

Exam # _____

Professor DeWolf
Torts

Fall 2013
October 16, 2013

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 60 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, product liability, premises liability, medical malpractice, or any other issue beyond those that 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

On August 11, 2013, Melissa Rollins, aged 26, was spending the day with her friend Jennifer Stuart and Jennifer's parents, Gerald and Paula Stuart, at their home on the shore of Spring Lake, Linden. The Stuarts owned two Sea-Doos, a type of personal watercraft. A Sea-Doo is operated by controls similar to a motorcycle; the operator steers the watercraft by turning the handlebars, and there is a throttle on the right handlebar that controls the speed. If the operator removes his or her hand from the throttle control, it will automatically come to a stop. Behind the operator's seat is a passenger seat.

On the afternoon of August 11, 2013 Melissa and Jennifer sat out on the back porch drinking margaritas. By 4 p.m. it had grown uncomfortably warm and Jennifer proposed that she take Melissa for a ride on one of the Sea-Doos. Melissa readily agreed. Jennifer asked Gerald where the key was for the Sea-Doo, and he reached into his pocket and handed it to her. Jennifer then handed Melissa a life vest, put one on herself, and walked to the dock where the Sea-Doo was tied up. Jennifer started the engine and invited Melissa to climb onto the passenger seat, which she did. Jennifer then steered the craft to the middle of the lake, where she proceeded to operate the Sea-Doo at a high rate of speed, attempting to "jump the wake" of other watercraft. Approximately twenty minutes after they left the dock, Jennifer attempted to pass in front of a boat operated by Thomas Decker, who saw her only at the last moment and was unable to avoid colliding with the Sea-Doo. As a result of the collision, both Melissa and Jennifer suffered fatal injuries.

You work in a law firm that handles personal injury claims. Melissa's boyfriend Alan Cooper (with whom Melissa had lived for two years preceding her death) appeared at your law firm unannounced and wound up spending 15 minutes talking to one of the legal assistants who works at the firm. The legal assistant got some information (below) from Cooper, and said that the firm would get back to him concerning the firm's recommendations. Based on the report of the water patrol agent who investigated the accident, there is no reason to believe that Decker would be held liable in the case. You have been asked to evaluate whether or not a claim against Jennifer Stuart and/or Gerald and Paula Stuart would hold up. In the initial phone call that Cooper made to set up the appointment, he provided the following information:

- (1) The medical examiner found that at the time of the collision Melissa had a blood alcohol content (BAC) of .15, almost twice the legal limit. Jennifer's BAC was .16.
- (2) Prior to her death Melissa had worked as a waitress at a 24-hour coffee shop in Pleasanton, Linden. She had taken classes at the local community college and hoped to start a catering business that would serve organic food.
- (3) Melissa was an only child. Her father left her mother (June) before Melissa was born, and June has had only fitful contact with Melissa since Melissa left home at age 18. Cooper was present when June visited Melissa in February 2013. It was, as Cooper put it, "awkward." Cooper arranged for a memorial service for Melissa that was attended by about thirty of Melissa's friends and co-workers. June appeared at the memorial service, but appeared to be heavily medicated, and took no active part in the service. Melissa actually had a will prepared that named Cooper as her sole beneficiary.

Based on the information you have received, please prepare a memo to be used as the basis for further contact with Cooper.

LINDEN STATUTES ANNOTATED
TITLE 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE
TITLE 16. PRACTICE, PROCEDURE, AND COURTS

§ 16-62-102. Wrongful death

- (a) (1) Whenever the death of a person or an unborn child is caused by a wrongful act, neglect, or default and the act, neglect, or default would have entitled the party injured to maintain an action and recover damages in respect thereof if death had not ensued, then and in every such case, the person or company or corporation that would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person or the unborn child, and although the death may have been caused under such circumstances as amount in law to a felony.
- (2) The cause of action created in this subsection shall survive the death of the person wrongfully causing the death of another and may be brought, maintained, or revived against the personal representatives of the person wrongfully causing the death of another.
- (3) A person is not liable under this subsection when the death of the unborn child results from:
- (A) A legal abortion, including an abortion performed to remove an ectopic pregnancy or other nonviable pregnancy where the embryo is not going to develop further;
 - (B) The fault of the pregnant woman carrying the unborn child;
 - (C) Assisted reproduction technology activity, procedure, or treatment;
 - (D) Actions occurring before transfer to the uterus of the woman of an embryo created through in vitro fertilization; or
 - (E) A woman or her healthcare provider using contraception approved by the United States Food and Drug Administration.
- (b) Every action shall be brought by and in the name of the personal representative of the deceased person. If there is no personal representative, then the action shall be brought by the heirs at law of the deceased person.
- (c) (1) Every action authorized by this section shall be commenced within three (3) years after the death of the person alleged to have been wrongfully killed, except the action may be commenced against a person in the time period permitted to bring a murder charge if the person was convicted of one (1) of the following offenses:
- (A) Capital murder;
 - (B) Murder in the first degree; or
 - (C) Murder in the second degree.

(2) If a nonsuit is entered for an action authorized by this section, the action shall be brought within one (1) year from the date the nonsuit was entered without regard to the date of the death of the person alleged to have been wrongfully killed.

(d) The beneficiaries of the action created in this section are:

(1) The surviving spouse, children, father, mother, brothers, and sisters of the deceased person;

(2) Persons, regardless of age, standing in loco parentis to the deceased; and

(3) Persons, regardless of age, to whom the deceased stood in loco parentis at any time during the life of the deceased.

(e) No part of any recovery referred to in this section shall be subject to the debts of the deceased or become, in any way, a part of the assets of the estate of the deceased person.

(f) (1) The jury or the court, in cases tried without a jury, may fix such damages as will be fair and just compensation for pecuniary injuries, including a spouse's loss of the services and companionship of a deceased spouse and any mental anguish resulting from the death to the surviving spouse and beneficiaries of the deceased.

(2) When mental anguish is claimed as a measure of damages under this section, mental anguish will include grief normally associated with the loss of a loved one.

(g) The judge of the court in which the claim or cause of action for wrongful death is tried or is submitted for approval of a compromise settlement, by judgment or order and upon the evidence presented during trial or in connection with any submission for approval of a compromise settlement, shall fix the share of each beneficiary, and distribution shall be made accordingly. However, in any action for wrongful death submitted to a jury, the jury shall make the apportionment at the request of any beneficiary or party.

(h) Nothing in this section shall limit or affect the right of circuit courts having jurisdiction to approve or authorize settlement of claims or causes of action for wrongful death, but the circuit courts shall consider the best interests of all the beneficiaries under this section and not merely the best interest of the widow and next of kin.

(i) It is not the responsibility of the personal representative of a deceased person to locate anyone in loco parentis who is not known to the personal representative to be in loco parentis to the deceased person.