

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!!!

QUESTION 1 (80 points)

Timothy Matlock, age 17, bought two packs of cigarettes from a Circle K convenience store one day in April 1993. Tim gave one of the packs to his friend, Eric Erdley, age 15. Smoking as they walked, the two trespassed onto a private storage facility in Sandy Beach, owned by Pacific Telephone Co., where a couple of hundred telephone poles were stacked up high upon the ground, held in place by two vertical poles sticking out of the ground. The two had climbed on the logs many times before.

Timothy and Eric were joined by two younger boys, about ten or eleven years old, who walked with them on the logs. Eric was smoking a cigarette held in his left hand. Timothy began to tease the younger boys, telling them the logs were going to fall. The boys started to run, though perhaps more out of laughter than of fear. One of the younger boys ran right into Eric's left arm. Eric dropped his cigarette down between the logs, where it landed on a bed of sand. For about 20 seconds Eric tried to retrieve the cigarette, but he couldn't reach it. He stood up and tried to extinguish it by spitting on it, and again was unsuccessful.

Then Eric caught up with Timothy who was about ten feet ahead. They went into some bunkers about 50 feet away; when they came out again after about twenty minutes, they saw flames at the base of the logs. They then ran and called the fire department. When the Linden Fire Department arrived, Phillip Perry directed a stream of water at the base of the fire. The log pile then collapsed, and one of the poles struck Perry and rolled on top of him. He was pinned to the ground and died before rescuers could get to him. Perry was single, childless, had no living parents, but was engaged to be married a month later to his high school sweetheart, Sarah Switzer.

You represent the Circle K Corporation. What tort liability do they face?

QUESTION 2 (55 points)

William Fifer enjoyed bear hunting. In anticipation of the upcoming bear hunting season, Fifer and his friend Dave Kappel planned a trip to check out their gear and insure their level of preparation. Dogs are frequently used in hunting bears, because they can track a bear's path from the spot where he encountered bait (food set out by the hunters to attract bears) to where the hunters can find him. Fifer didn't own such a dog, and neither did Kappel, but Kappel's friend Lyle Dix had a dog named Zippy who was reputed to "run bear" quite well. Kappel asked Dix if he could borrow Zippy, and Dix said yes, but he cautioned Kappel that "Zippy had once bitten a person," and advised him "not to force the issue. Anytime someone was to catch Zippy, just back away and let him load himself." Kappel said he understood, and on Friday night he came to pick up Zippy in preparation for setting out early Saturday morning. Kappel went to pick up Fifer on their way to the Evergreen National Forest where they planned to go bear hunting. As they were driving, Kappel explained to Fifer that Dix had loaned him Zippy, and repeated Dix's warning about Zippy's having bitten someone.

Fifer and Kappel drove to the trailhead and unloaded their gear. They began walking toward the spot where Kappel had left his bait. The trail wound uphill rather steeply, and after about a mile Fifer and Kappel stopped to eat a snack and catch their breath. Fifer pulled a sandwich out of his jacket pocket and was eating it when he heard the sound of another party on the trail. He reached out to grab his gear to get it out of the way; as he did so, Zippy bit him.

The bite produced a very severe injury to Fifer's hand. The wound required 23 stitches to close, and by the time it was treated an infection had set in that required a strong dose of antibiotics

to eliminate. In addition, the hand suffered significant nerve damage from which Fifer never recovered. Fifer has had to apply for a transfer from his job as a tool and die operator in an aerospace plant to one that doesn't require any manual dexterity.

Fifer has come to your law office seeking tort compensation. How would you advise him?

SELECTED STATUTES OF THE STATE OF LINDEN
ANNOTATED LINDEN CODES
TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE
PART VII. CIVIL ACTIONS AND PROCEEDINGS
CHAPTER 83. PARTICULAR RIGHTS AND IMMUNITIES
SUBCHAPTER A. RIGHTS OF ACTION

8301. Death action

(a) General rule.--An action may be brought, under procedures prescribed by general rules, to recover pecuniary damages for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another if no recovery for the same damages claimed in the wrongful death action was obtained by the injured individual during his lifetime and any prior actions for the same injuries are consolidated with the wrongful death claim so as to avoid a duplicate recovery.

(b) Beneficiaries.--Except as provided in subsection (d), the right of action created by this section shall exist only for the benefit of the spouse, children or parents of the deceased, whether or not citizens or residents of this State or elsewhere. The damages recovered shall be distributed to the beneficiaries in the proportion they would take the personal estate of the decedent in the case of intestacy and without liability to creditors of the deceased person under the statutes of this State.

(c) Special damages.--In an action brought under subsection (a), the plaintiff shall be entitled to recover, in addition to other damages, damages for reasonable hospital, nursing, medical, funeral expenses and expenses of administration necessitated by reason of injuries causing death.

(d) Action by personal representative.--If no person is eligible to recover damages under subsection (b), the personal representative of the deceased may bring an action to recover damages for reasonable hospital, nursing, medical, funeral expenses and expenses of administration necessitated by reason of injuries causing death.

PENAL CODE
PART 1. OF CRIMES AND PUNISHMENTS
TITLE 9. OF CRIMES AGAINST THE PERSON INVOLVING SEXUAL ASSAULT, AND
CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS
CHAPTER 7. OF CRIMES AGAINST RELIGION AND CONSCIENCE, AND OTHER
OFFENSES AGAINST GOOD MORALS

907.308. Tobacco; smoking paraphernalia; selling or furnishing to persons under 18; misdemeanor or civil violation; penalty; disbursement of penalties collected; defenses; persons liable; penalty for purchasing or receiving; posting copy of act by dealers; individual franchises or business locations a separate entity; legislative intent to regulate; sale or furnishing to minor inmates

(a) Every person, firm, or corporation which knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

Twenty-five percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars (\$75) or 30 hours of community service work.

(c) Every person, firm, or corporation which sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of 22952 of the Business and Professions Code, and any person failing to do so shall upon conviction be punished by a fine of ten dollars (\$10) for the first offense and fifty dollars (\$50) for each succeeding violation of this provision, or by imprisonment for not more than 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature's intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

(f) Notwithstanding any other provision of this section, the Director of Corrections may sell or supply tobacco and tobacco products, including cigarettes and cigarette papers, to any person confined in any institution or facility under his or her jurisdiction who has attained the age of 16 years, if the parent or guardian of the person consents thereto, and may permit smoking by the person in any institution or facility. No officer or employee of the Department of Corrections shall be considered to have violated this section by any act authorized by this subdivision.

POLICE REGULATIONS CHAPTER 174. DOGS

§ 174.02. Owner's liability for damage caused by dog; penalties

(1) Liability for injury. (a) *Without notice.* The owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property.

(b) *After notice.* The owner of a dog is liable for 2 times the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property if the owner was notified or knew that the dog previously injured or caused injury to a person, domestic animal or property.

(2) Penalties imposed on owner of dog causing damage. (a) *Without notice.* The owner of a dog shall forfeit not less than \$50 nor more than \$500 if the dog injures or causes injury to a person, domestic animal, property, deer, game birds or the nests or eggs of game birds.

(b) *After notice.* The owner of a dog shall forfeit not less than \$200 nor more than \$1,000 if the dog injures or causes injury to a person, domestic animal, property, deer, game birds or the nests or eggs of game birds, if the owner was notified or knew that the dog previously injured or caused injury to a person, domestic animal, property, deer, game birds or the nests or eggs of game birds.

(c) *Penalties in addition to liability for damages.* The penalties in this subsection are in addition to any other liability imposed on the owner of a dog.