

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!
GOOD LUCK!!!

DOUBLE SPACE!

QUESTION 1 (75 points)

At approximately 9:30 pm on March 28, 2002, Tonya Brown and Anita Addison went to Hampton's Party Store in Meadowridge, Linden to purchase some snacks. Hampton's was located on the southeast corner of the intersection of Salisbury Street and Russell Street. The Tristate Telephone Company owned two public pay telephones located on the northwest corner of Hampton's property. The telephones were originally attached to the side of the Hampton's building, but Hampton's had built a kiosk with advertising four feet closer to the street and incorporated the telephones into that kiosk. The kiosk was 12½ feet from Russell Street (a residential street) and approximately 45 feet from Salisbury Street (a commercial street). A Meadowridge municipal ordinance required a minimum of 15 feet between any structure and a public thoroughfare used for motor vehicle traffic. (Hampton's and Tristate had been notified by city authorities of the need to relocate the kiosk and the telephones, and on March 28, 2002 Tristate was still in the process of negotiating with Hampton's to reattach the phones to the side of the Hampton's building.)

After purchasing the snacks, Tonya Brown was using one of the telephones while Anita Addison stood nearby. A car driven by Ruby Greer veered out of control as she attempted to make a left turn from Salisbury Street onto Russell Street. Both Tonya and Anita turned to see the car heading toward them, and each was just beginning to move out of the way when the car pinned Tonya to the kiosk and ran over Anita. Tonya lost the use of both of her legs, and her 8½-month-old fetus (Amber Vonetta Brown) was also lost as a result of the accident. Anita Addison suffered severe head injuries, which resulted in permanent brain damage.

Greer subsequently pleaded guilty to felonious driving and driving without insurance coverage, and is now incarcerated. Greer had been smoking crack cocaine and drinking alcohol a few hours before the accident. Apparently, an armed robbery had occurred a few blocks north of Hampton's Party Store. Greer, one of the robbery victims, fled the scene in a car. However, not only was Greer intoxicated at the time, but she had never driven a car before and did not have a driver's license. Greer drove south on Salisbury Street for a few blocks at an excessive rate of speed before the car crashed into Hampton's Party Store.

Your law firm represents Tonya Brown. Please evaluate her prospects for recovering tort compensation from Tristate or Hampton's.

QUESTION 2 (60 points)

On May 18, 2002, Mike and Cynthia LaCross were flying in a Cessna 170 airplane from Echo Valley to Agate Cove in the state of Linden. Visibility on that day was at least seven miles. At 11 a.m. the plane struck power lines owned by Consumers Power Co. that extended across Sanford Lake. Both Mike and Cynthia were killed instantly in the resultant crash, and they are survived by their son Frank, age 32.

You represent Consumers Power Co. and have been provided with the following background information:

At the point where the power lines cross the lake, Sanford Lake is approximately 600 feet wide. The power lines, carrying 500,000 volts of electricity, were elevated forty feet above the surface of the lake, and they were unmarked. In 1982 an airplane crashed into Consumers Power Co. power lines crossing Sanford Lake (it's unclear whether they were the same power lines), and following the crash the lines were repaired. At the time they were repaired some Consumers Power Co. customers complained that the lines should either be marked or should be relocated. The power lines involved in the Lacross crash are not located in an official aircraft approach area, and there are no airports or marinas in the vicinity. The Cessna 170 flown by Mike Lacross was not an amphibious aircraft that could have been landed on the water. The shores of Sanford Lake are lined with houses and docks, and in such circumstances federal regulations require a pilot to maintain a 500 foot clearance from any person, vessel or structure. The last radio transmission with air traffic control was ten minutes prior to the crash, and reported normal progress on the flight path and no mechanical difficulties with the airplane.

Please evaluate the tort exposure that Consumers Power Co. faces.

SELECTED STATUTES OF THE STATE OF LINDEN
ANNOTATED LINDEN CODES
TITLE 6. JUDICIARY AND JUDICIAL PROCEDURE
CHAPTER 29. PARTICULAR RIGHTS AND IMMUNITIES
SUBCHAPTER A. RIGHTS OF ACTION

§ 600.2922. Wrongful death

(1) Whenever the death of a person or injuries resulting in death shall be caused by wrongful act, neglect, or fault of another, and the act, neglect, or fault is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, the person who or the corporation that would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances that constitute a felony.

(2) Every action under this section shall be brought by, and in the name of, the personal representative of the estate of the deceased person. Within 30 days after the commencement of an action, the personal representative shall serve a copy of the complaint and notice as prescribed in subsection (4) upon the person or persons who may be entitled to damages under subsection (3) in the manner and method provided in the rules applicable to probate court proceedings.

(3) Subject to sections 2802 to 2805 of the estates and protected individuals code, A.L.C. §§ 700.2802 to 700.2805, the person or persons who may be entitled to damages under this section shall be limited to any of the following who suffer damages and survive the deceased:

(a) The deceased's spouse, children, descendants, parents, grandparents, brothers and sisters, and, if none of these persons survive the deceased, then those persons to whom the estate of the deceased would pass under the laws of intestate succession determined as of the date of death of the deceased.

(b) The children of the deceased's spouse.

(c) Those persons who are devisees under the will of the deceased, except those whose relationship with the decedent violated Linden law, including beneficiaries of a trust under the will, those persons who are designated in the will as persons who may be entitled to damages under this section, and the beneficiaries of a living trust of the deceased if there is a devise to that trust in the will of the deceased.

(4) The notice required in subsection (2) shall contain the following:

(a) The name and address of the personal representative and the personal representative's attorney.

(b) A statement that the attorney for the personal representative shall be advised within 60 days after the mailing of the notice of any material fact that may constitute evidence of any claim for damages and that failure to do so may adversely affect his or her recovery of damages and could bar his or her right to any claim at a hearing to distribute proceeds.

(c) A statement that he or she will be notified of a hearing to determine the distribution of the proceeds after the adjudication or settlement of the claim for damages.

(d) A statement that to recover damages under this section the person who may be entitled to damages must present a claim for damages to the personal representative on or before the date set for hearing on the motion for distribution of the proceeds under subsection (6) and that failure to present a claim for damages within the time provided shall bar the person from making a claim to any of the proceeds.

(5) If, for the purpose of settling a claim for damages for wrongful death where an action for those damages is pending, a motion is filed in the court where the action is pending by the personal representative asking leave of the court to settle the claim, the court shall, with or without notice, conduct a hearing and approve or reject the proposed settlement.

(6) In every action under this section, the court or jury may award damages as the court or jury shall consider fair and equitable, under all the circumstances including reasonable medical, hospital, funeral, and burial expenses for which the estate is liable; reasonable compensation for the pain and suffering, while conscious, undergone by the deceased person during the period intervening between the time of the injury and death; and damages for the loss of financial support and the loss of the society and companionship of the deceased. The proceeds of a settlement or judgment in an action for damages for wrongful death shall be distributed as follows:

(a) The personal representative shall file with the court a motion for authority to distribute the proceeds. Upon the filing of the motion, the court shall order a hearing.

(b) Unless waived, notice of the hearing shall be served upon all persons who may be entitled to damages under subsection (3) in the time, manner, and method provided in the rules applicable to probate court proceedings.

(c) If any interested person is a minor, a disappeared person, or an incapacitated individual for whom a fiduciary is not appointed, a fiduciary or guardian ad litem shall be first appointed, and the notice provided in subdivision (b) shall be given to the fiduciary or guardian ad litem of the minor, disappeared person, or legally incapacitated individual.

(d) After a hearing by the court, the court shall order payment from the proceeds of the reasonable medical, hospital, funeral, and burial expenses of the decedent for which the estate is liable. The proceeds shall not be applied to the payment of any other charges against the estate of the decedent. The court shall then enter an order distributing the proceeds to those persons designated in subsection (3) who suffered damages and to the estate of the deceased for compensation for conscious pain and suffering, if any, in the amount as the court or jury considers fair and equitable considering the relative damages sustained by each of the persons and the estate of the deceased. If there is a special verdict by a jury in the wrongful death action, damages shall be distributed as provided in the special verdict.

(e) If none of the persons entitled to the proceeds is a minor, a disappeared person, or a legally incapacitated individual and all of the persons entitled to the proceeds execute a verified stipulation or agreement in writing in which the portion of the proceeds to be distributed to each of the persons is specified, the order of the court shall be entered in accordance with the stipulation or agreement.

(7) A person who may be entitled to damages under this section must present a claim for damages to the personal representative on or before the date set for hearing on the motion for distribution of the proceeds under subsection (6). The failure to present a claim for damages within the time provided shall bar the person from making a claim to any of the proceeds.

(8) A person who may be entitled to damages under this section shall advise the attorney for the

personal representative within 60 days after service of the complaint and notice as provided for under subsection (2) of any material fact of which the person has knowledge and that may constitute evidence of any claim for damages. The person's right to claim at a hearing any proceeds may be barred by the court if the person fails to advise the personal representative as prescribed in this subsection.

(9) If a claim under this section is to be settled and a civil action for wrongful death is not pending under this section, the procedures prescribed in section 3924 of the estates and protected individuals code, A.L.C. § 700.3924, shall be applicable to the distribution of the proceeds.