

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)

On March 4, 2003, a boiler exploded at American Rubber Products Corporation ("ARPC"). The explosion caused extensive property damage and killed two custodial employees working at ARPC: Joan Erickson and Linda White. A subsequent investigation revealed the following:

(1) A boiler is defined as "a closed vessel in which water is heated, steam is generated, steam is super-heated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy."

(2) The boiler was originally manufactured and installed in 1947. In 1998, Power Plant Service, Inc., sold and installed a replacement burner on the boiler. As part of the installation of the replacement burner, a separate support pipe was installed to adequately support the burner and relieve the stress on the attachment bolts from the weight of the burner. In 2000, the support pipe was removed, and the weight of the burner caused it to tilt and improperly heat the elements of the boiler, ultimately resulting in the explosion.

(3) Pursuant to Linden state law, a boiler such as the one used at ARPC must be inspected and certified for operation each year. Hartford Services, Inc. is designated an "inspection agency" by statute as "an agency engaged in inspecting regulated boilers and pressure vessels in Linden" Hartford employee Michael Nasatka is a "special inspector" under the administrative rules of the Linden Boiler and Pressure Vessel Rules Board which defined a special inspector as "an Inspector other than a State Inspector who is in the regular employ of the authorized inspection agency named on his inspector's commission."

(4) In his capacity as a special inspector for Hartford, Nasatka inspected ARPC's boiler in 2001 and 2002. He last inspected the boiler, both internally and externally, on July 29, 2002, while it was shut down. Standard procedure was for Nasatka to send the completed inspection report to Hartford's offices in BigCity, and if there were no problems with the inspection, they would send a copy to the State, which would in turn invoice the inspected company for the inspection certificate fee. Following Nasatka's July 2002 inspection, and after ARPC paid the required fee, the State issued an inspection certificate for the year to ARPC.

(5) Nasatka states that he did not inspect the burner or its method of attachment to the boiler when he conducted the internal inspection of the boiler in July 2002, because "the burner and the attachments weren't covered under that inspection." An ARPC employee who was present during the boiler inspections testified that no inspector had ever inspected the burner and that he always covered the burner with a sheet of plastic when the boiler was shut down to protect it and keep it clean while the boiler was cleaned.

(6) A metallurgist who investigated the explosion has stated that the bolts that attached the burner to the boiler showed visible evidence of corrosion from exposure to unusually high heat and had become badly elongated.

(7) Gerard Schmitz, a consulting engineer who investigated the explosion, has stated that the condition of the bolts could have been seen by removing the front cover plate of the boiler. The front cover plate itself was discolored from oxidation. The amount of oxidation in his opinion would have been striking in view of the relatively recent installation of the replacement burner.

(8) Joan Erickson, 55 years old at the time of her death, was survived by a 27-year-old son, Michael, and three grandchildren. Joan divorced Michael's father in 1981.

(9) Linda White was 34 years old at the time of her death, and is survived by her husband

Tom and two children, Oprah (age 13) and Sam (age 10).

Your law firm has been hired by Hartford to evaluate their potential exposure in this case. Another lawyer in the firm has been assigned to assess whatever property damage might have been suffered by ARPC in the explosion. You have been assigned the task of addressing the potential for claims based on the death of the two employees. Please prepare your assessment.

QUESTION 2 (60 points)

Appalachian Stone Company is a quarry that produces stone for landscaping and construction customers. In the process of excavation, Appalachian Stone uses dynamite. Quantities of dynamite are stored at its plant in Tyrone County.

On the morning of January 15, 2003, John Francesca, an Appalachian Stone employee, discovered that the door leading to the storage locker where the dynamite was stored had been opened. It appeared that, while the locks to the door were intact, steel bars preventing the door from opening had been "cut" with an acetylene torch. When he took inventory, Francesca determined that 40 sticks had been stolen. He then reported the theft to federal authorities.

In the early morning hours of January 31, 2003, William Webb, fashioned an explosive device out of dynamite and concealed it in a structure containing a mailbox at the home of Charles Bridges. Bridges was the general partner of a trucking firm with whom Webb had a long-running dispute. The Bridges home is in Johnson County, Linden, approximately 100 miles from the Appalachian Stone plant. On the afternoon of January 31, Michael Bridges, the twelve-year-old son of Charles Bridges, went to open the mailbox and triggered an explosion that killed him and injured both his father and Parker Minske, a schoolmate of Michael Bridges who was visiting that day. Minske suffered substantial visual impairment and required plastic surgery to his face.

You have been hired by Parker Minske's family to pursue legal remedies on Parker's behalf. In your research you have come across the following information:

(1) Based on chemical testing, it has been determined that the dynamite used in the Bridges bombing was the dynamite that was stolen from the Appalachian Stone plant.

(2) The manner of storage of explosives is highly regulated and controlled by government since 1970 when Congress enacted the Organized Crime Control Act. Title XI of Public Law 91-452 adding Chapter 40 to Title 18 U.S.C., provides for licensing and regulation of that activity by the Secretary of the Treasury and enforcement of those regulations by the Bureau of Alcohol, Tobacco and Firearms. 18 U.S.C. § 842 declares that its purpose is to "protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from the misuse and unsafe and insecure storage of explosive materials." The legislative history of Public Law 91-452, Title XI, discloses that Congress was mostly concerned about unlawful use of explosives. House Report No. 91-1549 states:

Bombings and the threat of bombings have become an ugly, recurrent incident of life in cities and on campuses throughout our Nation. The absence of any effective State or local controls clearly attest to the urgent need to enact strengthened Federal regulation of explosives.

Title XI, added by the committee to S. 30, responds to a widespread national concern that existing Federal and State sanctions and prohibitions over the use, possession, and transportation of explosives are inadequate.

Among other matters, the hearing record discloses that between January 1, 1969, and April 15, 1970 (approximately 15½ months) law enforcement officials reported a total of 4,330 bombings, 1,475 attempted bombings, and 35,129 threatened bombings. The Department of the Treasury spokesman indicated that in this period such bombing outrages were responsible for the death of 40 persons and approximately \$22 million of property damage.

The hearing record further discloses that approximately 35 States have little or no regulation over the sale or distribution of dynamite and other explosive substances. Moreover, the Federal Explosives Act, December 26, 1941 (55 Stat. 863), becomes operative only in times of war or national emergency and is inadequate in light of present technology and should be repealed.

Title XI combines the regulatory approach to the distribution and storage of explosives with strengthened and expanded criminal prohibitions that apply to the intentional misuse of explosives. Its purpose is to protect interstate and foreign commerce against interference and interruption by reducing the hazards to persons and property arising from explosives misuse and unsafe or insecure storage. It is also intended to assist the States effectively to regulate explosives distribution within their borders. It is not the purpose of this provision to place any undue or unnecessary restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage or use of explosives for legitimate industrial, mining or agricultural purposes.

1970 U.S.Code Cong. & Admin.News, pp. 4007, 4013. The regulations promulgated under this act place great emphasis on the prevention of thefts. Of the five types of storage facilities permitted, four are specifically required to be theft-resistant and the remaining one cannot be used if unattended. Permanent storage facilities for dynamite must have no openings at all except for entrances and ventilation. 27 C.F.R. 181.187(a). In all types, doors must be of plate steel lined with hardwood, and the hinges and hasps must be attached by welding, riveting or bolting to the inside of the doors: "They shall be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked." 27 C.F.R. 181.187(a)(8). It is further specified what number and kind of locks are required to secure the doors. In the case of padlocks, steel caps must be constructed "so as to prevent sawing or lever action on the locks or hasps." 27 C.F.R. 181.187(a)(9). Persons storing explosives are required to maintain records of daily transactions. At the close of each business day, they are required to record the total quantities of explosives received, removed and remaining, and report any discrepancies which might indicate a theft or loss of explosives. 27 C.F.R. 181.127. At least every three days an inspection of the facilities must be conducted to determine if the explosives are intact and if there has been an unauthorized entry or attempted entry. 27 C.F.R. 181.184. Any loss or theft must be reported within twenty-four hours of its discovery to the Assistant Regional Commissioner. 27 C.F.R. 181.30. The failure to report such discovery is punishable by a fine of no more than \$1,000.00, imprisonment not more than one year, or both.

(3) William Webb was tried and convicted of capital murder and is awaiting an appeal of his death sentence.

Based on what you have learned, please provide an analysis of the tort remedies available to Parker Minske.

SELECTED STATUTES OF THE STATE OF LINDEN
ANNOTATED LINDEN CODES
Title 34. Civil Procedure
Article 23. Causes of Action: Wrongful Death
Chapter 1. Wrongful Death Generally

§ 34-23-1-1 Death from wrongful act or omission

Sec. 1. When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, if the former might have maintained an action had he or she, as the case may be, lived, against the latter for an injury for the same act or omission. When the death of one is caused by the wrongful act or omission of another, the action shall be commenced by the personal representative of the decedent within two (2) years, and the damages shall be in such an amount as may be determined by the court or jury, including, but not limited to, reasonable medical, hospital, funeral and burial expenses, and lost earnings of such deceased person resulting from said wrongful act or omission. That part of the damages which is recovered for reasonable medical, hospital, funeral and burial expense shall inure to the exclusive benefit of the decedent's estate for the payment thereof. The remainder of the damages, if any, shall, subject to the provisions of this article, inure to the exclusive benefit of the widow or widower, as the case may be, and to the dependent children, if any, or dependent next of kin, to be distributed in the same manner as the personal property of the deceased. If such decedent depart this life leaving no such widow or widower, or dependent children or dependent next of kin, surviving her or him, the damages inure to the exclusive benefit of the person or persons furnishing necessary and reasonable hospitalization or hospital services in connection with the last illness or injury of the decedent, performing necessary and reasonable medical or surgical services in connection with the last illness or injury of the decedent, to a funeral director or funeral home for the necessary and reasonable funeral and burial expenses, and to the personal representative, as such, for the necessary and reasonable costs and expenses of administering the estate and prosecuting or compromising the action, including a reasonable attorney's fee, and in case of a death under such circumstances, and when such decedent leaves no such widow, widower, or dependent children, or dependent next of kin, surviving him or her, the measure of damages to be recovered shall be the total of the necessary and reasonable value of such hospitalization or hospital service, medical and surgical services, such funeral expenses, and such costs and expenses of administration, including attorney fees.