

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

Professor DeWolf  
Torts

Summer 2014  
July 10, 2014

### 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 70 minutes. Plan on spending at least 5 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 the second section of Chapter 3 (*i.e.*, up to page 190). 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 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

Roberto Hernandez worked for Green's Auto Parts in Springfield, Evergreen delivering parts that customers ordered from their warehouse. On March 23, 2014 Hernandez was told to deliver parts to Rogers Contracting to repair a Ford 150 truck located at a steel mill operated by National Steel Corp. in Springfield, where Rogers Contracting was doing work. Hernandez drove to the steel mill and saw a Ford 150 truck with the Rogers Contracting logo on it. Hernandez parked his car and began walking toward the truck. His path took him past a blast furnace. Attached to the blast furnace was a dust catcher – a large, vertical structure. Gases from the blast furnace enter the dust catcher from the top where they decelerate, causing the coarser particles to fall to the bottom of the catcher, where they collect in a funnel-shaped hopper at the bottom, while the gases flow out through a lateral outlet located in the upper portion of the catcher. The collected dust can then be discharged from the catcher through a lock at the bottom of the hopper. When a blast furnace is scheduled to be brought back on line, the dust catcher must be emptied or “dumped,” a process which releases large amounts of carbon monoxide gas. Carbon monoxide is a colorless, odorless, and potentially deadly gas. Carbon monoxide attaches to the hemoglobin in red blood cells, preventing oxygen from being transported to the rest of the body.

National Steel has numerous safety procedures and requirements in place at the Springfield mill. The person wanting to empty the dust catcher must have a face-to-face meeting with the control room operator and receive a “lockout key” and authorization to do so. Then, there is supposed to be a visual inspection of the area near the blast furnace to check to make sure that no one is in the area, including the backside roadway. Then, flashing lights and a siren are activated to warn people in the area that the dust catcher is going to be emptied. Also, the operator announces over National Steel's public-address system, “dumping dust catcher” three times. The operator is then to wait between five to seven minutes after this announcement to receive any responses that the catcher should not be dumped at that time. Additionally, all personnel that might be exposed to carbon monoxide are issued small carbon monoxide detectors.

On March 23, 2014 the dust catcher operator verified with the control room operator that he had permission to dump the dust catcher and manually checked the area to ensure that there were no people in the immediate vicinity. He then activated the siren and flashing lights to warn that the dust catcher was about to be dumped. He also announced three times that the dust catcher was about to be dumped. When he received no response, he started the procedure to dump or empty the dust catcher, which lasted from five to ten minutes and released carbon monoxide. Unfortunately, no one from Rogers Contracting had reported to the control room operator that they were expecting a delivery. Also, the dust catcher operator's visual inspection of the area failed to notice Hernandez. Not long after the dust catcher was dumped, Hernandez was found unconscious and despite resuscitation efforts he was pronounced dead at the scene. An autopsy revealed he had died from carbon monoxide.

You represent National Steel Corp. A report of the accident has been forwarded to you and you have been asked to assess your client's potential tort liability arising from Hernandez' death. Please prepare that assessment. Hernandez left a wife of three years and no children.

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**SELECTED STATUTES OF THE STATE OF EVERGREEN****Title 3. Remedies; Special Actions and Proceedings****Chapter 41. Actions and Proceedings in Particular Cases Concerning Persons****Actions for Death by Wrongful Act or Neglect****41.085. Heirs and personal representatives may maintain action**

1. As used in this section, “heir” means a surviving spouse, or child, or a person who, under the laws of this State, would be entitled to succeed to the separate property of the decedent if the decedent had died intestate. The term does not include a person who is deemed to be a killer of the decedent.
2. When the death of any person, whether or not a minor, is caused by the wrongful act or neglect of another, the heirs of the decedent and the personal representatives of the decedent may each maintain an action for damages against the person who caused the death, or if the wrongdoer is dead, against the wrongdoer’s personal representatives, whether the wrongdoer died before or after the death of the person injured by the wrongdoer. If any other person is responsible for the wrongful act or neglect, or if the wrongdoer is employed by another person who is responsible for the wrongdoer’s conduct, the action may be maintained against that other person, or if the other person is dead, against the other person’s personal representatives.
3. An action brought by the heirs of a decedent pursuant to subsection 2 and the cause of action of that decedent brought or maintained by the decedent’s personal representatives which arose out of the same wrongful act or neglect may be joined.
4. The heirs may prove their respective damages in the action brought pursuant to subsection 2 and the court or jury may award each person pecuniary damages for the person’s grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent. The proceeds of any judgment for damages awarded under this subsection are not liable for any debt of the decedent.
5. The damages recoverable by the personal representatives of a decedent on behalf of the decedent’s estate include:
  - (a) Any special damages, such as medical expenses, which the decedent incurred or sustained before the decedent’s death, and funeral expenses; and
  - (b) Any penalties, including, but not limited to, exemplary or punitive damages, that the decedent would have recovered if the decedent had lived, but do not include damages for pain, suffering or disfigurement of the decedent. The proceeds of any judgment for damages awarded under this subsection are liable for the debts of the decedent unless exempted by law.