

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 Evergreen, 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 May 13, 2001, a traffic accident occurred at the intersection of Sylvan Road and Elmo Ozment Drive in Dyersburg, Evergreen. Henry Butler was driving north on Sylvan Road, while Mozella P. Finley was driving east on Elmo Ozment Drive when the collision occurred. The intersection in question is located within the Evergreen State Wildlife Preserve; both roads are flat in three directions. Sylvan Road had been used for a very substantial period of time, whereas Elmo Ozment Road had only relatively recently been opened to the public. There were no traffic control devices on Elmo Ozment Drive or Sylvan Road to indicate an intersection or to indicate the need to stop. It is a "T" intersection, whereby a person traveling east on Elmo Ozment Drive, which is paved, would need to turn either left or right when that person got to Sylvan Road. There is a gravel road which extends on across Sylvan Road; however, that particular road was gravel and was not intended for the general public.

Mrs. Finley, on the date and time in question, did not see the intersection as she traveled east on Elmo Ozment Drive. She was not familiar at all with the intersection. Even though she had been on it from a different direction the same day, she was not generally familiar with the intersection. She was proceeding east on Elmo Ozment Drive, looking for the intersection and looking at the place to turn north. She went on into the intersection. Mrs. Finley was looking for a stop sign and a place to turn. Obviously there was no stop sign and she did not see the place to turn. She didn't see the truck until she got into the intersection.

Elmo Ozment Drive and the intersection were completed and opened to public traffic on or about July 9, 2000; it was the State's responsibility to erect any traffic control devices or signs that would be needed.

It was the custom of the State of Evergreen for the Department of Transportation to determine the need for traffic control devices and traffic signs, to include stop signs.

The State of Evergreen approves road construction before a road is open to the public and did so in this instance. Under the custom existing in the City, and under their policy, the Assistant Chief of Police decides when and where traffic control devices and signs are needed. Under their policy, the Assistant Secretary of Transportation determines the need. He contacts the appropriate person relating to installation. There does not exist within the Department of Transportation any policy whereby any state official notifies the Department of Transportation as to the opening of a new road and possible need for traffic control devices, and certainly it was not done in this instance. There were no reported accidents at this intersection prior to this accident. However, State Police officers patrol in this district and would have patrolled this particular intersection and would have been and were aware of the condition that existed at this particular intersection. The Assistant Chief of Police had not really considered whether or not there was a need for a traffic control device at this particular intersection prior to the accident.

The Court further finds as a matter of fact that it is obvious, even to a layman, that a stop sign or some warning device, some kind of traffic control device, was needed at this particular intersection to indicate who had the right of way.

The Court finds as a matter of fact that the intersection of Elmo Ozment Drive and Sylvan Road were [sic] unsafe and dangerous, since there was no stop sign or any other traffic control device there to regulate the flow of traffic and to indicate right of way....

QUESTION 2 (65 points)

On October 23, 2001, at approximately 3:45 a.m., the Evergreen State Fire Department was dispatched to extinguish a fire of unknown origin at the home of Tracey and Dale Hawks, located at 1135 Rainbow Circle in Capital City, Evergreen (Capital City is the area of the state capital, operated by the State of Evergreen). The Hawks were out of town when the fire occurred.

Though a portion of the roof was ablaze when the firefighters arrived, the fire primarily was confined to the middle of the house. Utilizing the water from the tanks on the fire trucks, the fire was brought under control within fifteen to thirty minutes of the firefighters' arrival. When the water supply in the tanks was exhausted, the firefighters attempted to obtain water from the two fire hydrants nearest the burning home. However, the hydrants yielded no water because an underground valve in the feeder pipe for each was closed. Although the firefighters had with them tools to open the valve in the hydrants, they did not have with them the six foot wrench which was required to open the underground valves. When it was not being used by maintenance employees of the Capital City water system, that tool was kept at the public works building.

When the firefighters realized that the hydrants were inoperable, they sent tankers to the civil defense building to obtain more water, called a neighboring fire department for backup assistance, and dispatched a Capital City employee to retrieve the special wrench to open the underground valves. While the firefighters waited for additional water, the fire gained momentum. The home was almost totally destroyed by fire before either additional water or the special wrench to open the valves arrived at the scene.

The valves in question were manufactured by Apcom, Inc., in 1980 and installed in the Capital City water system in 1982. In 1994 Apcom introduced a new line of valves which could be opened and closed using standard pipe wrenches. However, very few of these new valves were sold to replace existing valves; instead, they were ordered for new construction or to be utilized when the pipes themselves were being replaced.

SELECTED STATUTES OF THE STATE OF EVERGREEN**EVERGREEN STATUTES ANNOTATED
LEGISLATURE
CHAPTER 3. LEGISLATURE
SETTLEMENT OF CLAIMS****§ 3.736. Tort claims**

Subdivision 1. General rule. The state will pay compensation for injury to or loss of property or personal injury or death caused by an act or omission of an employee of the state while acting within the scope of office or employment or a peace officer who is not acting on behalf of a private employer and who is acting in good faith under section 629.40, subdivision 4, under circumstances where the state, if a private person, would be liable to the claimant, whether arising out of a

governmental or proprietary function. Nothing in this section waives the defense of judicial or legislative immunity except to the extent provided in subdivision 8.

Subd. 2. Procedure. Claims of various kinds shall be considered and paid only in accordance with the statutory procedures provided. If there is no other applicable statute, a claim shall be brought under this section as a civil action in the courts of the state.

Subd. 3. Exclusions. Without intent to preclude the courts from finding additional cases where the state and its employees should not, in equity and good conscience, pay compensation for personal injuries or property losses, the legislature declares that the state and its employees are not liable for the following losses:

(a) a loss caused by an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule;

(b) a loss caused by the performance or failure to perform a discretionary duty, whether or not the discretion is abused;

(c) a loss in connection with the assessment and collection of taxes;

(d) a loss caused by snow or ice conditions on a highway or public sidewalk that does not abut a publicly owned building or a publicly owned parking lot, except when the condition is affirmatively caused by the negligent acts of a state employee;

(e) a loss caused by wild animals in their natural state, except as provided in section 3.7371;

(f) a loss other than injury to or loss of property or personal injury or death;

(g) a loss caused by the condition of unimproved real property owned by the state, which means land that the state has not improved, state land that contains idled or abandoned mine pits or shafts, and appurtenances, fixtures, and attachments to land that the state has neither affixed nor improved;

(h) a loss involving or arising out of the use or operation of a recreational motor vehicle, as defined in section 84.90, subdivision 1, within the right-of-way of a trunk highway, as defined in section 160.02, except that the state is liable for conduct that would entitle a trespasser to damages against a private person;

(i) a loss incurred by a user arising from the construction, operation, or maintenance of the outdoor recreation system, as defined in section 86A.04, or for a loss arising from the construction, operation, maintenance, or administration of grants-in-aid trails as defined in section 85.018, or for a loss arising from the construction, operation, or maintenance of a water access site created by the iron range resources and rehabilitation board, except that the state is liable for conduct that would entitle a trespasser to damages against a private person. For the purposes of this clause, a water access site, as defined in section 86A.04 or created by the iron range resources and rehabilitation board, that provides access to an idled, water filled mine pit, also includes the entire water filled area of the pit and, further, includes losses caused by the caving or slumping of the mine pit walls;

(j) a loss of benefits or compensation due under a program of public assistance or public welfare, except if state compensation for loss is expressly required by federal law in order for the state to receive federal grants-in-aid;

(k) a loss based on the failure of a person to meet the standards needed for a license, permit, or other authorization issued by the state or its agents;

(l) a loss based on the usual care and treatment, or lack of care and treatment, of a person at a state hospital or state corrections facility where reasonable use of available appropriations has been made to provide care;

(m) loss, damage, or destruction of property of a patient or inmate of a state institution;

(n) a loss for which recovery is prohibited by section 169A.48, subdivision 2;

(o) a loss caused by an aeration, bubbler, water circulation, or similar system used to increase dissolved oxygen or maintain open water on the ice of public waters, that is operated under a permit issued by the commissioner of natural resources;

(p) a loss incurred by a visitor to the Evergreen zoological garden, except that the state is liable for conduct that would entitle a trespasser to damages against a private person;

(q) a loss arising out of a person's use of a logging road on public land that is maintained exclusively to provide access to timber on that land by harvesters of the timber, and is not signed or otherwise held out to the public as a public highway; and

(r) a loss incurred by a user of property owned, leased, or otherwise controlled by the Evergreen National Guard or the department of military affairs, except that the state is liable for conduct that would entitle a trespasser to damages against a private person.

The state will not pay punitive damages.

Subd. 4. Limits. The total liability of the state and its employees acting within the scope of their employment on any tort claim shall not exceed:

(a) \$300,000 when the claim is one for death by wrongful act or omission and \$300,000 to any claimant in any other case;

(b) \$750,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 1998, and before January 1, 2000; or

(c) \$1,000,000 for any number of claims arising out of a single occurrence, for claims arising on or after January 1, 2000.

If the amount awarded to or settled upon multiple claimants exceeds the applicable limit under clause (b) or (c), any party may apply to the district court to apportion to each claimant a proper share of the amount available under the applicable limit under clause (b) or (c). The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement bears to the aggregate awards and settlements for all claims arising out of the occurrence.

The limitation imposed by this subdivision on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

Subd. 4a. Securities claims limits. The total liability of the state and its employees acting within the scope of their employment on any claim of whatever matter arising from the issuance and sale of securities by the state shall not exceed:

(a) \$100,000 to any one person or

(b) \$500,000 to all claimants in respect of the securities of the same series.

The limitations in clauses (a) and (b) shall not affect the obligation of the issuing state entity to pay the indebtedness under the securities in accordance with their terms and from the sources pledged to their payment.

Subd. 5. Notice required. Except as provided in subdivision 6, every person, whether plaintiff, defendant or third party plaintiff or defendant, who claims compensation from the state or a state employee acting within the scope of employment for or on account of any loss or injury shall present to the attorney general or, in the case of a claim against the University of Evergreen, to the person designated by the regents of the university as the university attorney, and any state employee from whom the claimant will seek compensation, within 180 days after the alleged loss or injury is discovered, a notice stating its time, place and circumstances, the names of any state employees known to be involved, and the amount of compensation or other relief demanded. Actual notice of sufficient facts to reasonably put the state or its insurer on notice of a possible claim complies with the notice requirements of this section. Failure to state the amount of compensation or other relief demanded does not invalidate the notice, but the claimant shall furnish full information available

regarding the nature and extent of the injuries and damages within 15 days after demand by the state. The time for giving the notice does not include the time during which the person injured is incapacitated by the injury from giving the notice.

Subd. 6. Claims for wrongful death; notice. When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin, or the consular officer of the foreign country of which the deceased was a citizen, within one year after the alleged injury or loss resulting in the death. If the person for whose death the claim is made has presented a notice that would have been sufficient had the person lived, an action for wrongful death may be brought without additional notice.

Subd. 7. Payment. A state agency, including an entity defined as part of the state in section 3.732, subdivision 1, clause (1), incurring a tort claim judgment or settlement obligation or whose employees acting within the scope of their employment incur the obligation shall seek approval to make payment by submitting a written request to the commissioner of finance. The request shall contain a description of the tort claim that causes the request, specify the amount of the obligation and be accompanied by copies of judgments, settlement agreements or other documentation relevant to the obligation for which the agency seeks payment. Upon receipt of the request and review of the claim, the commissioner of finance shall determine the proper appropriation from which to make payment. If there is enough money in an appropriation or combination of appropriations to the agency for its general operations and management to pay the claim without unduly hindering the operation of the agency, the commissioner shall direct that payment be made from that source. Claims relating to activities paid for by appropriations of dedicated receipts shall be paid from those appropriations if practicable. On determining that an agency has sufficient money in these appropriations to pay only part of a claim, the commissioner shall pay the remainder of the claim from the money appropriated to the commissioner for the purpose. On determining that the agency does not have enough money to pay any part of the claim, the commissioner shall pay all of the claim from money appropriated to the commissioner for the purpose. Payment shall be made only upon receipt of a written release by the claimant in a form approved by the attorney general, or the person designated as the university attorney, as the case may be.

No attachment or execution shall issue against the state.

Subd. 8. Liability insurance. A state agency, including an entity defined as a part of the state in section 3.732, subdivision 1, clause (1), may procure insurance against liability of the agency and its employees for damages resulting from the torts of the agency and its employees. Procurement of the insurance is a waiver of the limits of governmental liability under subdivisions 4 and 4a only to the extent that valid and collectible insurance, including where applicable, proceeds from the Evergreen Guarantee Fund, exceeds those limits and covers the claim. Purchase of insurance has no other effect on the liability of the agency and its employees. Procurement of commercial insurance, participation in the risk management fund under section 16B.85, or provisions of an individual self-insurance plan with or without a reserve fund or reinsurance does not constitute a waiver of any governmental immunities or exclusions.

Subd. 9. Indemnification. The state shall defend, save harmless, and indemnify any employee of the state against expenses, attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the employee in connection with any tort, civil, or equitable claim or demand, or expenses, attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the employee in connection with any claim or demand arising from the issuance and sale of securities by the state, whether groundless or otherwise, arising out of an alleged act or omission occurring during the period of employment if the employee provides

complete disclosure and cooperation in the defense of the claim or demand and if the employee was acting within the scope of employment. Except for elected employees, an employee is conclusively presumed to have been acting within the scope of employment if the employee's appointing authority issues a certificate to that effect. This determination may be overruled by the attorney general. The determination of whether an employee was acting within the scope of employment is a question of fact to be determined by the trier of fact based upon the circumstances of each case:

- (i) in the absence of a certification,
- (ii) if a certification is overruled by the attorney general,
- (iii) if an unfavorable certification is made, or
- (iv) with respect to an elected official.

The absence of the certification or an unfavorable certification is not evidence relevant to a determination by the trier of fact. It is the express intent of this provision to defend, save harmless, and indemnify any employee of the state against the full amount of any final judgment rendered by a court of competent jurisdiction arising from a claim or demand described herein, regardless of whether the limitations on liability specified in subdivision 4 or 4a are, for any reason, found to be inapplicable. This subdivision does not apply in case of malfeasance in office or willful or wanton actions or neglect of duty, nor does it apply to expenses, attorneys' fees, judgments, fines, and amounts paid in settlement of claims for proceedings brought by or before responsibility or ethics boards or committees.

Subd. 9a. Peace officer indemnification. The state shall defend, save harmless, and indemnify a peace officer who is not acting on behalf of a private employer and who is acting in good faith under section 629.40, subdivision 4, the same as if the officer were an employee of the state.

Subd. 10. Judgment as bar. The judgment in an action under this section is a complete bar to any action by the claimant, by reason of the same subject matter, against the state employee whose act or omission gave rise to the claim.

Subd. 11. Statute of limitation. The statute of limitations for all tort claims brought against the state is as provided in chapter 541 and other laws.

TESTIMONY, DOCUMENTARY EVIDENCE AND PRESUMPTIONS

Chapter 891. PRESUMPTIONS

§ 891.44. Presumption of lack of contributory negligence for infant minor

It shall be conclusively presumed that an infant minor who has not reached the age of 7 shall be incapable of being guilty of contributory negligence or of any negligence whatsoever.

MISCELLANEOUS ACTIONS, PROCEEDINGS AND PROCEDURE

CHAPTER 895. MISCELLANEOUS GENERAL PROVISIONS

§ 895.045. Contributory negligence

(1) *Comparative negligence.* Contributory negligence does not bar recovery in an action by any person or the person's legal representative to recover damages for negligence resulting in death or in injury to person or property, if that negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributed to the person recovering. The negligence of the plaintiff shall be measured separately against the negligence of each person found to be causally negligent. The liability of each person found to be causally negligent whose percentage of causal negligence is less than 51% is limited to the percentage of the total causal negligence attributed to that person. A person found to be causally negligent whose percentage of causal negligence is 51% or more shall be jointly and severally liable for the damages allowed.

(2) *Concerted action.* Notwithstanding sub. (1), if 2 or more parties act in accordance with a common scheme or plan, those parties are jointly and severally liable for all damages resulting from that action.