

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 recorded your EXAM NUMBER, 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.

If you use bluebooks, be sure to DOUBLE-SPACE. Also, be sure to 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 1-3A 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 (50 points)

On October 12, 2003, Nelson Shoemaker, aged 17, attended a party hosted by David and Margaret Hansen. Their daughter Tricia was turning sixteen, and to celebrate the Hansens invited a variety of relatives, friends of David and Margaret Hansen, and friends of Tricia. Nelson was the son of Joseph and Monica Birch, who owned a dress shop for which David Hansen provided accounting services. At the party the Hansens had a keg of beer that was available for consumption by guests at the party. At the last minute Joseph and Monica decided not to attend the party, but Nelson wanted to go and he drove the family car.

Over the course of the two hours he was at the party Nelson consumed approximately five glasses of beer. He left the party at 8 pm, and began driving east on Route 17. After passing Dorchester Avenue he failed to negotiate a curve, entered the westbound lane of Route 17, and struck a car being driven by Roger Benson.

Roger Benson had started his journey to pick up his son from a piano lesson at the home of Becky Trainor. En route he had gotten a call on his cell phone asking if he could give the piano teacher's daughter Megan a ride home from the library. Benson had just picked up Megan when his car was struck by Nelson Shoemaker. Megan was fatally injured in the crash.

You represent Becky Trainor, who has been appointed the personal representative of the estate of Megan Trainor. She would like to know what tort compensation, if any, she would be entitled to from the Hansens. Please advise.

QUESTION 2 (85 points)

On the morning of April 7, 2004, Dan Ferrin and Alan Seidel were putting out hay and cattle feed in pastures owned by the Seven-S Corporation. As Seidel was dispensing hay in what was known as the Kominska pasture, he saw smoke rising from a smoldering patch of grass. After dropping off all of the hay, Seidel drove over to the area where he had seen the smoke and proceeded to put out the fire. Seidel kicked the smoldering debris to the middle of the burning patch and kicked or pushed loose dirt over the debris. Seidel remained for about 15 minutes and after seeing no more smoke, left the area to complete his work. As Seidel was driving home after completing his deliveries, he looked over toward the place he had found the fire and, observing no sign of smoke, continued home.

Shortly after noon on that same day, Buck Ferrin, the operating manager of Seven-S Corporation, received a call from a neighboring rancher who said he had seen smoke coming from the Kominska pasture. After looking out his door and seeing smoke coming from the pasture, Ferrin called the fire department. Ferrin then drove to Seidel's house and told him about the fire. Seidel took a water truck, drove to the pasture, and started fighting the fire. Seidel was unable to control the fire, and by the time the fire department arrived, it was out of control. The fire eventually spread to the Koger ranch. Before being brought under control, the fire burned an area approximately 23 miles long and 7 miles wide, in all approximately 30,000 acres. The fire destroyed pasture, fence, baled hay, railroad ties, and bridges. The extent of the fire and severity of the damage was caused by the extreme dry conditions and high winds.

You represent the Seven-S Corporation. Please provide your analysis of the likelihood that Seven-S will be held liable for the damages resulting from the fire.

SELECTED STATUTES OF THE STATE OF LINDEN
Linden Statutes Annotated
Title XLV. Torts (Chapters 766-774)
Negligence
General Provisions

§ 768.16. Wrongful Death Act

Sections 768.16-768.26 may be cited as the "Linden Wrongful Death Act."

§ 768.17. Legislative intent

It is the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer. Sections 768.16-768.26 are remedial and shall be liberally construed.

§ 768.18. Definitions

As used in §§ 768.16-768.26::

(1) "Survivors" means the decedent's spouse, children, parents, and, when partly or wholly dependent on the decedent for support or services, any blood relatives and adoptive brothers and sisters. It includes the child born out of wedlock of a mother, but not the child born out of wedlock of the father unless the father has recognized a responsibility for the child's support.

(2) "Minor children" means children under 25 years of age, notwithstanding the age of majority.

(3) "Support" includes contributions in kind as well as money.

(4) "Services" means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the survivors of the decedent. These services may vary according to the identity of the decedent and survivor and shall be determined under the particular facts of each case.

(5) "Net accumulations" means the part of the decedent's expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of her or his estate if the decedent had lived her or his normal life expectancy. "Net business or salary income" is the part of the decedent's probable gross income after taxes, excluding income from investments continuing beyond death, that remains after deducting the decedent's personal expenses and support of survivors, excluding contributions in kind.

§ 768.19. Right of action

When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had

not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

§ 768.20. Parties

The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death. When a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate. The wrongdoer's personal representative shall be the defendant if the wrongdoer dies before or pending the action. A defense that would bar or reduce a survivor's recovery if she or he were the plaintiff may be asserted against the survivor, but shall not affect the recovery of any other survivor.

§ 768.21. Damages

All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

- (1) Each survivor may recover the value of lost support and services from the date of the decedent's injury to her or his death, with interest, and future loss of support and services from the date of death and reduced to present value. In evaluating loss of support and services, the survivor's relationship to the decedent, the amount of the decedent's probable net income available for distribution to the particular survivor, and the replacement value of the decedent's services to the survivor may be considered. In computing the duration of future losses, the joint life expectancies of the survivor and the decedent and the period of minority, in the case of healthy minor children, may be considered.
- (2) The surviving spouse may also recover for loss of the decedent's companionship and protection and for mental pain and suffering from the date of injury.
- (3) Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury. For the purposes of this subsection, if both spouses die within 30 days of one another as a result of the same wrongful act or series of acts arising out of the same incident, each spouse is considered to have been predeceased by the other.
- (4) Each parent of a deceased minor child may also recover for mental pain and suffering from the date of injury. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors.
- (5) Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them.
- (6) The decedent's personal representative may recover for the decedent's estate the following:

- (a) Loss of earnings of the deceased from the date of injury to the date of death, less lost support of survivors excluding contributions in kind, with interest. Loss of the prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value, may also be recovered:
1. If the decedent's survivors include a surviving spouse or lineal descendants; or
 2. If the decedent is not a minor child as defined in § 768.18(2), there are no lost support and services recoverable under subsection (1), and there is a surviving parent.
- (b) Medical or funeral expenses due to the decedent's injury or death that have become a charge against her or his estate or that were paid by or on behalf of decedent, excluding amounts recoverable under subsection (5).
- (c) Evidence of remarriage of the decedent's spouse is admissible.

(7) All awards for the decedent's estate are subject to the claims of creditors who have complied with the requirements of probate law concerning claims.

(8) The damages specified in subsection (3) shall not be recoverable by adult children and the damages specified in subsection (4) shall not be recoverable by parents of an adult child with respect to claims for medical negligence as defined by § 766.106(1).

§ 768.22. Form of verdict

The amounts awarded to each survivor and to the estate shall be stated separately in the verdict.

§ 768.23. Protection of minors and incompetents

The court shall provide protection for any amount awarded for the benefit of a minor child or an incompetent pursuant to the Linden Guardianship Law.

§ 768.24. Death of a survivor before judgment

A survivor's death before final judgment shall limit the survivor's recovery to lost support and services to the date of his or her death. The personal representative shall pay the amount recovered to the personal representative of the deceased survivor.

§ 768.25. Court approval of settlements

While an action under this act is pending, no settlement as to amount or apportionment among the beneficiaries which is objected to by any survivor or which affects a survivor who is a minor or an incompetent shall be effective unless approved by the court.

§ 768.26. Litigation expenses

Attorneys' fees and other expenses of litigation shall be paid by the personal representative and deducted from the awards to the survivors and the estate in proportion to the amounts awarded to them, but expenses incurred for the benefit of a particular survivor or the estate shall be paid from their awards.

TITLE XLVI. CRIMES (CHAPTERS 775-899)

Chapter 856. Drunkenness; Open House Parties; Loitering; Prowling; Desertion

§ 856.015. Open house parties

(1) Definitions.--As used in this section:

- (a) "Alcoholic beverage" means distilled spirits and any beverage containing 0.5 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined in accordance with the provisions of § 561.01(4)(b).
- (b) "Control" means the authority or ability to regulate, direct, or dominate.
- (c) "Drug" means a controlled substance, as that term is defined in §§ 893.02(4) and 893.03.
- (d) "Minor" means an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to chapter 562.
- (e) "Open house party" means a social gathering at a residence.
- (f) "Person" means an individual 18 years of age or older.
- (g) "Residence" means a home, apartment, condominium, or other dwelling unit.

(2) No person having control of any residence shall allow an open house party to take place at said residence if any alcoholic beverage or drug is possessed or consumed at said residence by any minor where the person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at said residence and where the person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

(3) The provisions of this section shall not apply to the use of alcoholic beverages at legally protected religious observances or activities.

(4) Any person who violates any of the provisions of subsection (2) commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.