

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 and can be read from front to back. 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 ... '.

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

The exam covers the subjects covered up to Chapters 3B2 of the casebook. Do not address any issues beyond that point, such as contributory fault, governmental liability, or other issues.

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 (90 points)

At 11:30 p.m. on May 14, 1999, John Allen was driving home from his night shift at Foodsavers Grocery. He was driving at the speed limit, but apparently that was not fast enough for a Bolton Industries truck, an empty flatbed semi-truck (a so-called 18-wheeler) driven by Michael Bolton. On an open stretch of highway the Bolton Industries truck passed him and disappeared around a curve in the highway. About five minutes later Allen saw a truck tire in the middle of the highway. He swerved to the right to avoid it, but in doing so he overcorrected and, to avoid going into a ditch, pulled the car sharply to the left. That put him into the path of an oncoming ambulance driven by Mark Ruggerio.

At 11:15 p.m. Thomas M. Williams called emergency services from his home in Hudson, complaining of chest pains. The town of Hudson had a contract with Ruggerio Ambulance Services (Ruggerio) to provide emergency ambulance service and related emergency medical services. Mark Ruggerio was driving Cab 1 to Williams' home when he collided with Allen's car. Ruggerio determined that his ambulance was no longer operable, and called for a second ambulance, which was immediately dispatched and arrived at Williams's home at 11:48 p.m. By that time Williams had stopped breathing at his home. He died while being transported to a hospital.

You represent Williams' widow Charlene. She would like to know what options, if any, she has for recovery of tort damages resulting from Williams' death.

In the course of your investigation, you discover the following facts:

(1) The truck tire found in the middle of the road is of a type that would be used as a spare tire for the flatbed trailer that Bolton was transporting on the evening of the accident. However, approximately 30% of the trailers on the highway use the same kind of tire. While Bolton doesn't deny that the tire could have come from him, he doesn't admit it, either. Moreover, Bolton takes the position that spare tires can come loose from their storage position underneath the bed of the trailer, because the chains that hold them in place may become weakened by rust over time.

(2) Ruggerio was driving with his emergency lights on, but no siren. The normal practice among ambulance drivers is to use sirens wherever there is traffic that would slow down the ambulance's progress, but that at night where there is light traffic, lights are normally sufficient. John Allen has stated that he was not aware that the ambulance was headed in his direction, and because of the curve in the road he was unable to see the ambulance lights. He believes that if he had heard the siren he would have slowed down or pulled over, and would not have struck the tire in the middle of his lane.

(3) Williams' physician, Dr. Myron Dexter, has given an opinion that Williams would have had a much better chance of recovery if he had been treated promptly. Williams was sixty years old and did not have a history of heart problems. Nonetheless, Dr. Dexter acknowledges that there is a high mortality rate for heart attack victims; when pressed, he is unable to say that Williams probably would have recovered if the ambulance had gotten there on time.

Please analyze Charlene's prospects in light of what you have learned.

QUESTION 2 (45 points)

Thomas R. Burnett owns a family farm in rural St. Clair County, Linden. In 1996, Burnett entered into a "Finishing Hog Agreement" with Tyson Foods, Inc. ("Tyson"). The contract stated that Burnett was an independent contractor of Tyson, and it provided that he would be responsible for operating and maintaining a hog farm. Tyson would deliver young hogs to Burnett, and he would feed, water, and care for the hogs until they reached market size, at which time Tyson would retrieve the hogs.

Pursuant to the contract, Tyson supplied all food, veterinary supplies, and veterinary care for the hogs. Because when they entered the contract Burnett did not yet have hog houses on his property, Tyson determined the location where the houses were to be built, specified the dimensions of the houses, and assisted Burnett in securing financing for construction of the houses.

Tyson also required Burnett to construct and maintain a waste-management system in compliance with a design developed by the U.S. Department of Agriculture's Soil Conservation Service. The design provided for waste from the hog houses to be drained into a pipe and then collected in two lagoons. At various times, the waste would be spread onto Burnett's fields for disposal.

Once Burnett's construction of the houses and the waste-management system was complete, Tyson delivered hogs to the farm. At any given time, approximately 4,800 hogs were housed on the Burnett farm. Tyson representatives would conduct inspections of the Burnett farm about once a week and note their observations on standardized inspection reports and with handwritten notes.

Ray Stevens and his wife Barbara Stevens ("Stevens") owned property adjacent to Burnett's. Shortly after the hog farm became operational, Stevens began to smell a noxious odor emanating from the Burnett farm and saw waste from the farm flow onto their property and into a creek located on their property. Stevens, along with several other neighbors, complained about the smells. As a result, Burnett significantly reduced the smells. However, in the summer of 2000 Stevens and the neighbors wrote a letter to Burnett complaining that the smells were intolerable. They also wrote to Tyson Foods, asking them to do something about it.

You represent Tyson Foods. You have been asked for an analysis of whether or not Stevens et al. have a case, and if so, what remedies they would be entitled to. In a preliminary fact-finding effort, you have discovered that Burnett admits that there had been recurring odor problems from the time of the first letter. He has also admitted that the waste-management system installed would regularly stop up and that the obstruction would cause constant leaks, spills, and overflows of the waste.

You have also been provided with inspection reports and photographs taken by Tyson representatives that confirmed the waste-overflow problems. Stevens also presented evidence that indicated Tyson knew about the odor problems and had explained to Burnett how he could correct the problems. Although Burnett claims that he could not afford to make the necessary repairs all at once, he also admitted building a vacation home in 1997, as well as constructing a new principal residence on his St. Clair County farm in 1998.

Please prepare a memo analyzing your client's position.

SELECTED STATUTES OF THE STATE OF LINDEN
ANNOTATED LINDEN CODES

LINDEN GENERAL LAWS ANNOTATED
PART III. COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES
TITLE II. ACTIONS AND PROCEEDINGS THEREIN
CHAPTER 228. SURVIVAL OF ACTIONS AND DEATH AND DISABILITIES OF PARTIES
SURVIVAL OF ACTIONS

§ 1. Enumeration

In addition to the actions which survive by the common law, the following shall survive:

(1) Actions of tort (a) for assault, battery, imprisonment or other damage to the person; (b) for consequential damages arising out of injury to the person and consisting of expenses incurred by a husband, wife, parent or guardian for medical, nursing, hospital or surgical services in connection with or on account of such injury; (c) for goods taken or carried away or converted; or (d) for damage to real or personal property; and

(2) Actions against sheriffs for the misconduct or negligence of themselves or their deputies.

CHAPTER 229. ACTIONS FOR DEATH AND INJURIES RESULTING IN DEATH

§ 2. Wrongful death; damages

A person who (1) by his negligence causes the death of a person, or (2) by willful, wanton or reckless act causes the death of a person under such circumstances that the deceased could have recovered damages for personal injuries if his death had not resulted, or (3) operates a common carrier of passengers and by his negligence causes the death of a passenger, or (4) operates a common carrier of passengers and by his willful, wanton or reckless act causes the death of a passenger under such circumstances that the deceased could have recovered damages for personal injuries if his death had not resulted, shall be liable in damages in the amount of:

- (1) the fair monetary value of the decedent to the persons entitled to receive the damages recovered, as provided in section one, including but not limited to compensation for the loss of the reasonably expected net income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent to the persons entitled to the damages recovered;
- (2) the reasonable funeral and burial expenses of the decedent;
- (3) punitive damages in an amount of not less than five thousand dollars in such case as the decedent's death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant;

except that

- (1) the liability of an employer to a person in his employment shall not be governed by this section,
- (2) a person operating a railroad shall not be liable for negligence in causing the death

of a person while walking or being upon such railroad contrary to law or to the reasonable rules and regulations of the carrier and

- (3) a person operating a street railway or electric railroad shall not be liable for negligence for causing the death of a person while walking or being upon that part of the street railway or electric railroad not within the limits of a highway.

A person shall be liable for the negligence or the willful, wanton or reckless act of his agents or servants while engaged in his business to the same extent and subject to the same limits as he would be liable under this section for his own act.

Damages under this section shall be recovered in an action of tort by the executor or administrator of the deceased.

§ 6. Conscious suffering; recovery of damages

In any civil action brought under section two or five A, damages may be recovered for conscious suffering resulting from the same injury, but any sum so recovered shall be held and disposed of by the executors or administrators as assets of the estate of the deceased.