

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 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 (85 points)

On July 28, 2001, eight-year-old Stephen Cole was severely injured in a motorcycle accident. Stephen was invited to go motorcycle riding that day by Jack Fairchild, Jr. ("Fairchild, Jr."), who had taken Stephen to ride motorcycles on other occasions. Stephen was given permission to go either by his mother, Diane Lilly (hereinafter Stephen's mother), his father, Stephen B. Cole, Sr., (hereinafter Stephen's father), and/or his paternal grandparents, Mr. Cole and his wife, Ginger Cole.

At the time of the accident, Stephen's parents were divorced, and Stephen's father lived with his parents, Mr. and Mrs. Cole. As a result of this situation, Stephen spent a significant amount of time at his paternal grandparents' house located in Beckley, Linden. The Coles were neighbors with Fairchild, Jr., and, according to Fairchild, Jr., Stephen and his son, Justin, frequently would play together on weekends when Stephen was at his grandparents' house.

Stephen's father states that he taught Stephen to ride a motorcycle when Stephen was around five years old, and he believed Stephen was a pretty good rider. In addition, Stephen's mother and stepfather, Ken Lilly, purchased a Yamaha motorcycle for Stephen which they kept at their house. Stephen also rode an "Indian" model motorcycle which belonged to Fairchild, Jr., but was repaired by Stephen's father and stored at the Coles' house. Before Stephen left to go motorcycle riding on the day of the accident, his mother dropped off his boots and a motorcycle helmet at the Cole residence. However, she did not bring Stephen's chest protector, which she did not realize was a standard part of the equipment he used. Stephen was riding his Yamaha motorcycle at the time of the accident; when he saw Jeremy at the last minute he turned to try to avoid him but slammed into the left handlebar which caused internal bleeding, spinal cord injury, and brain damage. Diane Lilly reported later that she knew nothing about the need for a chest protector except that and was angered to find that there was no mention of the need for one in the owner's manual for the motorcycle.

On the day of the accident, Fairchild, Jr., took his two sons, Jeremy (aged 10) and Justin (age 12); Stephen; and his brother-in-law, Robert Douglas Meador to Flat Top Lake Association ("Flat Top"), an area where they had ridden before. The accident occurred when the group was motorcycle riding on an area of property owned by Flat Top referred to as the "upper field" and "upper track." Fairchild, Jr., states that he stayed in front of Justin and Stephen as they rode the motorcycles around the upper track and he taught them to ride in a clockwise direction. At some point, all five members of the group stopped at the entrance to the upper track and Fairchild, Jr., began talking to Gene Kessler.

Fairchild, Jr., explained there was not a rule to go one direction or the other, but "it was for safety factors to go clockwise" because on "the left side of the track is a small, upgrade hill and to come down that direction could build speed"

Kessler had worked as a conservator/superintendent at Flat Top for ten years prior to the accident. While Fairchild, Jr., and Mr. Kessler were talking, Mr. Kessler noticed that Jeremy rode one of the motorcycles toward an area known as the "big field," but Jeremy then returned to the upper track and began traveling in a counterclockwise direction. In the meantime, Mr. Kessler observed that Stephen took off in a clockwise direction around the upper track with Mr. Meador following behind him. Mr. Kessler said that Fairchild, Jr., "kind of yelled out to [Jeremy], but he didn't hear or anything." As Meador and Jeremy "went around the upper turns" of the track, Mr. Meador saw Jeremy and Stephen collide at a point where high grass caused a "blind spot." Mr. Meador said the grass was about four to four and one-half feet high and over Stephen's head. At the point of the accident, Mr. Meador described the upper track to be approximately eight feet wide. Meador now claims

he had previously asked Kessler to cut the grass for better visibility, but Kessler denies having had such a conversation.

Flat Top is a homeowners' association for persons who had purchased real property at Flat Top Lake. Flat Top also "owns certain real property and recreational facilities ... surrounding Flat Top Lake to which the homeowners in the association have access by virtue of their membership in the Association. Access to the homes ... and to the Lake area is restricted and controlled by rules of the Association." According to Flat Top's handbook, dated April 5, 1990, the original purpose of this organization was to provide recreational opportunities exclusively to benefit its members. The handbook further provides such recreational opportunities include tennis courts, playground equipment, a softball field, a basketball court, and a man-made lake for water activities, such as boating, fishing, and swimming. However, it equally is clear from the handbook that, in reality, Flat Top does more than just provide recreational opportunities for its members. Among other things for instance, as a homeowners' association, it maintains the perimeter road which provides access to the residential houses around the lake. In addition, it maintains Flat Top's property and regulates the way homeowners may develop and maintain their privately owned property.

Fairchild, Jr., who took Stephen motorcycle riding on Flat Top property, was neither a property owner nor a member of the Flat Top Homeowners' Association at the time the accident occurred. However, his father, Jack R. Fairchild ("Fairchild, Sr."), now deceased, owned three lots along the lake and was a member. Fairchild, Sr., gave Fairchild, Jr., a gate card so Fairchild, Jr., always would have access to his parents' house.

According to Mr. Kessler, Flat Top's property consists of approximately 2,200 acres, including about a 258-acre lake. There are 374 lots surrounding the lake with around 272 seasonal and full-time houses located thereon. Mr. Kessler estimated that about 1,800 acres of Flat Top's property extends beyond the perimeter road. He stated this area is mainly woodland and fire trails, but he said it also contains some fields and maintenance buildings. Mr. Kessler also mentioned that all members of Flat Top can use this property for things like hiking, camping, riding motorcycles, and riding four-wheelers. Moreover, the area of the upper field where Stephen was injured was used by members and guests of Flat Top for motorcycle riding and other recreational activities.

The president of Flat Top was Constance Duffy Woods. Ms. Woods stated that the area is restricted from the general public by a gate system. To enter the premises, one must have a card to raise the gate, be admitted by a member via a phone system, or be on a standing guest list. Guards are posted at the gate on Saturdays, Sundays, and holidays to admit guests on the list. Ms. Woods explained that to be a member of Flat Top one must first apply for membership and, if accepted, must purchase property usually within thirty days. According to Ms. Woods, members in good standing and their guests are entitled to use Flat Top's recreational areas. To be in good standing, members are required to pay annual dues and assessments.

Diane Lilly and Stephen Cole, Sr. (Stephen Jr.'s natural mother and father) have hired your law firm to evaluate claims for tort compensation for Stephen's injury. A partner in the firm has estimated that the long-term medical care, wage loss, and pain and suffering damages suffered by Stephen Jr. would be assessed by the jury at \$5,000,000. Please provide your assessment of the prospects for tort compensation for this accident.

QUESTION 2 (50 points)

Jean Kirkland, who suffers from severe mental illness, was voluntarily committed to Northeast Linden State Hospital (NLSH), administered by the Department of Health and Rehabilitative Services (HRS). At the time of her admission, Kirkland complained of suicidal tendencies. Dr. John Asner, her treating physician at NFSH, permitted her to have ground privileges under a "buddy pass" system. According to Dr. Asner, the giving of "buddy pass" privileges--a part of milieu therapy--is a decision made by a team of people, including the nurses, social workers, and the treating physician of the patient. On July 6, 2001, Kirkland was given a "buddy pass" while she was in an agitated and disoriented state of mind. Later that afternoon, Kirkland threw herself in front of an oncoming truck on a highway near the grounds of the hospital, suffering serious multiple, permanent injuries.

You represent the State of Linden. Please evaluate its potential exposure in this case. Assume for purposes of your analysis that a jury would assess Ms. Kirkland's wage loss, medical expense, and pain and suffering at \$500,000.

SELECTED STATUTES OF THE STATE OF LINDEN
ANNOTATED LINDEN CODE
TITLE XLV. TORTS
ARTICLE 51. NEGLIGENCE
PART II. DAMAGES

§ 768.81. Comparative fault

(1) *Definition.*--As used in this section, "economic damages" means past lost income and future lost income reduced to present value; medical and funeral expenses; lost support and services; replacement value of lost personal property; loss of appraised fair market value of real property; costs of construction repairs, including labor, overhead, and profit; and any other economic loss which would not have occurred but for the injury giving rise to the cause of action.

(2) *Effect of contributory fault.*--In an action to which this section applies, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

(3) *Apportionment of damages.*--In cases to which this section applies, the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability, except as provided in paragraphs (a), (b), and (c):

(a) Where a plaintiff is found to be at fault, the following shall apply:

1. Any defendant found 10 percent or less at fault shall not be subject to joint and several liability.

2. For any defendant found more than 10 percent but less than 25 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$200,000.

3. For any defendant found at least 25 percent but not more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$500,000.

4. For any defendant found more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$1 million.

For any defendant under subparagraph 2., subparagraph 3., or subparagraph 4., the amount of economic damages calculated under joint and several liability shall be in addition to the amount of economic and noneconomic damages already apportioned to that defendant based on that defendant's percentage of fault.

(b) Where a plaintiff is found to be without fault, the following shall apply:

1. Any defendant found less than 10 percent at fault shall not be subject to joint and several liability.

2. For any defendant found at least 10 percent but less than 25 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$500,000.

3. For any defendant found at least 25 percent but not more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$1 million.

4. For any defendant found more than 50 percent at fault, joint and several liability shall not apply to that portion of economic damages in excess of \$2 million.

For any defendant under subparagraph 2., subparagraph 3., or subparagraph 4., the amount of economic damages calculated under joint and several liability shall be in addition to the amount of economic and noneconomic damages already apportioned to that defendant based on that defendant's percentage of fault.

(c) With respect to any defendant whose percentage of fault is less than the fault of a particular plaintiff, the doctrine of joint and several liability shall not apply to any damages imposed against the defendant.

(d) In order to allocate any or all fault to a nonparty, a defendant must affirmatively plead the fault of a nonparty and, absent a showing of good cause, identify the nonparty, if known, or describe the nonparty as specifically as practicable, either by motion or in the initial responsive pleading when defenses are first presented, subject to amendment any time before trial in accordance with the Linden Rules of Civil Procedure.

(e) In order to allocate any or all fault to a nonparty and include the named or unnamed nonparty on the verdict form for purposes of apportioning damages, a defendant must prove at trial, by a preponderance of the evidence, the fault of the nonparty in causing the plaintiff's injuries.

(4) *Applicability.*--

(a) This section applies to negligence cases. For purposes of this section, "negligence cases" includes, but is not limited to, civil actions for damages based upon theories of negligence, strict liability, products liability, professional malpractice whether couched in terms of contract or tort, or breach of warranty and like theories. In determining whether a case falls within the term "negligence cases," the court shall look to the substance of the action and not the conclusory terms used by the parties.

(b) This section does not apply to any action brought by any person to recover actual economic damages resulting from pollution, to any action based upon an intentional tort, or to any cause of action as to which application of the doctrine of joint and several liability is specifically provided by chapter 403, chapter 498, chapter 517, chapter 542, or chapter 895.

(5) Notwithstanding anything in law to the contrary, in an action for damages for personal injury or wrongful death arising out of medical malpractice, whether in contract or tort, when an apportionment of damages pursuant to this section is attributed to a teaching hospital as defined in § 408.07, the court shall enter judgment against the teaching hospital on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability.

WEST'S LINDEN STATUTES ANNOTATED
TITLE XLV. TORTS
CHAPTER 768. NEGLIGENCE
PART I. GENERAL PROVISIONS

§ 768.28. Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs

(1) In accordance with § 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act. Any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued. However, any such action against a state university board of trustees shall be brought in the county in which that university's main campus is located or in the county in which the cause of action accrued if the university maintains therein a substantial presence for the transaction of its customary business.

(2) As used in this act, "state agencies or subdivisions" include the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state, including state university boards of trustees; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Linden Space Authority.

(3) Except for a municipality and the Linden Space Authority, the affected agency or subdivision may, at its discretion, request the assistance of the Department of Insurance in the consideration, adjustment, and settlement of any claim under this act.

(4) Subject to the provisions of this section, any state agency or subdivision shall have the right to appeal any award, compromise, settlement, or determination to the court of appropriate jurisdiction.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$100,000 or \$200,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage

provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the \$100,000 or \$200,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality or the Linden Space Authority, presents such claim in writing to the Department of Insurance, within 3 years after such claim accrues and the Department of Insurance or the appropriate agency denies the claim in writing; except that, if such claim is for contribution pursuant to § 768.31, it must be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against her or him, to discharge the common liability.

(b) For purposes of this section, the requirements of notice to the agency and denial of the claim pursuant to paragraph (a) are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues.

(c) The claimant shall also provide to the agency the claimant's date and place of birth and social security number if the claimant is an individual, or a federal identification number if the claimant is not an individual. The claimant shall also state the case style, tribunal, the nature and amount of all adjudicated penalties, fines, fees, victim restitution fund, and other judgments in excess of \$200, whether imposed by a civil, criminal, or administrative tribunal, owed by the claimant to the state, its agency, officer or subdivision. If there exists no prior adjudicated unpaid claim in excess of \$200, the claimant shall so state.

(d) For purposes of this section, complete, accurate, and timely compliance with the requirements of paragraph (c) shall occur prior to settlement payment, close of discovery or commencement of trial, whichever is sooner; provided the ability to plead setoff is not precluded by the delay. This setoff shall apply only against that part of the settlement or judgment payable to the claimant, minus claimant's reasonable attorney's fees and costs. Incomplete or inaccurate disclosure of unpaid adjudicated claims due the state, its agency, officer, or subdivision, may be excused by the court upon a showing by the preponderance of the evidence of the claimant's lack of knowledge of an adjudicated claim and reasonable inquiry by, or on behalf of, the claimant to obtain the information from public records. Unless the appropriate agency had actual notice of the information required to be disclosed by paragraph (c) in time to assert a setoff, an unexcused failure to disclose shall, upon hearing and order of court, cause the claimant to be liable for double the original undisclosed judgment and, upon further motion, the court shall enter judgment for the agency in that amount. The failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 6 months after it is filed shall be deemed a final denial of the claim for purposes of this section. For purposes of this subsection, in medical malpractice actions, the failure of the Department of Insurance or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted by counterclaim pursuant to § 768.14.

(7) In actions brought pursuant to this section, process shall be served upon the head of the agency concerned and also, except as to a defendant municipality or the Linden Space Authority, upon the Department of Insurance; and the department or the agency concerned shall have 30 days within which to plead thereto.

(8) No attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement.

(9)(a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.
2. "Officer, employee, or agent" includes, but is not limited to, any health care provider when providing services pursuant to § 766.1115, any member of the Linden Health Services Corps, as defined in § 381.0302, who provides uncompensated care to medically indigent persons referred by the Department of Health, and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

(c) For purposes of the waiver of sovereign immunity only, a member of the Linden National Guard is not acting within the scope of state employment when performing duty under the provisions of Title 10 or Title 32 of the United States Code or other applicable federal law; and neither the state nor any individual may be named in any action under this chapter arising from the performance of such federal duty.

(10)(a) Health care providers or vendors, or any of their employees or agents, that have contractually agreed to act as agents of the Department of Corrections to provide health care services to inmates of the state correctional system shall be considered agents of the State of Linden, Department of Corrections, for the purposes of this section, while acting within the scope of and pursuant to guidelines established in said contract or by rule. The contracts shall provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

(b) This subsection shall not be construed as designating persons providing contracted health care services to inmates as employees or agents of the state for the purposes of chapter 440.

(c) For purposes of this section, regional poison control centers created in accordance with § 395.1027 and coordinated and supervised under the Division of Children's Medical Services Prevention and Intervention of the Department of Health, or any of their employees

or agents, shall be considered agents of the State of Linden, Department of Health. Any contracts with poison control centers must provide, to the extent permitted by law, for the indemnification of the state by the agency for any liabilities incurred up to the limits set out in this chapter.

(d) For the purposes of this section, operators, dispatchers, and providers of security for rail services and rail facility maintenance providers in the South Linden Rail Corridor, or any of their employees or agents, performing such services under contract with and on behalf of the South Linden Regional Transportation Authority or the Department of Transportation shall be considered agents of the state while acting within the scope of and pursuant to guidelines established in said contract or by rule.

(11)(a) Providers or vendors, or any of their employees or agents, that have contractually agreed to act on behalf of the state as agents of the Department of Juvenile Justice to provide services to children in need of services, families in need of services, or juvenile offenders are, solely with respect to such services, agents of the state for purposes of this section while acting within the scope of and pursuant to guidelines established in the contract or by rule. A contract must provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

(b) This subsection does not designate a person who provides contracted services to juvenile offenders as an employee or agent of the state for purposes of chapter 440.

(12) Laws allowing the state or its agencies or subdivisions to buy insurance are still in force and effect and are not restricted in any way by the terms of this act.

(13) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that an action for contribution must be commenced within the limitations provided in § 768.31(4).

(14) No action may be brought against the state or any of its agencies or subdivisions by anyone who unlawfully participates in a riot, unlawful assembly, public demonstration, mob violence, or civil disobedience if the claim arises out of such riot, unlawful assembly, public demonstration, mob violence, or civil disobedience. Nothing in this act shall abridge traditional immunities pertaining to statements made in court.

(15)(a) The state and its agencies and subdivisions are authorized to be self-insured, to enter into risk management programs, or to purchase liability insurance for whatever coverage they may choose, or to have any combination thereof, in anticipation of any claim, judgment, and claims bill which they may be liable to pay pursuant to this section. Agencies or subdivisions, and sheriffs, that are subject to homogeneous risks may purchase insurance jointly or may join together as self-insurers to provide other means of protection against tort claims, any charter provisions or laws to the contrary notwithstanding.

(b) Claims files maintained by any risk management program administered by the state, its agencies, and its subdivisions are confidential and exempt from the provisions of § 119.07(1) and § 24(a), Art. I of the State Constitution until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Claims files records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided for in this paragraph.

(c) Portions of meetings and proceedings conducted pursuant to any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to the evaluation of claims filed with the risk management program or which relate solely to offers

of compromise of claims filed with the risk management program are exempt from the provisions of § 286.011 and § 24(b), Art. I of the State Constitution. Until termination of all litigation and settlement of all claims arising out of the same incident, persons privy to discussions pertinent to the evaluation of a filed claim shall not be subject to subpoena in any administrative or civil proceeding with regard to the content of those discussions.

(d) Minutes of the meetings and proceedings of any risk management program administered by the state, its agencies, or its subdivisions, which relate solely to the evaluation of claims filed with the risk management program or which relate solely to offers of compromise of claims filed with the risk management program are exempt from the provisions of § 119.07(1) and § 24(a), Art. I of the State Constitution until termination of all litigation and settlement of all claims arising out of the same incident.

(16) This section, as amended by chapter 81-317, Laws of Linden, shall apply only to causes of actions which accrue on or after October 1, 1981.

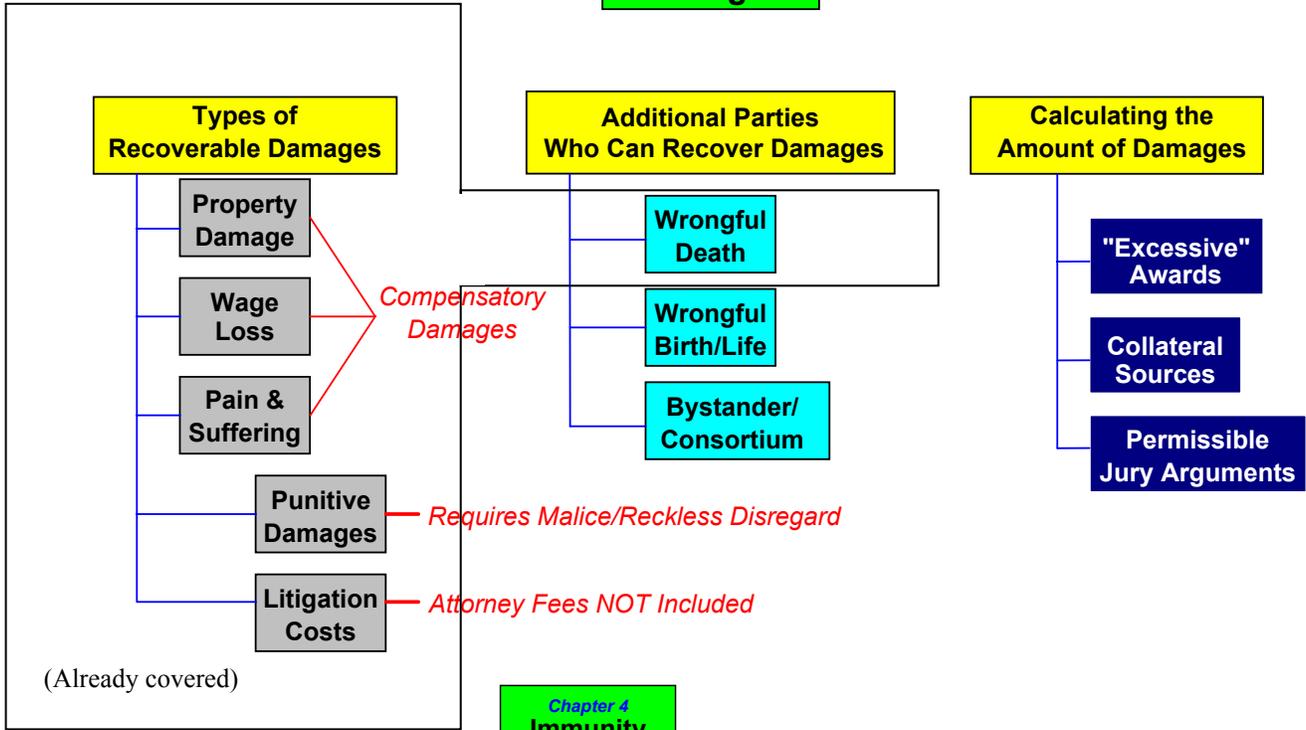
(17) No provision of this section, or of any other section of the Linden Statutes, whether read separately or in conjunction with any other provision, shall be construed to waive the immunity of the state or any of its agencies from suit in federal court, as such immunity is guaranteed by the Eleventh Amendment to the Constitution of the United States, unless such waiver is explicitly and definitely stated to be a waiver of the immunity of the state and its agencies from suit in federal court. This subsection shall not be construed to mean that the state has at any time previously waived, by implication, its immunity, or that of any of its agencies, from suit in federal court through any statute in existence prior to June 24, 1984.

(18) Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity, or increases the limits of its liability, upon entering into a contractual relationship with another agency or subdivision of the state. Such a contract must not contain any provision that requires one party to indemnify or insure the other party for the other party's negligence or to assume any liability for the other party's negligence. This does not preclude a party from requiring a nongovernmental entity to provide such indemnification or insurance. The restrictions of this subsection do not prevent a regional water supply authority from indemnifying and assuming the liabilities of its member governments for obligations arising from past acts or omissions at or with property acquired from a member government by the authority and arising from the acts or omissions of the authority in performing activities contemplated by an interlocal agreement. Such indemnification may not be considered to increase or otherwise waive the limits of liability to third-party claimants established by this section.

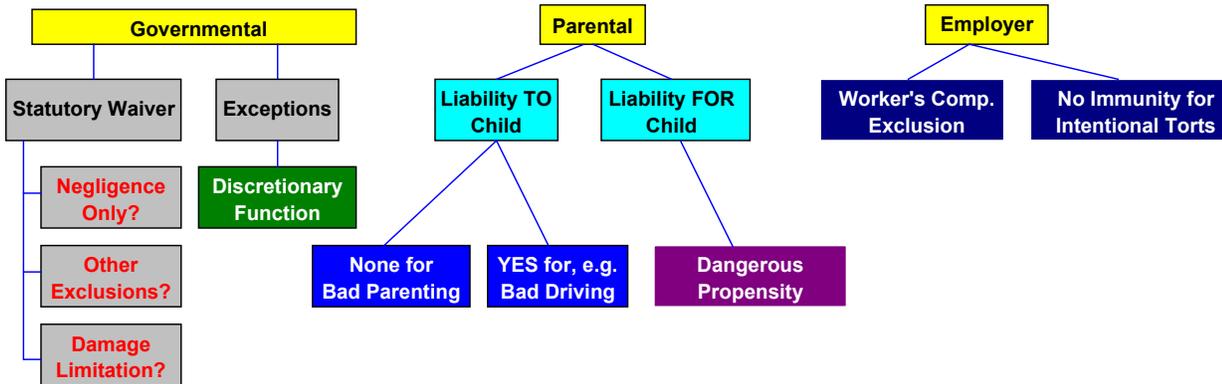
(19) Every municipality, and any agency thereof, is authorized to undertake to indemnify those employees that are exposed to personal liability pursuant to the Clean Air Act Amendments of 1990, 42 U.S.C.A. §§ 7401 et seq., and all rules and regulations adopted to implement that act, for acts performed within the course and scope of their employment with the municipality or its agency, including but not limited to indemnification pertaining to the holding, transfer, or disposition of allowances allocated to the municipality's or its agency's electric generating units, and the monitoring, submission, certification, and compliance with permits, permit applications, records, compliance plans, and reports for those units, when such acts are performed within the course and scope of their employment with the municipality or its agency. The authority to indemnify under this section covers every act by an employee when such act is performed within the course and scope of her or his employment with the municipality or its agency, but does not cover any act of willful misconduct or any intentional or knowing violation of any law by the employee. The

authority to indemnify under this section includes, but is not limited to, the authority to pay any fine and provide legal representation in any action.

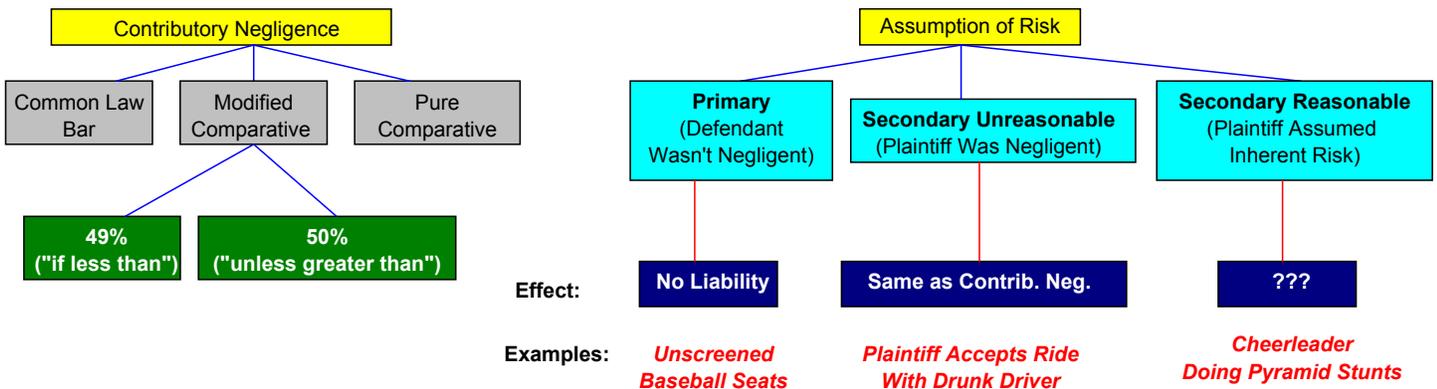
**Chapter 3
Damages**



**Chapter 4
Immunity**

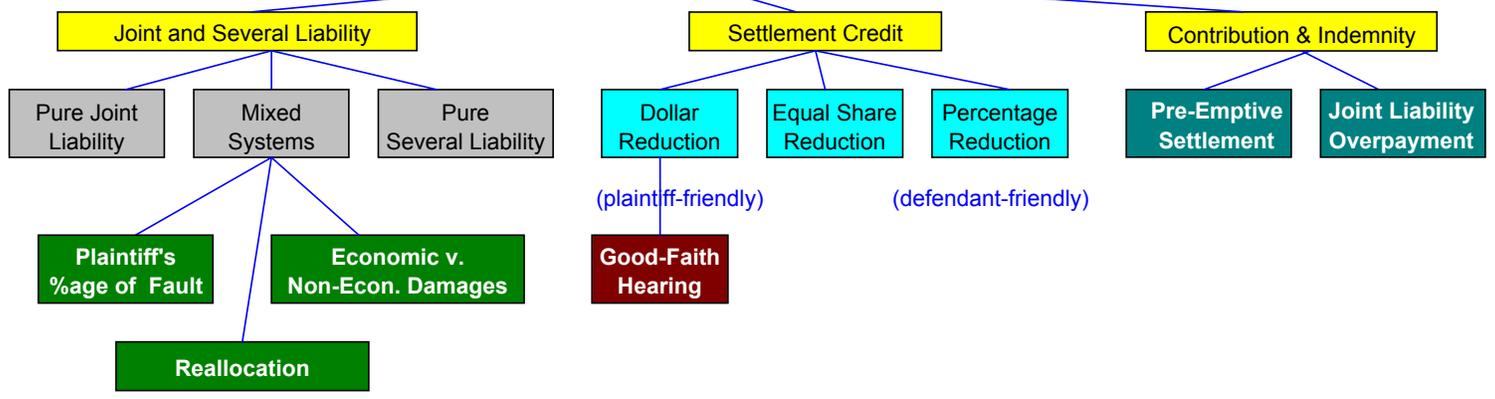


**Chapter 5
Contributory Fault**

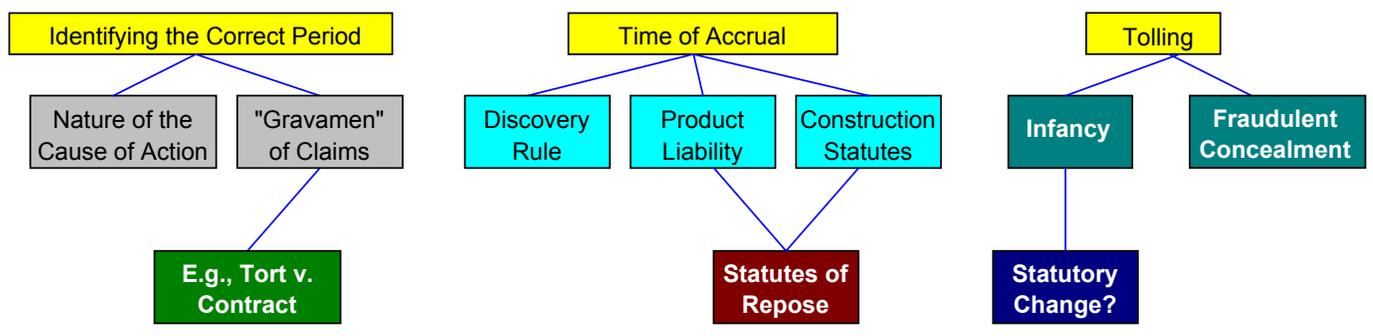


**Chapter 6
Multiple Tortfeasors**

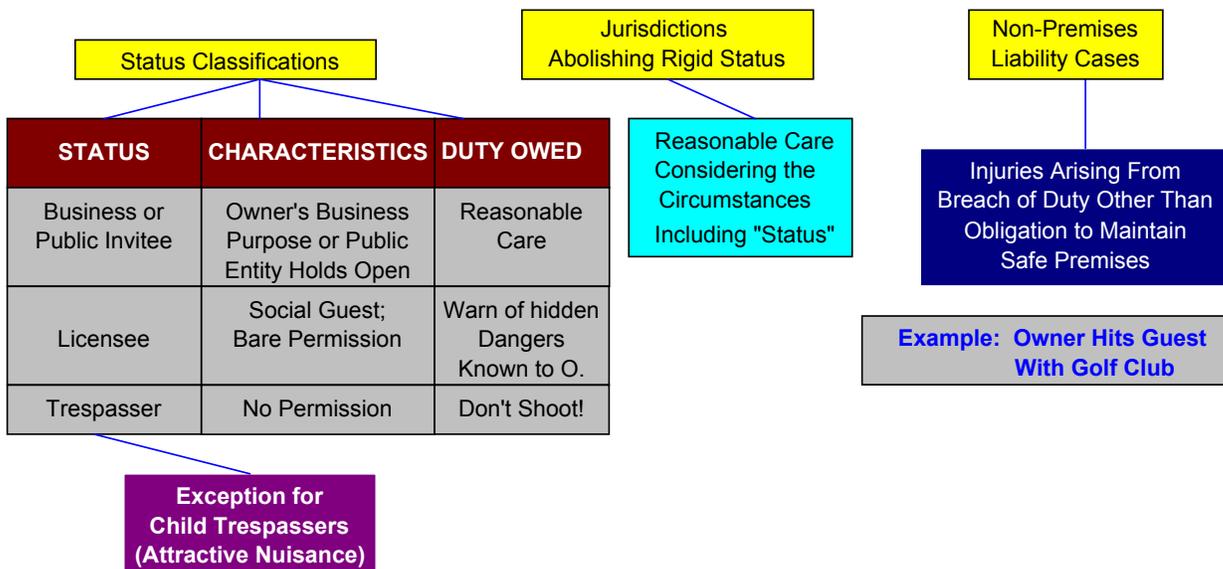
Indivisible Injury?



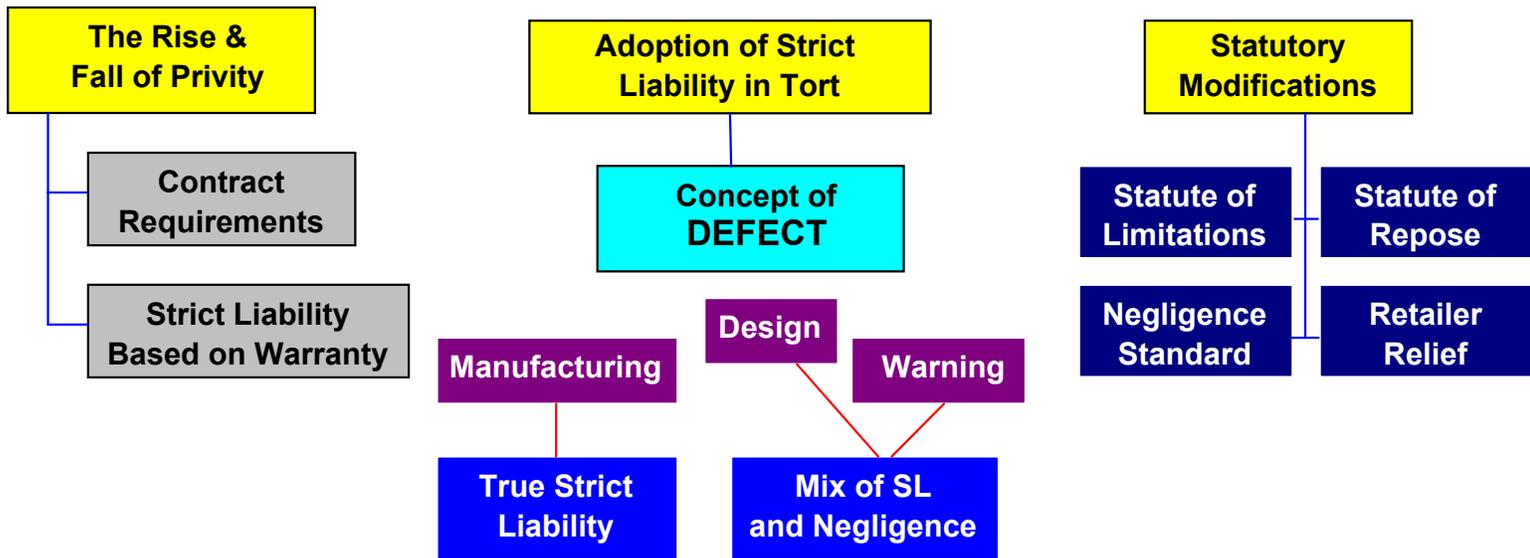
**Chapter 7
Statutes of Limitation**



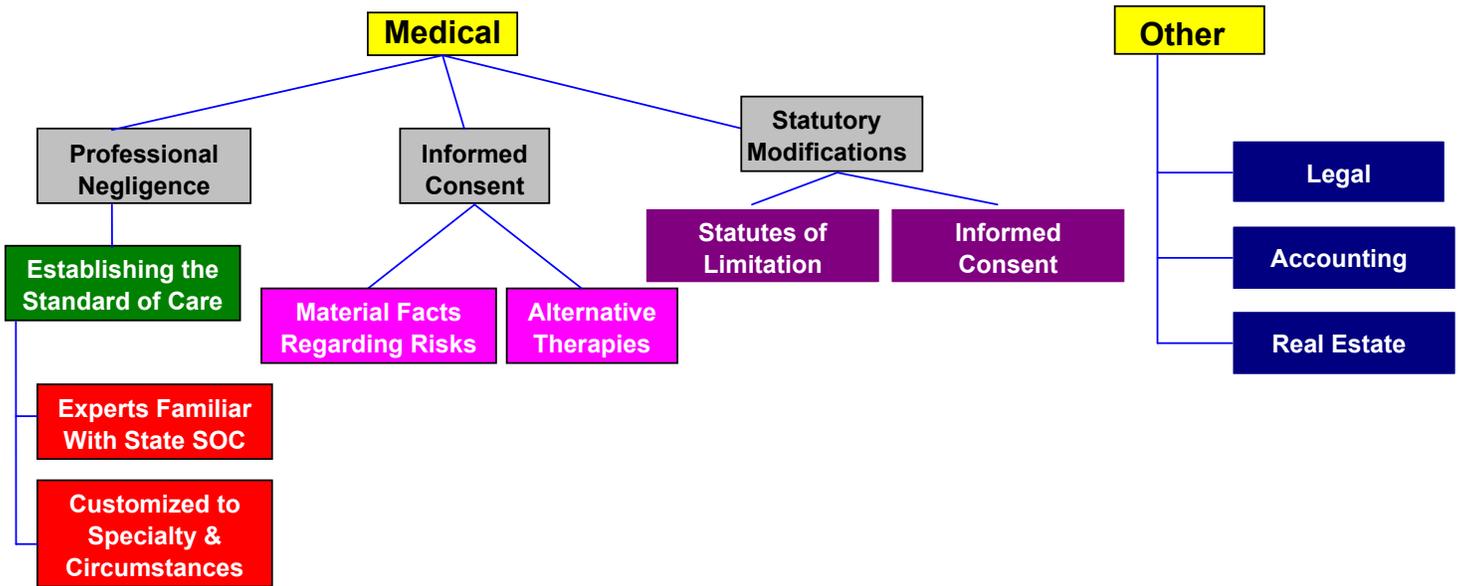
**Chapter 8
Premises Liability**



**Chapter 9
Product Liability**



**Chapter 10
Professional Malpractice**



**Chapter 11
Rescuers, Justifiable Reliance
and Special Relationships**

What Triggers a Defendant's Duty to Use Reasonable Care?

