

EXAM 6 – CANADA, FALL 2019

8. (1.25 points)

In the article *Tort Reform Tension*, Harris described several areas of tort reform aimed at controlling legal claim costs in Canada.

a. (0.25 point)

Briefly describe one reason trial lawyers have been resistant to joint and several liability tort reform measures.

b. (0.5 point)

Briefly describe the “deep pocket” syndrome and propose one reform that would help address it.

c. (0.5 point)

Explain whether damages for loss of income could be greater than the plaintiff would have otherwise received while working.

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SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 8	
TOTAL POINT VALUE: 1.25	LEARNING OBJECTIVE(S): A4-a
SAMPLE ANSWERS	
Part a: 0.25 point	
<u>Sample answers (one of the following)</u>	
<ul style="list-style-type: none"> • After reform, the victims may not get full compensation if any of defendants go bankrupt • Victims may not always get paid in full • Longer trials to determine % liable for defendant • After replacement to proportionate liability, we will have more trials to determine share of liability. Efficiency will decrease and legal costs will increase. 	
Part b: 0.5 point	
<u>Sample 1</u>	
<ul style="list-style-type: none"> • Victims go after company with deepest pockets to pay total loss even if they have small degree of liability • Replace joint & several liability with proportional liability 	
<u>Sample 2</u>	
<ul style="list-style-type: none"> • Under the current joint and several liability legal framework, a defendant who is found one percent guilty can be liable to pay up to 100% of the loss • Remove vicarious liability 	
Part c: 0.5 point	
<u>Sample</u>	
<p>If reform, no because plaintiff would receive compensation on a net basis instead of gross, and must present collateral source.</p> <p>Currently, the basis is gross income and no collateral source needs to be admitted so plaintiffs receive more than their net loss.</p>	
EXAMINER'S REPORT	
Candidates were expected to demonstrate knowledge of trends in tort litigation.	
Part a	
<p>Candidate were expected to present an argument as to why lawyers may oppose change to joint and several liability.</p> <p>A common error included:</p> <ul style="list-style-type: none"> • Stating that lawyers' compensation would be lower. This answer does not address the importance of the efficiency of the legal system and the impact on the plaintiff as they may not be fully compensated. 	
Part b	
Candidates were expected to identify the inverse link between liability level and monetary resources for deep pocket syndrome.	

SAMPLE ANSWERS AND EXAMINER'S REPORT

Common errors included:

- Not establishing the link between liability level and monetary resources

Part c

Candidates were expected to correctly identify that income was replaced on a gross basis and that currently plaintiffs can recover from dual sources which may lead to overcompensation.

A common error was:

- Stating that expenses while not working were lower without linking the answer to compensation