

Exam # _____

Professor DeWolf
Torts

Fall 2010
October 19, 2010

MID-TERM EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

THIS IS A CLOSED BOOK EXAM.

FOLLOW the instructions of the proctor for initiating the ExamSoft software. If you are using a BLUEBOOK instead of ExamSoft, be sure that you have written your MIDTERM exam number on the bluebook(s) and that you are otherwise ready to begin.

This exam will last 65 minutes. Plan on spending at least 10 MINUTES reading the question and outlining your answer. REREAD the question to be sure you haven't missed anything.

Please discuss only the kinds of issues that would be raised as a result of what you have learned through Chapter 3. Please **OMIT** from your analysis any discussion of issues that are covered beyond that point; DO NOT discuss, for example, claims against government entities, multi-party liability, comparative fault, or any other issue other than the issues we have already covered in class.

The events described in this question occur in the hypothetical state of Linden. Please apply any statutes from the state of Linden that are supplied with the question.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, "Andropov (A) would sue Brezhnev (B). B would be liable to A if"

Plan on spending at least 5 minutes at the end PROOFREADING your answers. You may not write ANOTHER WORD after time is called.

REMEMBER THE HONOR CODE: DO NOT IDENTIFY YOURSELF

GOOD LUCK!

Question

In the early morning of September 10, 2009, while traveling southbound on State Route 188 in Pleasant Township, Linden, a Ford Mustang driven by Mr. Bryan Hittle was involved in an automobile accident. Mr. Robert Turner was a passenger inside Mr. Hittle's vehicle, as the two were commuting to work together that morning. At the time of the accident, because of fog and poor visibility, Mr. Hittle could not see clearly the center and edge lines of the road. Instead, he followed the taillights of the pick-up truck immediately in front of his vehicle. While trailing the truck around a curve in the road, Mr. Hittle drove his Mustang off the highway, striking a Western Telephone Company utility pole. The utility pole was located in a grassy area three feet, nine inches from the highway's edge line and two feet, five inches from the road's berm. Mr. Turner died as a result of the accident. Mr. Hittle was later convicted of vehicular manslaughter, and of operating a vehicle without insurance. He was sentenced to 46 months imprisonment.

Lorri Turner, Robert Turner's widow, has come to the law firm at which you are employed as an associate and has asked for an analysis of her prospects, if any, for recovering tort compensation for the loss of her husband. Please prepare such an analysis.

SELECTED STATUTES OF THE STATE OF LINDEN
ANNOTATED LINDEN CODES
TITLE 49. PUBLIC UTILITIES
CHAPTER 4931. TELEPHONE COMPANIES; APPROPRIATION OF LAND

§ 4931.03 Construction in unincorporated area of township

A telephone company may construct telecommunications lines or facilities upon and along any of the public roads and highways and across any waters within that area by the erection of the necessary fixtures, including posts, piers, or abutments for sustaining the cords or wires of those lines or facilities. The lines and facilities shall be constructed so as not to inconvenience the public in the use of the roads or highways, or endanger or injuriously interrupt the navigation of the waters.

TITLE 62. CIVIL CLAIMS
CHAPTER 180. WRONGFUL DEATH ACT

§ 180.1. Action for damages

Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who or company or corporation which 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 shall have been caused under such circumstances as amount in law to felony. No action may be brought under this Act if the decedent had brought a cause of action with

respect to the same underlying incident or occurrence which was settled or on which judgment was rendered.

§ 180.2. Parties to suit; beneficiaries; damages; distribution;

Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person. In every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, including damages for grief, sorrow, and mental suffering, to the surviving spouse and next of kin of such deceased person.

The amount recovered in any such action shall be distributed by the court in which the cause is heard or, in the case of an agreed settlement, by the circuit court, to each of the surviving spouse and next of kin of such deceased person in the proportion, as determined by the court, that the percentage of dependency of each such person upon the deceased person bears to the sum of the percentages of dependency of all such persons upon the deceased person.