

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 (70 points)

On the morning of October 13, 1998, Andrew Roseboro arrived at the platform of the Linden State Transit Authority's train station at 116th Street and 8th Avenue to await the A train which would take him to work. At the time in question, Transit Authority was aware that this train station was infested with crack addicts, and Transit Authority's token booth clerk, Joseph Hutchinson, remembered seeing Mr. Roseboro, whom he recognized as a "regular," enter the station that morning.

Shortly thereafter, Mr. Roseboro was approached by two of the addict habitues, who then attempted to rob him, during the course of which he was beaten. While this assault was taking place, Hutchinson saw, on the three television monitors located in the front of his token booth, a disturbance but took no affirmative action. Hutchinson was dozing on and off at the time.

According to the recollection of another resident drug user, Rochelle White, the assault of Mr. Roseboro lasted more than five minutes, during which time the victim was brutally beaten; he eventually fell to the tracks while attempting to get away. However, the assailants pursued Mr. Roseboro onto the tracks, continuing to beat him by slamming his head against a beam which separated the local and express tracks, while rifling his pockets. At this time, a train entered the station. The assailants jumped up on the platform; Mr. Roseboro, however, bloodied and staggering, could not avoid the oncoming train and died shortly after impact.

The assailants were eventually captured and convicted of murder in the second degree.

You represent Lydia Roseboro, Andrew's widow. Please advise her as to her prospects for recovery.

QUESTION 2 (65 points)

On October 30, 1999, Walter Krohn and his friend Jimmy Flynn, both aged 10, were playing with a Halloween pumpkin Walter had carved at school. The boys were spending the afternoon at a farm in Springfield, Linden, owned by Eugene Krohn, Walter's father. After discussing various things they might do, the boys decided to fill the pumpkin with gasoline and ignite it. Walter knew that there was a gasoline storage tank on the farm and he had seen his father fill his farm vehicles with gasoline from that tank. Walter placed the nozzle into the pumpkin, filled the pumpkin with gasoline, and then lit it with a small butane lighter. A huge fireball erupted, causing serious burns to Walter.

You represent William M. Wilson's Sons, Inc. ("Wilson's"), who designed the gas pump and manufactured it in 1982. The unit operates as follows: The unit is placed onto the top of a gasoline tank by being screwed onto one of the 2" diameter openings at the top of the tank. A steel pipe extends down from the unit to the bottom of the tank; a handle operates the pumping unit, so that when the handle is moved up and down, gasoline flows from the bottom of the tank through the pump and into a 6 foot hose. At the end of the hose is a nozzle that can be placed into the opening of the tank on an automobile or farm vehicle, or placed into a gas can. (Unlike the handle found at a commercial gasoline pumping station, which regulates the flow of gasoline by squeezing a lever on the handle, the flow of gasoline in the pumping unit is controlled by moving the pump handle up and down; when pumping ceases, the flow of gasoline stops.)

Designs similar to the one described above have been sold for at least fifty years by six different manufacturers. Prior to 1996, no effort was made to sell a nozzle that had any kind of locking device. However, in 1996, Ajax Manufacturing began offering a pump unit that included

a plastic "valve" near the pump nozzle. The plastic valve had to be pulled out and twisted 180 degrees to permit the flow of gasoline. This feature was advertised in their catalogue as follows: "Helps to reduce the likelihood that your pump will be used by someone you don't want pumping gas. It's like the childproof cap on hazardous chemical bottles." You have information suggesting that approximately 20% of Ajax' sales are of this type of pump unit, whereas the rest of their sales are the traditional type with no valve. The engineers at Wilson's calculate that including this plastic valve would add approximately \$5 per pump unit to the cost of manufacturing, and that it would be regarded by most consumers as inconvenient.

Please prepare a memo evaluating the tort liability Wilson's faces.

SELECTED STATUTES OF THE STATE OF LINDEN
ESTATES, POWERS AND TRUSTS LAW
CHAPTER 17-B OF THE CONSOLIDATED LAWS
ARTICLE 5—FAMILY RIGHTS
PART 4. RIGHTS OF MEMBERS OF FAMILY RESULTING FROM WRONGFUL ACT,
NEGLECT OR DEFAULT CAUSING DEATH OF DECEDENT

§ 5-4.1. Action by personal representative for wrongful act, neglect or default causing death of decedent

1. The personal representative, duly appointed in this state or any other jurisdiction, of a decedent who is survived by distributees may maintain an action to recover damages for a wrongful act, neglect or default which caused the decedent's death against a person who would have been liable to the decedent by reason of such wrongful conduct if death had not ensued. Such an action must be commenced within two years after the decedent's death. When the distributees do not participate in the administration of the decedent's estate under a will appointing an executor who refuses to bring such action, the distributees are entitled to have an administrator appointed to prosecute the action for their benefit.

§ 5-4.3 Amount of recovery

(a) The damages awarded to the plaintiff may be such sum as the jury or, where issues of fact are tried without a jury, the court or referee deems to be fair and just compensation for the pecuniary injuries resulting from the decedent's death to the persons for whose benefit the action is brought. In every such action, in addition to any other lawful element of recoverable damages, the reasonable expenses of medical aid, nursing and attention incident to the injury causing death and the reasonable funeral expenses of the decedent paid by the distributees, or for the payment of which any distributee is responsible, shall also be proper elements of damage. Interest upon the principal sum recovered by the plaintiff from the date of the decedent's death shall be added to and be a part of the total sum awarded.

(b) Where the death of the decedent occurs on or after September first, nineteen hundred eighty-two, in addition to damages and expenses recoverable under paragraph (a) above, punitive damages may be awarded if such damages would have been recoverable had the decedent survived.

(c) (i) In any action in which the wrongful conduct is medical malpractice or dental malpractice, evidence shall be admissible to establish the federal, state and local personal income taxes which the decedent would have been obligated by law to pay.

(ii) In any such action tried by a jury, the court shall instruct the jury to consider the amount of federal, state and local personal income taxes which the jury finds, with reasonable certainty, that the decedent would have been obligated by law to pay in determining the sum that would otherwise be available for the support of persons for whom the action is brought.

(iii) In any such action tried without a jury, the court shall consider the amount of federal, state and local personal income taxes which the court finds, with reasonable certainty, that the decedent would have been obligated by law to pay in determining the sum that would otherwise be available for the support of persons for whom the action is brought.

§ 5-4.4 Distribution of damages recovered

(a) The damages, as prescribed by 5-4.3, whether recovered in an action or by settlement without an action, are exclusively for the benefit of the decedent's distributees and, when collected, shall be distributed to the persons entitled thereto under 4-1.1 and 5-4.5, except that where the decedent is survived by a parent or parents and a spouse and no issue, the parent or parents will be deemed to be distributees for purposes of this section. The damages shall be distributed subject to the following:

(1) Such damages shall be distributed by the personal representative to the persons entitled thereto in proportion to the pecuniary injuries suffered by them, such proportions to be determined after a hearing, on application of the personal representative or any distributee, at such time and on notice to all interested persons in such manner as the court may direct. If no action is brought, such determination shall be made by the surrogate of the county in which letters were issued to the plaintiff; if an action is brought, by the court having jurisdiction of the action or by the surrogate of the county in which letters were issued.

(2) The court which determines the proportions of the pecuniary injuries suffered by the distributees, as provided in subparagraph (1), shall also decide any question concerning the disqualification of a parent, under 4-1.4, or a surviving spouse, under 5-1.2, to share in the damages recovered.

(b) The reasonable expenses of the action or settlement and, if included in the damages recovered, the reasonable expenses of medical aid, nursing and attention incident to the injury causing death and the reasonable funeral expenses of the decedent may be fixed by the court which determines the proportions of the pecuniary injuries suffered by the distributees, as provided in subparagraph (1), upon notice given in such manner and to such persons as the court may direct, and such expenses may be deducted from the damages recovered. The commissions of the personal representative upon the residue may be fixed by the surrogate, upon notice given in such manner and to such persons as the surrogate may direct or upon the judicial settlement of the account of the personal representative, and such commissions may be deducted from the damages recovered.

(c) In the event that an action is brought, as authorized in this part, and there is no recovery or settlement, the reasonable expenses of such unsuccessful action, excluding counsel fees, shall be payable out of the assets of the decedent's estate.

§ 5-4.5 Non-marital children

For the purposes of this part, a non-marital child is the distributee of his father and paternal kindred and the father and paternal kindred of a non-marital child are that child's distributees to the extent permitted by 4-1.2.

LINDEN REVISED STATUTES ANNOTATED
COURT OF CLAIMS ACT

§ 8. Waiver of immunity from liability

The state hereby waives its immunity from liability and action and hereby assumes liability and consents to have the same determined in accordance with the same rules of law as applied to actions in the trial courts against individuals or corporations, provided the claimant complies with the limitations of this article. Nothing herein contained shall be construed to affect, alter or repeal any provision of the worker's compensation law.

§ 8-b. Claims for unjust conviction and imprisonment

1. The legislature finds and declares that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. The legislature intends by enactment of the provisions of this section that those innocent persons who can demonstrate by clear and convincing evidence that they were unjustly convicted and imprisoned be able to recover damages against the state. In light of the substantial burden of proof that must be carried by such persons, it is the intent of the legislature that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

2. Any person convicted and subsequently imprisoned for one or more felonies or misdemeanors against the state which he did not commit may, under the conditions hereinafter provided, present a claim for damages against the state.

3. In order to present the claim for unjust conviction and imprisonment, claimant must establish by documentary evidence that:

(a) he has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) (i) he has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (ii) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; provided that the judgement of conviction was reversed or vacated, and the accusatory

instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (e) or (g) of subdivision one of § 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in item (A) hereof), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of § 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the State of Linden; and

(c) his claim is not time-barred by the provisions of subdivision seven of this section.

4. The claim shall state facts in sufficient detail to permit the court to find that claimant is likely to succeed at trial in proving that (a) he did not commit any of the acts charged in the accusatory instrument or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state, and (b) he did not by his own conduct cause or bring about his conviction. The claim shall be verified by the claimant. If the court finds after reading the claim that claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of the state.

5. In order to obtain a judgment in his favor, claimant must prove by clear and convincing evidence that:

(a) he has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) (i) he has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint; or (ii) his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed; provided that the judgement of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (e) or (g) of subdivision one of § 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in item (A) hereof), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of § 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the State of Linden; and

(c) he did not commit any of the acts charged in the accusatory instrument or his acts or omissions charged in the accusatory instrument did not constitute a felony or misdemeanor against the state; and

(d) he did not by his own conduct cause or bring about his conviction.

6. If the court finds that the claimant is entitled to a judgment, it shall award damages in such sum of money as the court determines will fairly and reasonably compensate him.

7. Any person claiming compensation under this section based on a pardon that was granted before the effective date of this section or the dismissal of an accusatory instrument that occurred before the effective date of this section shall file his claim within two years after the effective date of this section. Any person claiming compensation under this section based on a pardon that was granted on or after the effective date of this section or the dismissal of an accusatory instrument that occurred on or after the effective date of this section shall file his claim within two years after the pardon or dismissal.

§ 10. Time of filing claims and notices of intention to file claims

No judgment shall be granted in favor of any claimant unless such claimant shall have complied with the provisions of this section applicable to his claim.

1. A claim for the appropriation by the state of lands, or any right, title or interest in or to lands shall be filed within three years after the accrual of such claim, or where title is vested by the filing of a description and map in the office of the county clerk or register, then within three years after personal service of a copy of such description and map and notice of filing thereof or if personal service cannot be made within the state, then within three years after the filing of the description and map and the recording of notice of filing thereof.

2. A claim by an executor or administrator of a decedent who left him or her surviving a husband, wife or next of kin, for damages for a wrongful act, neglect or default, on the part of the state by which the decedent's death was caused, shall be filed within ninety days after the appointment of such executor or administrator, unless the claimant shall within such time file a written notice of intention to file a claim therefor in which event the claim shall be filed within two years after the death of the decedent. In any event such claim shall be filed within two years after the death of the decedent.

3. A claim to recover damages for injuries to property or for personal injury caused by the negligence or unintentional tort of an officer or employee of the state while acting as such officer or employee, shall be filed within ninety days after the accrual of such claim unless the claimant shall within such time file a written notice of intention to file a claim therefor, in which event the claim shall be filed within two years after the accrual of such claim.

3-a. A claim to recover damages for injuries to property or for personal injuries caused by the negligence or unintentional tort of a member of the organized militia or of an employee in the division of military and naval affairs of the executive department, shall be filed within ninety days after the accrual of such claim, unless the claimant shall within such time file a written notice of intention to file a claim therefor, in which event the claim shall be filed within two years after the accrual of such claim.

3-b. A claim to recover damages for injuries to property or for personal injuries caused by the intentional tort of an officer or employee of the state while acting as such officer or employee, or of a member of the organized militia or of an employee in the division of military and naval affairs of the executive department, shall be filed within ninety days after the accrual of such claim, unless the claimant shall within such time file a written notice of intention to file a claim therefor, in which event the claim shall be filed within one year after the accrual of such claim.

4. A claim for breach of contract, express or implied, and any other claim not otherwise provided for by this section, over which jurisdiction has been conferred upon the court of claims, shall be filed within six months after the accrual of such claim, unless the claimant shall within such time file a written notice of intention to file a claim therefor in which event the claim shall be filed within two years after such accrual.

5. If the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

6. A claimant who fails to file a claim or notice of intention, as provided in the foregoing subdivisions, within the time limited therein for filing the claim or notice of intention, may, nevertheless, in the discretion of the court, be permitted to file such claim at any time before an action asserting a like claim against a citizen of the state would be barred under the provisions of article two of the civil practice law and rules. For the purpose of this subdivision, a claim against

the state arising under subdivision one of this section shall be deemed an action upon an implied contractual obligation. The application for such permission shall be made returnable at any regular or special session of the court and may be heard and determined by any judge thereof. The claim proposed to be filed, containing all of the information set forth in § 11 of this act, shall accompany such application. In determining whether to permit the filing of a claim pursuant to this subdivision, the court shall consider, among other factors, whether the delay in filing the claim was excusable; whether the state had notice of the essential facts constituting the claim; whether the state had an opportunity to investigate the circumstances underlying the claim; whether the claim appears to be meritorious; whether the failure to file a timely claim or notice of intention resulted in substantial prejudice to the state; and whether the claimant has any other available remedy.

7. For the purposes of subdivision three of this section, a claim against the state which would be governed by § 214-c of the civil practice law and rules if it were asserted against a citizen of the state shall be deemed to have accrued on the date of discovery of the injury by the claimant or on the date when through the exercise of reasonable diligence the injury should have been discovered by the claimant, whichever is earlier.

§ 12. Conditions of judgment

1. No judgment shall be granted on any claim against the state except upon such legal evidence as would establish liability against an individual or corporation in a court of law or equity.

2. No judgment shall be awarded to any claimant on any claim which, as between citizens of the state, would be barred by lapse of time.

3. Claims shall be heard and judgments thereon rendered by one judge, provided, however, that the presiding judge may order any claim or claims to be heard or determined by more than one judge, but not more than three judges, in which event the judgments thereon shall be rendered upon the concurrence of two judges. All intermediate applications and motions may be heard and determined by one judge.

4. Before any judgment shall be rendered for appropriation of land, the value of which exceeds five thousand dollars the judge rendering or one of the judges concurring in the judgment shall view the premises affected thereby.

5. No liability shall be imposed upon the state for alleged errors or omissions in the performance of a discretionary function.

CIVIL PRACTICE LAW AND RULES
CHAPTER EIGHT OF THE CONSOLIDATED LAWS
ARTICLE 14-A--DAMAGE ACTIONS:
EFFECT OF CONTRIBUTORY NEGLIGENCE AND ASSUMPTION OF RISK

§ 1411. Damages recoverable when contributory negligence or assumption of risk is established

In any action to recover damages for personal injury, injury to property, or wrongful death, the culpable conduct attributable to the claimant or to the decedent, including contributory

negligence or assumption of risk, shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to the claimant or decedent bears to the culpable conduct which caused the damages.

§ 1412. Burden of pleading; burden of proof

Culpable conduct claimed in diminution of damages, in accordance with § 1411, shall be an affirmative defense to be pleaded and proved by the party asserting the defense.

CHAPTER 24-A OF THE CONSOLIDATED LAWS
ARTICLE 15--MODIFICATION AND DISCHARGE OF OBLIGATIONS
TITLE 1. DISCHARGE OF JOINT OBLIGORS

§ 15-108. Release or covenant not to sue

(a) Effect of release of or covenant not to sue tortfeasors. When a release or a covenant not to sue or not to enforce a judgment is given to one of two or more persons liable or claimed to be liable in tort for the same injury, or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms expressly so provide, but it reduces the claim of the releasor against the other tortfeasors to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, or in the amount of the released tortfeasor's equitable share of the damages under article fourteen of the civil practice law and rules, whichever is the greatest.

(b) Release of tortfeasor. A release given in good faith by the injured person to one tortfeasor as provided in subdivision (a) relieves him from liability to any other person for contribution as provided in article fourteen of the civil practice law and rules.

(c) Waiver of contribution. A tortfeasor who has obtained his own release from liability shall not be entitled to contribution from any other person.

CIVIL PRACTICE LAW AND RULES
CHAPTER EIGHT OF THE CONSOLIDATED LAWS
ARTICLE 16--LIMITED LIABILITY OF PERSONS JOINTLY LIABLE

§ 15-01. Actions against persons jointly liable; service of summons; judgment

Where less than all of the named defendants in an action based upon a joint obligation, contract or liability are served with the summons, the plaintiff may proceed against the defendants served, unless the court otherwise directs, and if the judgment is for the plaintiff it may be taken against all the defendants.

CIVIL PRACTICE LAW AND RULES
CHAPTER EIGHT OF THE CONSOLIDATED LAWS
ARTICLE 16--LIMITED LIABILITY OF PERSONS JOINTLY LIABLE

§ 1601. Limited liability of persons jointly liable

1. Notwithstanding any other provision of law, when a verdict or decision in an action or claim for personal injury is determined in favor of a claimant in an action involving two or more tortfeasors jointly liable or in a claim against the state and the liability of a defendant is found to be fifty percent or less of the total liability assigned to all persons liable, the liability of such defendant to the claimant for non-economic loss shall not exceed that defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss; provided, however that the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence he was unable to obtain jurisdiction over such person in said action (or in a claim against the state, in a court of this state).

2. Nothing in this section shall be construed to affect or impair any right of a tortfeasor under section 15-108 of the general obligations law.

§ 1602. Application

The limitations set forth in this article shall:

1. apply to any claim for contribution or indemnification, but shall not include:

(a) a claim for indemnification if, prior to the accident or occurrence on which the claim is based, the claimant and the tortfeasor had entered into a written contract in which the tortfeasor had expressly agreed to indemnify the claimant for the type of loss suffered; or

(b) a claim for indemnification by a public employee, including indemnification pursuant to section fifty-k of the general municipal law or section seventeen or eighteen of the public officers law.

2. not be construed to impair, alter, limit, modify, enlarge, abrogate or restrict (i) the limitations set forth in section twenty-a of the court of claims act; (ii) any immunity or right of indemnification available to or conferred upon any defendant for any negligent or wrongful act or omission; (iii) any right on the part of any defendant to plead and prove an affirmative defense as to culpable conduct attributable to a claimant or decedent which is claimed by such defendant in the diminution of damages in any action; and (iv) any liability arising by reason of a non-delegable duty or by reason of the doctrine of respondeat superior.

3. not apply to administrative proceedings.

4. not apply to claims under the workers' compensation law or to a claim against a defendant where such defendant has impleaded a third party against whom the claimant is barred from asserting a cause of action because of the applicability of the workers' compensation law, to the extent of the equitable share of said third party.

5. not apply to actions requiring proof of intent.

6. not apply to any person held liable by reason of his use, operation, or ownership of a motor vehicle or motorcycle, as those terms are defined respectively in sections three hundred eleven and one hundred twenty-five of the vehicle and traffic law.

7. not apply to any person held liable for causing claimant's injury by having acted with reckless disregard for the safety of others.

8. not apply to any person held liable by reason of the applicability of article ten of the labor law.

9. not apply to any person held liable for causing claimant's injury by having unlawfully released into the environment a substance hazardous to public health, safety or the environment, a substance acutely hazardous to public health, safety or the environment or a hazardous waste, as defined in articles thirty-seven and twenty-seven of the environmental conservation law and in violation of article seventy-one of such law; provided, however, that nothing herein shall require that the violation of said article by such person has resulted in a criminal conviction or administrative adjudication of liability.

10. not apply to any person held liable in a product liability action where the manufacturer of the product is not a party to the action and the claimant establishes by a preponderance of the evidence that jurisdiction over the manufacturer could not with due diligence be obtained and that if the manufacturer were a party to the action, liability for claimant's injury would have been imposed upon said manufacturer by reason of the doctrine of strict liability, to the extent of the equitable share of such manufacturer.

11. not apply to any parties found to have acted knowingly or intentionally, and in concert, to cause the acts or failures upon which liability is based; provided, however, that nothing in this subdivision shall be construed to create, impair, alter, limit, modify, enlarge, abrogate, or restrict any theory of liability upon which said parties may be held liable to the claimant.