

FINAL EXAM

**Instructions**

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

THIS IS A CLOSED BOOK EXAM! While you are waiting for the exam to begin, be sure that you have written your EXAM NUMBER on EACH bluebook, that you have read these instructions, and that you are otherwise ready to begin.

IMPORTANT: This exam will last THREE HOURS. You should plan on spending AT LEAST 20 minutes reading the questions carefully and outlining your answers on a separate sheet of paper. Before writing your answers, REREAD each question to be sure you haven't missed anything.

DOUBLE-SPACE your answers in the bluebook.

Use SEPARATE BLUEBOOKS for EACH QUESTION. Label each bluebook according to each question and, if necessary, book number, e.g., "Question 1, Book 1"; "Question 1, Book 2"; "Question 2"; etc. When you are finished, turn to the back cover of the first bluebook, and place the second, third, fourth, etc. bluebook in order inside the end of the first bluebook, so the whole makes a single package. Then put it in the box at the front.

You are welcome to use abbreviations, but indicate what they are, e.g., 'Andropov ("A") would be sued by Brezhnev ("B"), alleging that A would be liable to B ... .'

PLEASE IGNORE issues relating to legal causation; assume that any but-for cause of an injury is also a proximate cause of that injury.

Plan on spending at least 15 minutes at the end PROOFREADING your answers. You may not write ANOTHER WORD after time is called.

A STATUTORY APPENDIX is provided that gives the law of this jurisdiction, the State of Linden, on some issues. If no law is specified on the point you are interested in, please comment on the possible alternatives.

Each question has been assigned a point total, and the exam as a whole has a point total of **135**. Spend the amount of time on each question reflecting its relative worth.

You may KEEP your copy of the exam questions if you wish.

REMEMBER THE HONOR CODE! Don't identify yourself.

DOUBLE SPACE!

DOUBLE SPACE!

DOUBLE SPACE!

GOOD LUCK!!!

QUESTION 1 (55 points)

On August 8, 1997, Beth Seymour, aged 13, went to Grenada Lake near Bakertown, Linden with her stepfather, Danny Ingold, and six other friends to go boating. The boat, which Danny owned on the date in question, was a 1980 Glastron, 19 feet in length, with a 165hp MerCruiser engine.

At approximately 6:00 p.m., Beth and two other girls jumped out of the boat to get onto an inner-tube pulled behind the boat driven by Danny. Danny subsequently pulled the three girls on the inner-tube behind the boat. Beth fell off of the inner-tube after approximately five minutes. Once Beth fell off, the other two girls dropped off as well.

The girls waited in the water for Danny to circle back around on the right and pick them up. However, Danny thought they wanted to ride the inner-tube again. He slowed the boat down and placed it in neutral as he approached the girls floating in the water 15 to 20 yards away. He then allowed the left side of the boat to pass by Beth. The other two girls were on the same side of the boat but 10 to 30 feet away.

As the boat slowly passed by Beth she did not indicate to anyone that she was ready to get into the boat but thought that Danny intended for her to get in since it was moving so slowly. She reached out to grab a ladder on the left side of the boat as the rear of the boat passed by her. Beth admits that she was aware of the danger of getting a body part mixed up in the running propeller and thought that it may have been running when she attempted to get into the boat, but also stated that she was unable to see the propeller beneath the water and could only hear bubbling noises as the boat passed. She reached out for the ladder on the left side of the boat and grabbed it with both hands and put her left foot on it to pull herself up into the boat. However, as she was lifting her right leg a current pulled her foot into the unguarded propeller cutting from the ankle to the toes causing her to fall back into the water as she released the ladder.

Your law firm has been hired by the insurance company to represent the boat manufacturer. The manufacturer has received a letter from Julie and Danny Ingold, on behalf of Julie's daughter Beth, demanding compensation for the injuries incurred on August 8, 1997. As part of your file you have the following transcript of an investigator's interview with Beth after the accident.

Q [investigator]. How close to the motor was the ladder?

A [Beth]. About like this. (Indicates)

Q. About--what about say that is, about two feet you have indicated, two and one-half feet?

A. I guess that's right.

Q. You are aware, are you not, that there was no guard of any type on the propeller?

A. I certainly am.

Q. You saw the boat and the motor out of the water on prior occasions, did you not?

A. Yes, I did.

Q. And you were aware at all times that there was no type of guard on the prop.

A. Right.

Q. Do you know how far under the water the propeller was when the boat was in the water? [pause]  
Do you understand the question?

A. No, I don't.

Q. Okay. You know how a boat is propelled by a propeller when it's sitting in the water?

A. Right.

Q. And you are aware, of course, that the propeller is turning?

A. Right.

Q. My question is, do you know how far from the top of the water when the boat is sitting in the water to the bottom of the propeller?

A. I would say maybe like this, whatever that is. (Indicates) I'm not very good with measuring.

Q. Again, you are indicating with your hands roughly two feet, two and one-half feet?

A. I would guess that's about right.

....

Q. You were aware that if you got a body part in the propeller when it was turning that you would be hurt, weren't you?

A. Certainly.

Q. And you knew that when you were out playing on the boat that day, didn't you?

A. Certainly.

You estimate Beth's medical costs to be \$200,000, and a jury's assessment of her pain and suffering to be \$1,000,000. Please analyze your client's potential exposure.

#### QUESTION 2 (80 points)

Joel Horton, Sr., aged 70, was living with his son and daughter-in-law, Joel and Sarah Horton, in Oakpark, Linden. Joel Sr. had suffered a major stroke in 1994 and a series of minor strokes between 1996 and 1998. On June 5, 1999, Joel Jr. and Sarah drove with Joel Sr. to Tyler Lake State Park. The three of them had a picnic lunch in an area reserved for that purpose. After they had finished, Joel Jr. turned on the radio to listen to a baseball game and Sarah began reading a book under the shade of a nearby tree. Joel Sr. said he was going for a walk. After an hour or so Joel Jr. asked Sarah where his father was, and she said that she hadn't seen him since after lunch. Joel Jr. walked in the direction he had last seen his father walking, and soon arrived at a swimming area in the lake. To his horror he saw his father floating face down in the water. Joel Jr. pulled him to shore, tried to revive him, and shouted frantically for help. Unfortunately, it was all to no avail; Joel Sr. was pronounced dead at the scene.

Joel Jr. and Sarah have come to your office and in your interview you learn the following facts:

- (1) Joel Sr. was wearing shorts, but not a swimsuit, when he walked over toward the lake. Joel and Sarah stated that Joel Sr. enjoyed wading in the water during warm weather, and before his stroke he had been able to swim, but it did not occur to them that Joel Sr. would be at risk on this occasion. They now very much regret not having kept a closer eye on him.
- (2) The first ten feet from shore at the swimming area had a relatively gradual slope, up to about 18" in depth. At about 10 feet from shore, however, it dropped off steeply to a depth of 9 feet. Joel and Sarah believe that Joel Sr. must have been wading in the shallow water and then lost his footing by stepping off the "ledge." A report from the medical examiner stated that there was a bump on the back of Joel Sr.'s head that was consistent with striking an object such as a rock on the bottom of the lake.

- (3) The water at the swimming area at Tyler Lake is not very clear. Particularly when someone has been stirring up sand or mud on the lake bottom, it would be difficult if not impossible to see one's feet through even a foot of water.
- (4) Mark Edwards, an expert in design of natural swimming areas, has been asked to investigate the scene and has reported that the "ledge" effect is one that should be avoided in maintenance of a swimming area to be used by the public. His inquiries about the history of the Tyler Lake swimming area have revealed that when it was first created in 1985, the swimming area had a gradual slope so that someone could wade out as much as 20-25 feet before the water would be over an adult's head. However, during the previous winter an unusually strong storm caused the soil to wash away from the swimming are, leaving the "ledge" that Joel Sr. apparently encountered. In informal conversations with Joel Jr. and Sarah, park officials have acknowledged that the steep drop-off was one that they planned to repair, and in fact the area was repaired not long after Joel Sr.'s tragic death.
- (5) A sign posted near the water said "No Lifeguard on Duty. Swim at your own risk." However, during busy months (from June 15 through September 1) the state tried to provide a park ranger who kept an eye on the area.

Joel Jr. and Sarah would like an evaluation of what, if any, remedies they might have for Joel Sr.'s death.

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SELECTED STATUTES OF THE STATE OF LINDEN

**LINDEN STATUTES ANNOTATED**  
**TITLE 1. CIVIL PROCEDURE**  
**Chapter 1. Comparative Fault**

**§ 1A.1 Comparative negligence**

In all actions hereafter brought, whether arising before or after the effective date of this act, for negligence resulting in personal injuries or wrongful death, or injury to property, contributory negligence shall not bar a recovery, unless any negligence of the person so injured, damaged or killed, is of greater degree than any negligence of the person, firm or corporation causing such damage, or unless any negligence of the person so injured, damaged or killed, is of greater degree than the combined negligence of any persons, firms or corporations causing such damage.

**§ 1A.2 Percentage of fault--Determination--Exception--Limitations**

(1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages except entities immune from liability to the claimant as a result of worker's compensation coverage. The sum of the percentages of the total fault attributed to at-fault entities shall equal one hundred percent. The entities whose fault shall be determined include the claimant or person suffering personal injury or incurring property damage, defendants, third-party defendants, entities released by the claimant, entities with any other individual defense against the claimant, and entities immune from liability to the claimant, but shall not include those entities immune from liability to the claimant because of worker's compensation coverage. Judgment shall be entered against each defendant except those who have been released by the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages. The liability of each defendant shall be several only and shall not be joint except:

(a) A party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party.

(b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimant's total damages.

(2) If a defendant is jointly and severally liable under one of the exceptions listed in subsections (1)(a) or (1)(b) of this section, such defendant's rights to contribution against another jointly and severally liable defendant, and the effect of settlement by either such defendant, shall be determined under § L.S.A. § 1B-1 et seq.

(3)(a) Nothing in this section affects any cause of action relating to hazardous wastes or substances or solid waste disposal sites.

(b) Nothing in this section shall affect a cause of action arising from the tortious interference with contracts or business relations.

(c) Nothing in this section shall affect any cause of action arising from the manufacture or marketing of a fungible product in a generic form which contains no clearly identifiable shape, color, or marking.

### **§ 1B-1. Right to contribution**

(a) Except as otherwise provided in this Article, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death has not been extinguished nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, succeeds to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This Article does not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(g) This Article shall not apply to breaches of trust or of other fiduciary obligation.

(h) The provisions of this Article shall apply to tort claims against the State. However, in such cases, the same rules governing liability and the limits of liability shall apply to the State and its agencies as in cases heard before the Industrial Commission. The State's share in such cases shall not exceed the pro rata share based upon the maximum amount of liability under the Tort Claims Act.

### **§ 1B-2. Pro rata shares**

In determining the pro rata shares of tortfeasors in the entire liability

- (1) Their relative degree of fault shall not be considered;
- (2) If equity requires, the collective liability of some as a group shall constitute a single share; and
- (3) Principles of equity applicable to contribution generally shall apply.

### **§ 1B-3. Enforcement [omitted]**

### **§ 1B-4. Release or covenant not to sue**

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it,

whichever is the greater; and,

(2) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

## **TITLE 28. WRONGFUL DEATH**

### **§ 28A-18-1. Survival of actions to and against personal representative**

(a) Upon the death of any person, all demands whatsoever, and rights to prosecute or defend any action or special proceeding, existing in favor of or against such person, except as provided in subsection (b) hereof, shall survive to and against the personal representative or collector of his estate.

(b) The following rights of action in favor of a decedent do not survive:

(1) Causes of action for libel and for slander, except slander of title;

(2) Causes of action for false imprisonment;

(3) Causes of action where the relief sought could not be enjoyed, or granting it would be nugatory after death.

### **§ 28A-18-2. Death by wrongful act of another; recovery not assets**

(a) When the death of a person is caused by a wrongful act, neglect or default of another, such as would, if the injured person had lived, have entitled him to an action for damages therefor, the person or corporation that would have been so liable, and his or their personal representatives or collectors, shall be liable to an action for damages, to be brought by the personal representative or collector of the decedent; and this notwithstanding the death, and although the wrongful act, neglect or default, causing the death, amounts in law to a felony. The personal representative or collector of the decedent who pursues an action under this section may pay from the assets of the estate the reasonable and necessary expenses, not including attorneys' fees, incurred in pursuing the action. At the termination of the action, any amount recovered shall be applied first to the reimbursement of the estate for the expenses incurred in pursuing the action, then to the payment of attorneys' fees, and shall then be distributed as provided in this section. The amount recovered in such action is not liable to be applied as assets, in the payment of debts or legacies, except as to burial expenses of the deceased, and reasonable hospital and medical expenses not exceeding four thousand five hundred dollars (\$4,500) incident to the injury resulting in death, except that the amount applied for hospital and medical expenses shall not exceed fifty percent (50%) of the amount of damages recovered after deducting attorneys' fees, but shall be disposed of as provided in the Intestate Succession Act. All claims filed for such services shall be approved by the clerk of the superior court and any party adversely affected by any decision of said clerk as to said claim may appeal to the superior court in term time.

- (b) Damages recoverable for death by wrongful act include:
- (1) Expenses for care, treatment and hospitalization incident to the injury resulting in death;
  - (2) Compensation for pain and suffering of the decedent;
  - (3) The reasonable funeral expenses of the decedent;
  - (4) The present monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected;
    - a. Net income of the decedent,
    - b. Services, protection, care and assistance of the decedent, whether voluntary or obligatory, to the persons entitled to the damages recovered,
    - c. Society, companionship, comfort, guidance, kindly offices and advice of the decedent to the persons entitled to the damages recovered;
  - (5) Such punitive damages as the decedent could have recovered pursuant to Chapter 1D of the General Statutes had he survived, and punitive damages for wrongfully causing the death of the decedent through malice or willful or wanton conduct, as defined in § G.S. 1D-5;
  - (6) Nominal damages when the jury so finds.
- (c) All evidence which reasonably tends to establish any of the elements of damages included in subsection (b), or otherwise reasonably tends to establish the present monetary value of the decedent to the persons entitled to receive the damages recovered, is admissible in an action for damages for death by wrongful act.

**TITLE 51. OFFICERS  
CHAPTER 5. GOVERNMENTAL TORT CLAIMS ACT**

**§ 151. Short title**

This act shall be known and may be cited as "The Governmental Tort Claims Act."

**§ 152. Definitions**

As used in the Governmental Tort Claims Act:

1. "Action" means a proceeding in a court of competent jurisdiction by which one party brings a suit against another;
2. "Agency" means any board, commission, committee, department or other instrumentality or entity designated to act in behalf of the state or a political subdivision;
3. "Claim" means any written demand presented by a claimant or his authorized

representative in accordance with this act to recover money from the state or political subdivision as compensation for an act or omission of a political subdivision or the state or an employee;

4. "Claimant" means the person or his authorized representative who files notice of a claim in accordance with this act. Only the following persons and no others may be claimants:

a. any person holding an interest in real or personal property which suffers a loss, provided that the claim of said person shall be aggregated with claims of all other persons holding an interest in the property and the claims of all other persons which are derivative of the loss, and that multiple claimants shall be considered a single claimant,

b. the individual actually involved in the accident or occurrence who suffers a loss, provided that he shall aggregate in his claim the losses of all other persons which are derivative of his loss, or

c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in his claim all losses of all persons which are derivative of the death;

5. "Employee" means any person who is authorized to act in behalf of a political subdivision or the state whether that person is acting on a permanent or temporary basis, with or without being compensated or on a full-time or part-time basis;

a. Employee also includes:

(1) all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor, and

(2) from September 1, 1991, through June 30, 1996, licensed physicians, licensed osteopathic physicians and certified nurse-midwives providing prenatal, delivery or infant care services to State Department of Health clients pursuant to a contract entered into with the State Department of Health in accordance with paragraph (3) of subsection (b) of § 1-106 of Title 63 of the Linden Statutes but only insofar as services authorized by and in conformity with the terms of the contract and the requirements of § 1-233 of Title 63 of the Linden Statutes.

b. For the purpose of this act, the following are employees of this state, regardless of the place in this state where duties as employees are performed:

(1) physicians acting in an administrative capacity,

(2) resident physicians and resident interns participating in a graduate medical education program of the University of Linden Health Sciences Center or the College of Osteopathic Medicine of Linden State University, and

(3) faculty members and staff of the University of Linden Health Sciences Center and the College of Osteopathic Medicine of Linden State University, while engaged in teaching duties.

Physician faculty members and staff of the University of Linden Health Sciences Center and the College of Osteopathic Medicine of Linden State University not acting in an administrative capacity or engaged in teaching duties are not employees or agents of the state. However, in no event shall the state be held liable for the tortious conduct of any physician, resident physician or intern while practicing medicine or providing medical treatment to patients;

6. "Loss" means death or injury to the body or rights of a person or damage to real or personal property or rights therein;

7. "Municipality" means any incorporated city or town, and all institutions, agencies or instrumentalities of a municipality;

8. "Political subdivision" [omitted]

9. "Scope of employment" means performance by an employee acting in good faith within the duties of his office or employment or of tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee, but shall not include corruption or fraud;

10. "State" means the State of Linden or any office, department, agency, authority, commission, board, institution, hospital, college, university, public trust created pursuant to Title 60 of the Linden Statutes of which the State of Linden is the beneficiary, or other instrumentality thereof; and

11. "Tort" means a legal wrong, independent of contract, involving violation of a duty imposed by general law or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment.

### **§ 152.1. Sovereign immunity**

A. The State of Linden does hereby adopt the doctrine of sovereign immunity. The state, its political subdivisions, and all of their employees acting within the scope of their employment, whether performing governmental or proprietary functions, shall be immune from liability for torts.

B. The state, only to the extent and in the manner provided in this act, waives its immunity and that of its political subdivisions. In so waiving immunity, it is not the intent of the state to waive any rights under the Eleventh Amendment to the United States Constitution.

### **§ 153. Liability--Scope--Exemptions--Exclusivity**

A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in this act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of this act for any act or omission of an employee acting outside the scope of his employment.

B. The liability of the state or political subdivision under this act shall be exclusive and in place of all other liability of the state, a political subdivision or employee at common law or otherwise.

**§ 154. Extent of liability--Punitive or exemplary damages--Joinder of parties--Severability of liability**

A. The total liability of the state and its political subdivisions on claims within the scope of this act, § 151 et seq. of this title, arising out of an accident or occurrence happening after the effective date of this act, § 151 et seq. of this title, shall not exceed:

1. Twenty-five Thousand Dollars (\$25,000.00) for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence;

2. One Hundred Thousand Dollars (\$100,000.00) to any claimant for his claim for any other loss arising out of a single act, accident, or occurrence. Except however, the limits of said liability for the University Hospitals and State Mental Health Hospitals operated by the Department of Mental Health and Substance Abuse Services for claims arising from medical negligence shall be Two Hundred Thousand Dollars (\$200,000.00). For claims arising from medical negligence by any licensed physician, osteopathic physician or certified nurse-midwife rendering prenatal, delivery or infant care services from September 1, 1991, through June 30, 1996, pursuant to a contract authorized by subsection (b) of § 1-106 of Title 63 of the Linden Statutes and in conformity with the requirements of § 3 of this act, the limits of said liability shall be Two Hundred Thousand Dollars (\$200,000.00); or

3. One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.

B. No award for damages in an action or any claim against the state or a political subdivision shall include punitive or exemplary damages.

C. When the amount awarded to or settled upon multiple claimants exceeds the limitations of this section, any party may apply to the district court which has jurisdiction of the cause to apportion to each claimant his proper share of the total amount as limited herein. The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement made to him bears to the aggregate awards and settlements for all claims against the state or its political subdivisions arising out of the occurrence. When the amount of the aggregate losses presented by a single claimant exceeds the limits of paragraphs 1 or 2 of subsection A of this section, each person suffering a loss shall be entitled to his proportionate share.

D. The total liability of resident physicians and interns while participating in a graduate medical education program of the University of Linden College of Medicine, its affiliated institutions and the Linden College of Osteopathic Medicine and Surgery shall not exceed One Hundred Thousand Dollars (\$100,000.00).

E. The state or a political subdivision may petition the court that all parties and actions arising out of a single accident or occurrence shall be joined as provided by law, and upon order of the court the proceedings upon good cause shown shall be continued for a reasonable time or until such joinder has been completed. The state or political subdivision shall be allowed to interplead in any action which may impose on it any duty or liability pursuant to this act.

F. The liability of the state or political subdivision under this act shall be several from that of any other person or entity, and the state or political subdivision shall only be liable for that

percentage of total damages that corresponds to its percentage of total negligence. Nothing in this section shall be construed as increasing the liability limits imposed on the state or political subdivision under this act.

### **§ 155. Exemptions from liability**

The state or a political subdivision shall not be liable if a loss or claim results from:

1. Legislative functions;
2. Judicial, quasi-judicial, or prosecutorial functions;
3. Execution or enforcement of the lawful orders of any court;
4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy;
5. Performance of or the failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees;
6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;
7. Any claim based on the theory of attractive nuisance;
8. Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the state or a political subdivision;
9. Entry upon any property where that entry is expressly or implied authorized by law;
10. Natural conditions of property of the state or political subdivision;
11. Assessment or collection of taxes or special assessments, license or registration fees, or other fees or charges imposed by law;
12. Licensing powers or functions including, but not limited to, the issuance, denial, suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authority;
13. Inspection powers or functions, including failure to make an inspection, review or approval, or making an inadequate or negligent inspection, review or approval of any property, real or personal, to determine whether the property complies with or violates any law or contains a hazard to health or safety, or fails to conform to a recognized standard;
14. Any loss to any person covered by any workers' compensation act or any employer's liability act;
15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning device unless the absence, condition, location or malfunction is not corrected by the state or political subdivision responsible within a reasonable time after actual or constructive notice or the removal or destruction of such signs, signals or warning devices by third parties, action of weather elements or as a result of traffic collision except on failure of the state or political subdivision to correct the same within a reasonable time after actual or constructive notice. Nothing herein shall give rise to liability

arising from the failure of the state or any political subdivision to initially place any of the above signs, signals or warning devices. The signs, signals and warning devices referred to herein are those used in connection with hazards normally connected with the use of roadways or public ways and do not apply to the duty to warn of special defects such as excavations or roadway obstructions;

16. Any claim which is limited or barred by any other law;

17. Misrepresentation, if unintentional;

18. An act or omission of an independent contractor or consultant or his employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred;

19. Theft by a third person of money in the custody of an employee unless the loss was sustained because of the negligence or wrongful act or omission of the employee;

20. Participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the state or a political subdivision;

21. Participation in any activity approved by a local board of education and held within a building or on the grounds of the school district served by that local board of education before or after normal school hours or on weekends;

22. Any court-ordered or Department of Corrections approved work release program; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;

23. The activities of the National Guard, . . . [omitted];

24. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner or injuries by a prisoner to any other prisoner; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;

25. Provision, equipping, operation or maintenance of any juvenile detention facility, or injuries resulting from the escape of a juvenile detainee, or injuries by a juvenile detainee to any other juvenile detainee;

26. Any claim or action based on the theory of manufacturer's products liability or breach of warranty, either expressed or implied;

27. Any claim or action based on the theory of indemnification or subrogation;

28. Any claim based upon an act or omission of an employee in the placement of children;

29. Acts or omissions done in conformance with then current recognized standards;

30. Maintenance of the state highway system or any portion thereof unless the claimant presents evidence which establishes either that the state failed to warn of the unsafe condition or that the loss would not have occurred but for a negligent affirmative act of the state;

31. Any confirmation of the existence or nonexistence of any effective financing statement on file in the office of the Secretary of State made in good faith by an employee of the office of the Secretary of State as required by the provisions of § 9-307.6 of Title 12A of the Linden Statutes; or

32. Any court-ordered community sentence.