

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 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.

DOUBLE-SPACE your answers in the bluebook.

Treat each question SEPARATELY. Do not assume that descriptions or discussions in one question can be transferred to the other question. Within each question, however, you may cross-reference previous discussion of issues if appropriate.

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 (85 points)**

Lynn Knowles married Randy Ulmer shortly after her eighteenth birthday in 1987. Lynn and Randy had two children: Cassandra, born in 1987; and Chad, born in 1988. At Lynn's instigation, Lynn and Randy separated in August 1989 and were divorced in January 1990. Originally upon their separation, Lynn had physical custody of the children. A strike occurred at Randy's workplace so he was able to help take care of the children during the day. In December 1989, Randy got a new job and was no longer able to help care for the children. Within a couple of weeks, just before Christmas 1989, Lynn asked Randy to take physical custody of the children. He agreed to take the children, and Lynn never had physical custody of the children after that time.

Although Randy had physical custody of the children at the time of the divorce in January 1990, the divorce decree granted legal custody of the children to Lynn. That arrangement, however, did not last long. In March 1990, Lynn asked Randy to assume legal custody of the children because she was thinking about joining the Navy. Randy assumed legal custody, but Lynn never did enlist. Nor did she ever attempt to regain legal or physical custody of the children. Over the course of the next several months, she saw the children only infrequently. She never paid any child support, nor was she required to under the divorce decree or custody agreement.

In the fall of 1990, Lynn left her hometown to go to college. She went to Iowa City and stayed with her brother briefly, then briefly tried the college dorms, which she did not like, then lived with a female roommate off-campus. She placed at most two phone calls to Randy after she left her hometown. During one of these calls Lynn informed Randy that she was going to go to another school, perhaps in Bethany, but she did not give any more information. That was the last communication Randy had with Lynn. On October 31, 1990, Lynn placed a phone call to her sister's house, stating that she was in Marysville. That was the last contact any of her family ever had with Lynn. Eventually, around October or November 1990, Randy received a phone call from an employee at a truck stop. The employee investigated a car that was apparently abandoned in the truck stop parking lot. The automobile (still registered in Randy's name) had some of Lynn's clothes in it. Lynn's family picked up the car.

We now know that in the early morning hours of November 2, 1990, Lynn was struck and killed by a vehicle driven by Deborah Corkill in Dairytown, Linden. Corkill was apparently operating the vehicle under the influence of alcohol. Corkill fled the scene of the accident without rendering aid to the victim or reporting the incident to authorities. Investigators and police officers were able to identify Corkill as the driver because pieces of her vehicle's grill were left on the highway when she struck the decedent. Corkill was cited for leaving the scene of an accident involving injury or death.

However, at the time authorities were unable to identify Lynn's body. Her purse and her wallet were missing, and she carried no other form of identification. For the next fourteen years Lynn's family did not know what had happened to her. Her two children thought she had abandoned them. Clark Tyler Knowles, Lynn's father, hired a private investigator to find his daughter, but to no avail. Fourteen years later, after making further inquiries, investigating dental records, and exhuming the body, authorities were finally able to identify Lynn and contact her family. On March 6, 2005, Knowles reviewed police photographs of Lynn's body, read a note found on her body, and identified the body as that of his daughter. Knowles had the body cremated, and the ashes were

scattered in a family ceremony in Springfield.

Clark Tyler Knowles has come to your office to inquire about the possibility of recovering compensation for himself and/or his grandchildren. As a result of the work of the private investigator and subsequent investigation by Knowles himself, the following additional information is available:

- (1) Corkill gave a statement to police at the time of her arrest, 36 hours after the fatal accident. She reported that the reason she fled the scene of the accident was because she believed herself to be under the influence of alcohol at the time of the accident. On the evening of November 1, 1990 she consumed three alcoholic beverages at home. At 8 p.m. she traveled to the Breadbasket, a local tavern, in order to meet Emily Frankhauser, who had called Corkill at her office earlier that day stating that she was interested in having her home listed for sale by the real estate agency for whom Corkill worked. After she left the Breadbasket Corkill drove to Peg Leg Pete's, another tavern, leaving there around 1 a.m. The accident involving Lynn Knowles apparently occurred around 2 a.m.
- (2) In early 1991 Corkill pleaded guilty to leaving the scene of the accident and was required to serve 30 days in jail and 180 hours of community service. Police officers interviewed employees at the Breadbasket and Peg Leg Pete's, and in both cases an employee confirmed that Corkill had been present at the bar that evening. However, there are no records as to how much alcohol Corkill consumed at either location. No one at either bar was cited.
- (3) Corkill died of complications from diabetes in 1999.

Ignore any issues relating to the statute of limitations, and any issues as to admissibility of evidence; assume that a tort claim filed on behalf of Clark Knowles or his grandchildren would be timely, and that such evidence as is available would also be admissible. Please analyze the likelihood that they could recover tort compensation for Lynn Knowles' death.

**QUESTION 2 (50 points)**

You are employed by the Pacific Cement Co. as in-house counsel. Sixteen months ago Pacific has received a demand letter from Walter York, a lawyer representing a group of residents and former residents of Redbluff, Linden, where a Pacific Cement plant was located between 1947 and 2001. During those years Pacific used a chemical for processing cement known as trichloroethylene (TCE). Each of the claimants represented by York is claiming one or more of the following diseases: Hodgkin's disease; leukemia; non-Hodgkin's lymphoma; brain tumors; rhabdomyosarcoma; lupus; congenital heart defect--bicuspid aortic valve defect; and kidney disease. In support of his claim, York attaches a report from Dr. Ozonoff, a medical doctor who specializes in environmental diseases. Ozonoff states that TCE is known to be a contributing factor to each of the diseases listed above, and he states that in his medical opinion the clients represented by York may have acquired their diseases as a result of exposure to the chemicals generated by Pacific's Redbluff plant.

In addition to the Ozonoff report, each of the claimants has a report from a doctor treating them for their disease, and details what the claimants reported to the doctor about how they were exposed to TCE from the Redbluff plant. Some were neighbors to the Redbluff plant; others delivered products or otherwise made regular trips to the Redbluff plant. In each case the treating doctor has stated that exposure to TCE was a contributing factor to the disease condition from which the claimant suffers.

Pacific has asked you to prepare an analysis of the potential tort exposure that Pacific faces from these claims so that Pacific can know how to respond to the demand letter. Please provide your analysis.

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SELECTED STATUTES OF THE STATE OF LINDEN  
ANNOTATED LINDEN CODES  
TITLE 1. CODE OF CIVIL PROCEDURE.  
CHAPTER 38. WRONGFUL DEATH.

**§ 1-38-101 Actions for wrongful death which survive; proceedings against executor or administrator of person liable.**

Whenever the death of a person is caused by wrongful act, neglect or default such as would have entitled the party injured to maintain an action to recover damages if death had not ensued, the person who would have been liable if death had not ensued is liable in an action for damages, even though the death was caused under circumstances as amount in law to murder in the first or second degree or manslaughter. If the person liable dies, the action may be brought against the executor or administrator of his estate. If he left no estate within the state of Linden, the court may appoint an administrator upon application.

**§ 1-38-102 Action to be brought by personal representative; recovery exempt from debts; measure and element of damages; limitation of action.**

(a) Every such action shall be brought by and in the name of the personal representative of the deceased person.

(b) If the deceased left a husband, wife, child, father or mother, no debt of the deceased may be satisfied out of the proceeds of any judgment obtained in any action brought under the provisions of this section.

(c) The court or jury, as the case may be, in every such action may award such damages, pecuniary and exemplary, as shall be deemed fair and just. Every person for whose benefit such action is brought may prove his respective damages, and the court or jury may award such person that amount of damages to which it considers such person entitled, including damages for loss of probable future companionship, society and comfort.

TITLE 30. INTOXICATING LIQUORS  
CHAPTER 545. LIQUOR CONTROL ACT  
PART VII. PROHIBITED ACTS, PENALTIES AND PROCEDURE

**§ 30-102. Dram Shop Act; Liquor Seller Liable for Damage by Intoxicated Person.**

If any person, by such person or such person's agent, sells any alcoholic liquor to an intoxicated person, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another, such seller shall pay just damages to the person injured, up to the amount of two hundred fifty thousand dollars, or to persons injured in consequence of such intoxication up to an aggregate amount of two hundred fifty thousand dollars, to be recovered in an action under this section.

**§ 30-103. Additional Prohibited Sales; Penalty**

It shall be unlawful for any permittee or other person to sell or furnish any alcoholic beverage to any person who is known to be insane or mentally defective, or to any person who is visibly intoxicated, or to any person who is known to habitually drink alcoholic beverages to excess, or to any person who is known to be an habitual user of narcotics or other habit-forming drugs. It shall also be unlawful for the holder of any package retailer's permit to sell any alcoholic beverages except by delivery in person to the purchaser at the place of business of the permittee.

**§ 30-104. Limitation of liability.**

(a) No person who has legally provided alcoholic liquor or malt beverage to any other person is liable for damages caused by the intoxication of the other person.

(b) This section does not affect the liability of the intoxicated person for damages.

(c) This section does not affect the liability of the licensee or person if the alcoholic liquor or malt beverage was sold or provided in violation of Title 30 of the Linden statutes.