

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 contributory fault, governmental liability, or other issues.

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 (75 points)

Comet Delta, Inc. ("CDI"), an American conglomerate, was an agricultural products corporation that shipped grain all over the world. In July 2002 CDI purchased 200,000 50-kilo polypropylene bags of U.S. No. 2 or better milled rice, maximum 4% broken. This rice was shipped to the port of Pascagoula, Linden, for storage in terminals "G" and "H" owned by Ryan-Walsh, Inc. ("RWI"). These terminals were covered with plastic drapes to protect the rice. CDI began looking for a buyer for this rice, and eventually entered into a contract with Lodean, Ltd. of London, United Kingdom ("Buyer"), to deliver the rice to Nigeria in October 2002 for \$614 per metric ton, f.o.b. Pascagoula. This purchase price on 10,022.68 metric tons equals \$6,153,925.52.

North of RWI's terminals was a coal storage facility operated by Pate Enterprises ("PE"). Barges loaded with coal were loaded and unloaded at PE's facility. Open barges of coal generate coal dust when strong winds are blowing. Occasionally, particularly if the barge was headed for a distant port, the barge would be enclosed, but most of the time the coal was open to the air.

After the contract between CDI and Buyer was finalized, Buyer appointed an agent, SGS Control Services ("SGS"), to inspect the rice prior to shipment. On August 17, 2002, CDI gave RWI instructions to remove the plastic drapes covering rice stored in Terminals "G" and "H" for purposes of fumigation, and to permit inspection by SGS as agent for Buyer. During the period of August 17-24, while the rice was uncovered for inspection, a strong southerly wind carried coal dust that contaminated CDI's rice. As a result of this contamination, SGS recommended to Buyer that they cancel the contract for the rice.

CDI has come to your law firm for advice on tort remedies available from PE for the damage to the rice. Please provide your analysis.

Preliminary contact with PE shows that in 2002 all but 20% of the coal loaded or unloaded at PE's facility was transported by two companies, Ajax Minerals and Bentham Energy. PE's records were destroyed in a fire, and it is not yet known whose barges were docked at PE's facility between August 17 and August 24, 2002.

QUESTION 2 (60 points)

Daisy Savage had driven to Jackson Lake in Washington County on a fishing trip with friends. She left them at the lake and, accompanied by her eleven-year-old grandson, Dexter Walton, started to Rolling Fork to procure an inspection sticker for her car. The shortest route from that point to Rolling Fork was by way of the Steel Bayou road and bridge. Mrs. Savage left the lake between 8:30 and 9:30 a.m., Tuesday, May 20, 2003, and she and the child were not seen again until their bodies and the car were found in Steel Bayou on Saturday, May 24, 2003. The Steel Bayou bridge was one hundred eighty (180) feet long and twenty-one (21) feet wide. At one time the bridge was operated by Washington County, but after the Interstate was constructed nearby traffic on Steel Bayou bridge dwindled to almost nothing. The county wanted to demolish the bridge, but a private golf course wanted to keep it so that its members could get to and from the golf course more conveniently. In exchange for the county's allowing the golf course to receive the bridge at no cost, the golf course agreed that the public would be allowed to travel freely across the bridge, and would assume responsibility for maintenance and repairs. Pursuant to this understanding, the

golf course periodically hired inspectors to look the bridge over and recommend any repairs. The golf course manager would then send out an announcement of the work to be done and would receive bids from local contractors, who would then be selected on the basis of the lowest bid.

At the west approach, the road made a sharp turn onto the bridge, and it likewise made a sharp turn on leaving the east end. Wooden guardrails (4' x 8') were built along the sides of the bridge, but farm machinery with discs (standard width twenty-four (24) feet) constantly knocked the guardrails down in passing over the bridge. On Wednesday, May 21, John Lott, the maintenance director for the golf course, was told that a creosote plank missing from a side of the bridge. The last time Lott had inspected the bridge was the previous Saturday night (May 17). On May 24, Mrs. Savage's body was seen floating seventy-five (75) feet downstream near the east bank of the bayou, Dexter Walton's body was found between one-fourth (1/4) to one-half (1/2) mile downstream, and the automobile was found approximately sixty (60) feet downstream. There were no eyewitnesses to explain what occurred.

You represent Michelle Walton, the daughter of Daisy Savage and the mother of Dexter Walton. Daisy had never married; neither had Michelle. Daisy wrote a will leaving everything in her estate to the Humane Society. Dexter had no will. Please advise Michelle Walton what she can expect.

SELECTED STATUTES OF THE STATE OF LINDEN
ANNOTATED LINDEN CODES

§ 11-7-13. Wrongful death

Whenever the death of any person shall be caused by any real, wrongful or negligent act or omission, or by such unsafe machinery, way or appliances as would, if death had not ensued, have entitled the party injured or damaged thereby to maintain an action and recover damages in respect thereof, or whenever the death of any person shall be caused by the breach of any warranty, express or implied, of the purity or fitness of any foods, drugs, medicines, beverages, tobacco or any and all other articles or commodities intended for human consumption, as would, had the death not ensued, have entitled the person injured or made ill or damaged thereby, to maintain an action and recover damages in respect thereof, and such deceased person shall have left a widow or children or both, or husband or father or mother, or sister, or brother, the person or corporation, or both that would have been liable if death had not ensued, and the representatives of such person shall be liable for damages, notwithstanding the death, and the fact that death was instantaneous shall in no case affect the right of recovery. The action for such damages may be brought in the name of the personal representative of the deceased person for the benefit of all persons entitled under the law to recover, or by widow for the death of her husband, or by the husband for the death of the wife, or by the parent for the death of a child, or in the name of a child, or in the name of a child for the death of a parent, or by a brother for the death of a sister, or by a sister for the death of a brother, or by a sister for the death of a sister, or a brother for the death of a brother, or all parties interested may join

in the suit, and there shall be but one (1) suit for the same death which shall ensue for the benefit of all parties concerned, but the determination of such suit shall not bar another action unless it be decided on its merits. In such action the party or parties suing shall recover such damages allowable by law as the jury may determine to be just, taking into consideration all the damages of every kind to the decedent and all damages of every kind to any and all parties interested in the suit.

This section shall apply to all personal injuries of servants and employees received in the service or business of the master or employer, where such injuries result in death, and to all deaths caused by breach of warranty, either express or implied, of the purity and fitness of foods, drugs, medicines, beverages, tobacco or other articles or commodities intended for human consumption.

Any person entitled to bring a wrongful death action may assert or maintain a claim for any breach of expressed warranty or for any breach of implied warranty. A wrongful death action may be maintained or asserted for strict liability in tort or for any cause of action known to the law for which any person, corporation, legal representative or entity would be liable for damages if death had not ensued.

In an action brought pursuant to the provisions of this section by the widow, husband, child, father, mother, sister or brother of the deceased, or by all interested parties, such party or parties may recover as damages property damages and funeral, medical or other related expenses incurred by or for the deceased as a result of such wrongful or negligent act or omission or breach of warranty, whether an estate has been opened or not. Any amount, but only such an amount, as may be recovered for property damage, funeral, medical or other related expenses shall be subject only to the payment of the debts or liabilities of the deceased for property damages, funeral, medical or other related expenses. All other damages recovered under the provisions of this section shall not be subject to the payment of the debts or liabilities of the deceased, except as hereinafter provided, and such damages shall be distributed as follows:

Damages for the injury and death of a married man shall be equally distributed to his wife and children, and if he has no children all shall go to his wife; damages for the injury and death of a married woman shall be equally distributed to the husband and children, and if she has no children all shall go to the husband; and if the deceased has no husband or wife, the damages shall be equally distributed to the children; if the deceased has no husband, nor wife, nor children, the damages shall be distributed equally to the father, mother, brothers and sisters, or such of them as the deceased may have living at his or her death. If the deceased have neither husband, nor wife, nor children, nor father, nor mother, nor sister, nor brother, then the damages shall go to the legal representative, subject to debts and general distribution, and the fact that the deceased was instantly killed shall not affect the right of the legal representative to recover. All references in this section to children shall include descendants of a deceased child, such descendants to take the share of the deceased child by representation. There shall not be, in any case, a distinction between the kindred of the whole and half blood of equal degree. The provisions of this section shall apply to illegitimate children on account of the death of the mother and to the mother on account of the death of an illegitimate child or children, and they shall have all the benefits, rights and remedies conferred by this section on legitimates. The provisions of this section shall apply to illegitimate children on account of the death of the natural father and to the natural father on account of the death of the illegitimate child or children, and they shall have all the benefits, rights and remedies conferred by this section on legitimates, if the survivor has or establishes the right to inherit from the deceased.

Any rights which a blood parent or parents may have under this section are hereby conferred upon and vested in an adopting parent or adopting parents surviving their deceased adopted child, just as if the child were theirs by the full blood and had been born to the adopting parents in lawful wedlock.