

Exam # \_\_\_\_\_

Professor DeWolf  
Torts

Fall 2011  
October 19, 2011

## MID-TERM EXAM

### Instructions

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

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, governmental immunity, 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 Evergreen. Please apply any statutes from the state of Evergreen 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

Combined Transport operated a general trucking business in the state of Evergreen. On November 5, 2009 Jesse Colt was driving a large shipment of glass on I-5 heading southbound. Jesse heard a noise and looked in his rearview mirror to discover that several large panes of glass had slipped from the rack where they were attached and fell to the freeway, leaving a large debris field. Jesse immediately called 911 and a clean-up operation was commenced. While the broken glass was being removed from the freeway a large traffic backup occurred.

Manuel Gleason, driving by himself, was also heading south on I-5 when he saw the congestion caused by the clean-up effort and slowed to a stop. However, Judith Clemmer, who was following Gleason on I-5, was not paying close attention (in part because she was intoxicated at the time). Although she braked to avoid a collision, she hit Gleason's car with such force that it caused fatal injuries. In the police report issued after the accident, it was noted that at the time of the fatal collision Gleason carried no insurance, and was survived by his daughter, Theresa.

You have been hired by the insurance company that insured Combined Transport to evaluate the exposure that Combined Transport faces as a result of the fatal collision. Please prepare a memo containing your evaluation.

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SELECTED STATUTES OF THE STATE OF EVERGREEN

EVERGREEN STATUTES ANNOTATED  
TITLE 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE  
SUBTITLE 6. SPECIFIC CIVIL ACTIONS  
CHAPTER 31. DEATH BY WRONGFUL ACT

**§ 2A:31-1. When action lies**

When the death of a person is caused by a wrongful act, neglect or default, such as would, if death had not ensued, have entitled the person injured to maintain an action for damages resulting from the injury, the person who would have been liable in damages for the injury if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances amounting in law to a crime.

**2A:31-2. Persons entitled to sue or make claim**

Every action commenced under this chapter shall be brought in the name of an administrator ad prosequendum of the decedent for whose death damages are sought, except where decedent dies testate and his will is probated, in which event the executor named in the will and qualifying, or the administrator with the will annexed, as the case may be, shall bring the action.

**2A:31-4. Persons entitled to amount recovered**

The amount recovered in proceedings under this chapter shall be for the exclusive benefit of the persons entitled to take any intestate personal property of the decedent, and in the proportions in which they are entitled to take the same except if there is a surviving spouse of the decedent and one or more surviving descendants of the decedent they shall be entitled to equal proportions for purposes of recovery under this chapter. If any of the persons so entitled in accordance with this section were dependent on the decedent at his death, they shall take the same as though they were sole persons so entitled, in such proportions, as shall be determined by the court without a jury, and as will result in a fair and equitable apportionment of the amount recovered, among them, taking into account in such determination, but not limited necessarily thereby, the age of the dependents, their physical and mental condition, the necessity or desirability of providing them with educational facilities, their financial condition and the availability to them of other means of support, present and future, and any other relevant factors which will contribute to a fair and equitable apportionment of the amount recovered.

**2A:31-5. Assessment of damages by jury**

In every action brought under the provisions of this chapter the jury may give such damages as they shall deem fair and just with reference to the pecuniary injuries resulting from such death, together with the hospital, medical and funeral expenses incurred for the deceased, to the persons entitled to any intestate personal property of the decedent in accordance with the provisions of Evergreen Statutes § 2A:31-4.

TITLE 39. MOTOR VEHICLES AND TRAFFIC REGULATION  
SUBTITLE 2. OTHER LAWS REGULATING MOTOR VEHICLES  
CHAPTER 6A. COMPULSORY AUTOMOBILE LIABILITY  
INSURANCE—NO FAULT PROVISIONS

**§ 39:6A-4.5. Failure to maintain required medical expense coverage; effect on recovery for noneconomic loss**

a. Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage mandated by section 4 of the insurance laws shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile.

b. Any person who is convicted of, or pleads guilty to, operating a motor vehicle while intoxicated shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of the accident.

c. Any person acting with specific intent of causing injury to himself or others in the operation or use of an automobile shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident arising from such conduct.