

EXAM 6 – CANADA, FALL 2019

7. (1.75 points)

As a result of the 1978 trilogy of Supreme Court of Canada decisions, an upper limit was established on awards for non-pecuniary general damages.

a. (0.25 point)

Define non-pecuniary general damages.

b. (1 point)

Identify four arguments for a cap on non-pecuniary general damages.

c. (0.5 point)

Identify two exceptions for which the cap on non-pecuniary general damages does not apply in Canada.

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SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 7	
TOTAL POINT VALUE: 1.75	LEARNING OBJECTIVE(S): A3
SAMPLE ANSWERS	
Part a: 0.25 point	
<p><u>Sample 1</u> Damages not easily quantified financially (e.g. pain & suffering)</p> <p><u>Sample 2</u> Non-economic loss arising out of physical or psychological pain and suffering</p> <p><u>Sample 3</u> Non-pecuniary damages are damages on pain and suffering that do not relate to financial losses</p>	
Part b: 1 point	
<p><u>Sample answers (maximum one answer from each of the four following categories)</u></p> <ul style="list-style-type: none"> • Limitless awards (one of the following) <ul style="list-style-type: none"> ○ The pain and suffering awards can be limitless if there is no cap ○ Limitless claims lead to extravagant awards ○ Lack of a cap leads to extravagant awards • Compensation (one of the following) <ul style="list-style-type: none"> ○ No money can provide true restitution ○ Victims are already fully compensated for income loss and future care ○ Non-pecuniary damage is not to indemnify the victims because they have been compensated for medical costs and loss of income • Insurance environment (one of the following) <ul style="list-style-type: none"> ○ It creates a more appropriate environment for insurers as losses are more predictable ○ Having predictable and stable rewards creates a good environment for insurers which then lower premium for policyholders ○ Creates predictable results so more insurers will be willing to enter the market (good for insureds availability) • Social burden (one of the following) <ul style="list-style-type: none"> ○ Extravagant award may lead to social burden and affect affordability and availability ○ Excessive awards could lead to increased insurance costs which may result in social burden ○ Extraordinary amount of awards lead to affordability and availability issue of insurance market, which lead to social burden 	
Part c: 0.5 point	
<p><u>Samples (any 2 of the following 3)</u></p> <ul style="list-style-type: none"> • Sexual abuse • Defamation • Negligence causing financial loss 	

SAMPLE ANSWERS AND EXAMINER'S REPORT

EXAMINER'S REPORT
<p>Candidates were expected to understand the definition of non-pecuniary awards, the reasons a cap was introduced, and when exceptions to the cap apply.</p>
<p>Part a</p> <p>Candidates were expected to provide the definition of non-pecuniary damages or describe the type of damage these awards are compensating for.</p> <p>A common error included:</p> <ul style="list-style-type: none">• Providing an incorrect definition, for example, stating “Damages not injury related to the insured but the damages financially sustained from the claims process”• Not specifying an intangible injury for which “non-financial damages” were being awarded
<p>Part b</p> <p>Candidates were expected to know why the Canadian legal system introduced a cap on non-pecuniary damages.</p> <p>Common errors included:</p> <ul style="list-style-type: none">• Providing two responses from the same category of reasons, for example, “not to provide compensation, but to make life easier” and “no amount of money can bring back what was lost”• Providing tort reforms unrelated to the non-pecuniary cap
<p>Part c</p> <p>Candidates were expected to know the exceptions for which the cap on non-pecuniary damages does not apply.</p> <p>Common errors included:</p> <ul style="list-style-type: none">• Providing incorrect exceptions, for example, “fraudulent damages”• Providing a correct exception but associating it with a court decision not related to the Trilogy• Answering “negligence” but not specifying that it should be “negligence causing financial loss”