

MID-TERM 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 Chapters 1-2 of the casebook, plus Chapter 3 up through wrongful death. Do not address any issues beyond that point, such as consortium/bystander claims, contributory fault, governmental liability, etc.

All of the events in this exam took place in the state of Linden. A STATUTORY APPENDIX for some Linden statutes is provided.

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 (65 points)**

On March 28, 2001, the Horizon Park Preparatory Academy scheduled a field trip for April 2, 2001, to the Linden City Museum for a group of first graders and chaperones. In preparation for the trip, Principal Seymour made a telephone call to Earl Person, whom he knew to be a licensed bus driver. Person said he was available and would be at the school at 8:00 a.m., 45 minutes before the bus was scheduled to leave. On April 2 the students got on the bus on time and the trip to the museum was uneventful. However, on the return trip, while traveling on the Lake/Porter County Line Road, Person noticed that the right wheels of the bus had left the pavement and gone onto the dirt shoulder. As he tried to bring those wheels back onto the pavement, the bus unexpectedly "jumped" and fishtailed into the opposite lane of the road, causing oncoming traffic to stop. Person eventually brought the bus back under control. Several children had lost their seats and were underneath the bus seats, crying. The chaperones asked that Person stop the bus a few minutes later at a convenience store, which he did. Several of the children were upset, a few had minor cuts and bruises, and the chaperones were all talking quite excitedly about what had just happened. Two of the children stayed at the convenience store and were transported to a local emergency room for examination, while the rest of the children went back to the Academy, where they were picked up by their parents.

Person parked the bus and went in to see the school principal, who took a detailed statement from him about what had happened.

A lawyer representing approximately half of the children and all of the chaperones has sent the Academy a letter asking for compensation for injuries suffered by the children and the chaperones. The letter claims that during the bus ride the bus went up on two wheels and that the fishtailing of the bus caused schoolchildren to be thrown from their seats twice onto the floor and/or into the walls, other seats, and even the ceiling of the bus.

Person's statement denied that the bus had ever been up on two wheels and, while he wasn't sure of what caused the wheels to leave the pavement, he denied that it was due to any lack of skill on his part.

Subsequent investigation produced a report from a state trooper who stated that holes and ruts in the road might have been a contributing cause of the incident. He also stated that the weather that day was clear and he knew of no mechanical defects on the bus. He also indicated that the road was dry and not dangerous, and that he did not believe the holes and ruts were such that they would have caused a prudent bus driver to lose control of the vehicle.

You work for the law firm that has been hired by the Academy's insurance company to represent the Academy. Please prepare an analysis of the legal position of the Academy with regard to the attorney's demand letter.

**QUESTION 2 (70 points)**

On April 6, 2001, Ray Hracek was working the night maintenance shift at an air separation plant operated by Air Liquide America Corporation ("ALAC"). At 1:52 a.m. a windstorm caused

a static shield wire, suspended above three electrical transmission wires at the Exxon refinery in Springfield, Linden, to break. The static shield wire fell onto the transmission wires below it. The transmission wires were operated by Enterprise Energy Corp. ("Entergy"), an electric utility. Prior to its breaking, the static shield wire was improperly held together with only one of its original seven strands. The initial breakage of the shield wire caused a circuit breaker to open the line, producing an "A phase to ground" fault, or a fault in the uppermost wire. This electrical fault was cleared in seven cycles, or 7/60 of a second, which was normal. However, shortly thereafter, when personnel from Entergy attempted to reclose the breaker manually in order to reenergize the line, the electrical fault was reinitiated and escalated to a full three-phase fault, or a fault in all three wires. The escalation occurred because the first three levels of automatic relay equipment failed to operate properly and isolate the fault. This resulted in a 58-cycle (58/60 of a second), three-phase electrical fault that caused a significant loss of voltage to be felt by all entities connected to the grid, which is the utility alignment that allows for a large number of customers to be serviced simultaneously. ALAC suffered a 47.5% voltage sag, which was one of the most serious experienced in the Entergy system.

The voltage sag at ALAC caused the facility's major equipment to automatically shut down. While the plant never completely lost power, the voltage sag triggered protective devices on the compressor motors designed to prevent them from burning up during an extended period of low voltage operation. Those protective devices shut off all four of the facility's air compressor motors automatically. Shortly after the shutdown, the plant manager, Ray Hracek, and several additional employees, including Jeb Bujol, were summoned to the plant to assist in restarting the air compressors.

By approximately 4:45 a.m., two of the four compressors were up and working. However, an operating problem developed in an oxygen pipeline, pressure regulating, automatic control valve located in the ALAC "letdown station." The valve regulated the differential pressure between a 700 PSIG (pounds per square inch gauge) pipeline, supplying gaseous oxygen to Exxon, and a 400 PSIG pipeline, supplying oxygen to other plants. The problem was discovered because the pressure to Exxon in the 700 PSIG pipeline was low. When Mr. Tony Mabile, the plant's assistant manager, passed by the letdown station, he saw the automatic valve was wide open, when it should have been closed. Upon learning of the problem with the valve, the three plaintiffs proceeded to the letdown station to close a manual block valve located near the automatic valve. As they were attempting to discover the source of the problem with the automatic valve, a large flash fire occurred at the letdown station. Mr. Bujol has stated that immediately preceding the explosion, he had told Mr. Hracek that he thought the valve had closed. Then he saw the valve begin to "stroke up" and open again before "it just dropped, slammed, and exploded." The force of the explosion threw Mr. Perkins and Mr. Bujol against the surrounding wall. A second explosion followed. Mr. Hracek died on April 11, 2001, as a result of his injuries. Mr. Bujol and Mr. Perkins suffered extensive burns, permanent scars, and permanent disabilities.

Ray Hracek was married to Judy Hracek in 1992. They had two children, Tommy (now age 5) and Tricia (now age 3). Ray and Judy divorced in January 2001. Judy has made an appointment with your law firm to find out what remedy she and/or her children would have for Ray's death. Please confine your analysis to an evaluation of whether, and to what extent, Entergy could be held liable for Ray's death.

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SELECTED STATUTES OF THE STATE OF LINDEN  
ANNOTATED LINDEN CODES

**§ 4.20.010. Wrongful death--Right of action**

When the death of a person is caused by the wrongful act, neglect or default of another his personal representative may maintain an action for damages against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony.

**§ 4.20.020. Wrongful death--Beneficiaries of action**

Every such action shall be for the benefit of the wife, husband, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife or husband or such child or children, such action may be maintained for the benefit of the parents, sisters or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death.

In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just.

**§ 4.20.060. Action for personal injury survives to surviving spouse, child, stepchildren, or heirs**

No action for a personal injury to any person occasioning death shall abate, nor shall such right of action determine, by reason of such death, if such person has a surviving spouse or child living, including stepchildren, or leaving no surviving spouse or such children, if there is dependent upon the deceased for support and resident within the United States at the time of decedent's death, parents, sisters or brothers; but such action may be prosecuted, or commenced and prosecuted, by the executor or administrator of the deceased, in favor of such surviving spouse, or in favor of the surviving spouse and such children, or if no surviving spouse, in favor of such child or children, or if no surviving spouse or such child or children, then in favor of the decedent's parents, sisters or brothers who may be dependent upon such person for support, and resident in the United States at the time of decedent's death.

**§ 4.20.046. Survival of actions**

(1) All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would

have survived at the common law or prior to the date of enactment of this section: PROVIDED, HOWEVER, That the personal representative shall only be entitled to recover damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by a deceased on behalf of those beneficiaries enumerated in A.L.C. § 4.20.020, and such damages are recoverable regardless of whether or not the death was occasioned by the injury that is the basis for the action. The liability of property of a husband and wife held by them as community property to execution in satisfaction of a claim enforceable against such property so held shall not be affected by the death of either or both spouses; and a cause of action shall remain an asset as though both claiming spouses continued to live despite the death of either or both claiming spouses.

(2) Where death or an injury to person or property, resulting from a wrongful act, neglect or default, occurs simultaneously with or after the death of a person who would have been liable therefor if his death had not occurred simultaneously with such death or injury or had not intervened between the wrongful act, neglect or default and the resulting death or injury, an action to recover damages for such death or injury may be maintained against the personal representative of such person.

#### **§ 4.24.010. Action for injury or death of child**

A mother or father, or both, who has regularly contributed to the support of his or her minor child, and the mother or father, or both, of a child on whom either, or both, are dependent for support may maintain or join as a party an action as plaintiff for the injury or death of the child.

This section creates only one cause of action, but if the parents of the child are not married, are separated, or not married to each other damages may be awarded to each plaintiff separately, as the trier of fact finds just and equitable.

If one parent brings an action under this section and the other parent is not named as a plaintiff, notice of the institution of the suit, together with a copy of the complaint, shall be served upon the other parent: PROVIDED, That notice shall be required only if parentage has been duly established.

Such notice shall be in compliance with the statutory requirements for a summons. Such notice shall state that the other parent must join as a party to the suit within twenty days or the right to recover damages under this section shall be barred. Failure of the other parent to timely appear shall bar such parent's action to recover any part of an award made to the party instituting the suit.

In such an action, in addition to damages for medical, hospital, medication expenses, and loss of services and support, damages may be recovered for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship in such amount as, under all the circumstances of the case, may be just.