

MID-TERM EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

FOLLOW any instructions for initiating the exam software. If you are using BLUEBOOKS instead of a computer, be sure that you have written your MIDTERM exam number on each bluebook and that you are otherwise ready to begin.

DOUBLE SPACE your answer.

This exam will last 90 minutes. Plan on spending at least 10 MINUTES reading the question and outlining your answer. REREAD the question to be sure you haven't missed anything.

Please discuss only the kinds of issues that would be raised as a result of what you have learned through section B(1) of Chapter 3, that is, through the coverage of wrongful death. Please **OMIT** from your analysis any discussion of issues that are covered beyond that point; **DO NOT** discuss, for example, governmental immunity, multi-party liability, comparative fault, or any other issue other than the issues we have already covered in class.

The events described in this question occur in the hypothetical state of Everglade. Please apply any statutes from the state of Everglade that are supplied with the question.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, "Andropov (A) would sue Brezhnev (B). B would be liable to A if"

Plan on spending at least 5 minutes at the end **PROOFREADING** your answers. You may not write **ANOTHER WORD** after time is called.

REMEMBER THE HONOR CODE: DO NOT IDENTIFY YOURSELF

DOUBLE SPACE!

GOOD LUCK!

DOUBLE SPACE!

Question

George Slater was employed by Flying Fuels as a tanker truck driver. He was regularly scheduled for a Tuesday delivery of unleaded gasoline to a truck stop in Springfield, Everglade. On November 10, 2023 he was traveling on the interstate on his way to Springfield. His rig was a typical 18-wheeler, with a tractor (housing the diesel engine and the cab where the driver sits), connected to a trailer containing the cargo. The speed limit for trucks on that stretch of the interstate was 60 mph. Slater was nearing Exit 53 (still five miles away from Exit 58, which would take him to the truck stop) when a car in the lane on his left suddenly cut in front of him trying to get to Exit 53. Slater slammed on his brakes, causing the rear of the trailer to swing around to the left, catching the front end of a Toyota Corolla being driven by Cynthia King. It caused King's car to flip and crash into a guard rail. The collision with the guard rail caused fatal injuries to Cynthia. She was declared dead at the scene. She was also 18-20 weeks pregnant at the time of the crash, and although the baby she was carrying (she and her husband Kenneth had decided to call her "Susan") was delivered (and then died) at the scene, medical experts agree that at that stage of pregnancy Susan was not viable, that is, was not yet developed enough to survive outside the womb. Cynthia and Kenneth had no other children.

Slater told officers at the scene that the car that swerved in front of him was a blue sedan, but he had no other identifying information. After suddenly cutting in front of him the blue sedan continued on the highway and has never been identified. Data recovered from Slater's truck showed that he was traveling 63 mph when he applied his brakes.

You work for the law firm that has been retained to defend Flying Fuels from any liability they may face as a result of the crash on November 10, 2023. Please evaluate their potential exposure.

SELECTED STATUTES OF THE STATE OF EVERGLADE

ANNOTATED CODE OF EVERGLADE

ARTICLE 7. ACTIONS FOR INJURIES

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE

§ 55-7-5 Action for death by wrongful act

Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action to recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to murder in the first or second degree, or manslaughter. No action, however, shall be maintained by the personal representative of one who, not an infant, after injury, has compromised for such injury and accepted satisfaction therefor previous to his death. Any right of action which may hereafter accrue by reason of such

injury done to the person of another shall survive the death of the wrongdoer, and may be enforced against the executor or administrator, either by reviving against such personal representative a suit which may have been brought against the wrongdoer himself in his lifetime, or by bringing an original suit against his personal representative after his death, whether or not the death of the wrongdoer occurred before or after the death of the injured party.

§ 55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages

(a) Every such action shall be brought by and in the name of the personal representative of such deceased person who has been duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, and the amount recovered in every such action shall be recovered by said personal representative and be distributed in accordance herewith. If the personal representative was duly appointed in another state, territory or district of the United States, or in any foreign country, such personal representative shall, at the time of filing of the complaint, post bond with a corporate surety thereon authorized to do business in this state, in the sum of \$100, conditioned that such personal representative shall pay all costs adjudged against him or her and that he or she shall comply with the provisions of this section. The circuit court may increase or decrease the amount of said bond, for good cause.

(b) In every such action for wrongful death, the jury, or in a case tried without a jury, the court, may award such damages as to it may seem fair and just, and, may direct in what proportions the damages shall be distributed to the surviving spouse and children, including adopted children and stepchildren, brothers, sisters, parents and any persons who were financially dependent upon the decedent at the time of his or her death or would otherwise be equitably entitled to share in such distribution after making provision for those expenditures, if any, specified in subdivision (2), subsection (c) of this section. If there are no such survivors, then the damages shall be distributed in accordance with the decedent's will or, if there is no will, in accordance with the laws of descent and distribution as set forth in chapter forty-two of this code. If the jury renders only a general verdict on damages and does not provide for the distribution thereof, the court shall distribute the damages in accordance with the provisions of this subsection.

(c)(1) The verdict of the jury shall include, but may not be limited to, damages for the following: (A) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent; (B) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection, care and assistance provided by the decedent; (C) expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death; and (D) reasonable funeral expenses.

(2) In its verdict the jury shall set forth separately the amount of damages, if any, awarded by it for reasonable funeral, hospital, medical and said other expenses incurred as a result of the wrongful act, neglect or default of the defendant or defendants which resulted in death, and any such amount recovered for such expenses shall be so expended by the personal representative.