

FALL 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 in Chapters 1-3 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!!! HAPPY HOLIDAYS!!!

QUESTION 1 (50 points)

On December 25, 1999, at approximately 10:00 p.m., after having consumed approximately 12½ to 13 ounces of cognac, Anthony L. Fields was driving northbound on I-437 in Jackson County, Linden. Fields was driving approximately 100 miles per hour, weaving in and out of lanes, and passing other vehicles. Ultimately, Fields' vehicle veered through three lanes of traffic, crossed the grassy highway median, became airborne, and entered the path of the southbound traffic on the highway near the 83rd Street exit.

At that same time, Cecil C. Stowers was driving southbound on I-437 with his wife, Tracy Robinson Stowers, and their four-month-old daughter, Sydney L. Stowers. Fields' vehicle collided with the Stowers' vehicle, fatally injuring the entire Stowers family.

Following the accident, Fields got out of his vehicle and began walking away from the scene. However, an individual that had stopped at the accident site caught up to Fields and insisted that he return to the scene, and Fields complied. Police and medical personnel arrived shortly thereafter. Fields' blood alcohol level was tested more than an hour after the accident. The test revealed that his blood had an alcohol concentration of .16 percent. The legal limit for blood alcohol concentration at the time was .10 percent.

You have an appointment to meet with Vernon and Laverne Robinson, the parents of Tracy Robinson Stowers, who was their only child. You have also learned that Cecil had no siblings; his mother never saw Cecil's father after Cecil's birth and she is now in a nursing home suffering from Alzheimer's.

Please prepare a memorandum outlining what remedies Vernon and Laverne Robinson might seek.

QUESTION 2 (85 points)

On Friday, April 21, 2000, Rochelle Silber was taking her son Jim, then 9 years old, to soccer practice, driving eastbound on Center St, in the righthand lane. In the lefthand lane was a Ford Explorer being driven by Frank Germond. Germond was a computer consultant. For the past three days he had installed a new computer system for the Miller Dental Group with software for scheduling and billing. As Germond's car was passing Silber's car, Germond received a telephone call from the receptionist at Miller Dental Group, who was having trouble entering some information for a new patient. As Germond reached for the telephone, the cradle fell off the dashboard and the phone tumbled to the floor. As Germond reached down to pick up the phone, he took his eyes off the road and his car drifted over the center line. When he looked up and saw that he was over the center line he pulled the wheel sharply to the right, and overcorrected, such that he sideswiped Silber's car. Silber's car was forced to the right, struck a telephone pole, and Jim was seriously injured.

Rochelle and Jim have come to your office for advice; please prepare a memorandum outlining what prospects there are for recovery of compensation for the injuries sustained in this accident.

Assume for purposes of this analysis the following facts:

(1) When Germond purchased his cellular telephone, the instruction book provided with the phone stated, "Cell phones can be hazardous if not used safely. Get to know the phone and its features such as speed dial and redial. When available, use a hands-free device, such as an earpiece or a phone cradle. Position your cell phone within easy reach. Let the person you are speaking with

know you are driving. If necessary, suspend the call in heavy traffic or hazardous weather conditions. Do not take notes or look up phone numbers while driving. Dial sensibly and assess the traffic. If possible, place calls when you are not moving or before pulling into traffic. Do not engage in stressful or emotional conversations that may divert your attention from the road. Dial 911 to report serious emergencies only. It is a free call from cell phones. Keep conversations short and sweet. Develop ways to get free of long-winded friends and associates while on the road. Don't use the cell phone for social visiting while you drive. Hang up in tricky traffic situations--without warning if necessary. You can explain later--because you will still be alive."

(2) Germond's fee from the Miller Dental Group included up to three hours of additional technical support as the staff adapted to the new system. Germond took Friday the 21st as a day off and he was on his way to the driving range to hit golf balls.

(3) A week before, on April 14, 2000, Germond had brought his Ford Explorer to East End Car Care, Inc. (doing business as Tidy Car), to have a "cradle" installed on his dashboard to hold his cellular telephone. The cradle was installed by a new employee at Tidy Car, who didn't tighten the screws that held the cradle to the dashboard.

SELECTED STATUTES OF THE STATE OF LINDEN
ANNOTATED LINDEN CODES
TITLE XXXVI. STATUTORY ACTIONS AND TORTS
CHAPTER 537. TORTS AND ACTIONS FOR DAMAGES

§ 537.080. Action for wrongful death--who may sue--limitation

1. Whenever the death of a person results from any act, conduct, occurrence, transaction, or circumstance which, if death had not ensued, would have entitled such person to recover damages in respect thereof, the person or party who, or the corporation which, would have been liable if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured, which damages may be sued for:

(1) By the spouse or children or the surviving lineal descendants of any deceased children, natural or adopted, legitimate or illegitimate, or by the father or mother of the deceased, natural or adoptive;

(2) If there be no persons in class (1) entitled to bring the action, then by the brother or sister of the deceased, or their descendants, who can establish his or her right to those damages set out in section 537.090 because of the death;

(3) If there be no persons in class (1) or (2) entitled to bring the action, then by a plaintiff ad litem. Such plaintiff ad litem shall be appointed by the court having jurisdiction over the action for damages provided in this section upon application of some person entitled to share in the proceeds of such action. Such plaintiff ad litem shall be some suitable person competent to prosecute such action and whose appointment is requested on behalf of those persons entitled to share in the proceeds of such action. Such court may, in its discretion, require that such plaintiff ad litem give bond for the faithful performance of his duties.

2. Only one action may be brought under this section against any one defendant for the death of any one person.

§ 537.085. Defenses to wrongful death action

On the trial of such action to recover damages for causing death, the defendant may plead and prove as a defense any defense which the defendant would have had against the deceased in an action based upon the same act, conduct, occurrence, transaction, or circumstance which caused the death of the deceased, and which action for damages the deceased would have been entitled to bring had death not ensued.

§ 537.090. Damages to be determined by jury--factors to be considered

In every action brought under section 537.080, the trier of the facts may give to the party or parties entitled thereto such damages as the trier of the facts may deem fair and just for the death and loss thus occasioned, having regard to the pecuniary losses suffered by reason of the death, funeral expenses, and the reasonable value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death and without limiting such damages to those which would be sustained prior to attaining the age of majority by the deceased or by the person suffering any such loss. In addition, the trier of the facts may award such damages as the deceased may have suffered between the time of injury and the time of death and for the recovery of which the deceased might have maintained an action had death not ensued. The mitigating or aggravating circumstances attending the death may be considered by the trier of the facts, but damages for grief and bereavement by reason of the death shall not be recoverable.

§ 537.095. Joinder of parties not required, when, effect on recovery--plaintiff ad litem, recovery, distribution

1. Except as provided in subsection 2 of this section, if two or more persons are entitled to sue for and recover damages as herein allowed, then any one or more of them may compromise or settle the claim for damages with approval of any circuit court, or may maintain such suit and recover such damages without joinder therein by any other person, provided that the claimant or petitioner shall satisfy the court that he has diligently attempted to notify all parties having a cause of action under section 537.080. Any settlement or recovery by suit shall be for the use and benefit of those who sue or join, or who are entitled to sue or join, and of whom the court has actual written notice.

2. When any settlement is made, or recovery had, by any plaintiff ad litem, the persons entitled to share in the proceeds thereof shall be determined according to the laws of descent, and any settlement or recovery by such plaintiff ad litem shall likewise be distributed according to the laws of descent unless special circumstances indicate that such a distribution would be inequitable, in which case the court shall apportion the settlement or recovery in proportion to the losses suffered by each person or party entitled to share in the proceeds and, provided, that any person entitled to share in the proceeds shall have the right to intervene at any time before any judgment is entered or settlement approved under this section.

3. In any action for damages under section 537.080, the trier of the facts shall state the total damages found, or upon the approval of any settlement for which a petition or application for such approval has been filed, the court shall state the total settlement approved. The court shall then enter

a judgment as to such damages, apportioning them among those persons entitled thereto in proportion to the losses suffered by each as determined by the court.

4. The court shall order the claimant:

- (1) To collect and receipt for the payment of the judgment;
- (2) To deduct and pay the expenses of recovery and collection of the judgment and the attorneys' fees as contracted, or if there is no contract, or if the party sharing in the proceeds has no attorney representing him before the rendition of any judgment or settlement, then the court may award the attorney who represents the original plaintiff such fee for his services, from such persons sharing in the proceeds, as the court deems fair and equitable under the circumstances;
- (3) To acknowledge satisfaction in whole or in part for the judgment and costs;
- (4) To distribute the net proceeds as ordered by the court; and
- (5) To report and account therefor to the court. In its discretion the court may require the claimant to give bond for the collection and distribution.

TITLE XXXI. TRUSTS AND ESTATES OF DECEDENTS
CHAPTER 474. PROBATE CODE--INTESTATE SUCCESSION AND WILLS
DESCENT AND DISTRIBUTION

§ 474.010. General rules of descent

All property as to which any decedent dies intestate shall descend and be distributed, subject to the payment of claims, as follows:

- (1) The surviving spouse shall receive:
 - (a) The entire intestate estate if there is no surviving issue of the decedent;
 - (b) The first twenty thousand dollars in value of the intestate estate, plus one-half of the balance of the intestate estate, if there are surviving issue, all of whom are also issue of the surviving spouse;
 - (c) One-half of the intestate estate if there are surviving issue, one or more of whom are not issue of the surviving spouse;
- (2) The part not distributable to the surviving spouse, or the entire intestate property, if there is no surviving spouse, shall descend and be distributed as follows:
 - (a) To the decedent's children, or their descendants, in equal parts;
 - (b) If there are no children, or their descendants, then to the decedent's father, mother, brothers and sisters or their descendants in equal parts;
 - (c) If there are no children, or their descendants, father, mother, brother or sister, or their descendants, then to the grandfathers, grandmothers, uncles and aunts or their descendants in equal parts;

63210, 1. Henderson v. Fields, 2001 WL 1529262 (Mo.App. W.D., Dec 04, 2001) (NO. WD 58275, WD 58276, WD 58277)