

Professor DeWolf
Torts § 4

Fall 2025
September 30, 2025

MID-TERM EXAM

Instructions

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

FOLLOW any instructions for initiating the exam software. If you are using BLUEBOOKS instead of a computer, be sure that you have written your MIDTERM exam number on each bluebook and that you are otherwise ready to begin.

This exam will last 90 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 section B(1) of Chapter 3, that is, through the coverage of wrongful death. 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 issue other than the issues we have already covered in class.

The events described in this question occur in the hypothetical state of Everglade. Please apply any statutes from the state of Everglade 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

Larry Wirth and his family owned farmland where they had built large grain bins to store grain that they harvested on their farm and from neighboring farming operations. Over the years the Wirths had built a row of four steel grain bins from south to north and on the south two-thirds of the farmstead. The last of the four bins (fourth bin) had been built in 2019. In the spring of 2025 the Wirths increased the grain storage in the four bins by adding a steel ring to each of the four bins, increasing each bins's height by several feet.

On August 20 Larry Wirth asked his friend Gary Sprague to help install a forty-one foot (41') Mayrath grain auger in an elevated position from the fourth bin to a drier bin to the west of the fourth bin. The move took place on the morning of August 23, 2025. The drier bin was serviced by electrical lines maintained by Rural Electrical Cooperative (REC). In the process of moving the auger a metal rod from the auger contacted the phase wire of the two wire line configuration, and Gary Sprague, who was holding on to the auger at the time, was instantly electrocuted. He was pronounced dead at the scene.

At the time of his death Sprague was 24 years old. He was unmarried, but he had a 5-year-old son, Chad, who was living with Sprague and his girlfriend, Samantha White, at the time of Sprague's death. Sprague's father was estranged from the family, but Sprague's mother, Martha Sprague, had kept in touch with her son and her grandson.

Samantha White and Martha Sprague made an appointment with the law firm where you are employed. They relayed the above information to the paralegal in the firm who set up the appointment. The senior partner in the firm has asked you to prepare an analysis of the case that could be given to the client based on the facts recited above and applicable statutes. Please prepare your analysis.

, M

SELECTED STATUTES OF THE STATE OF EVERGLADE

ANNOTATED CODE OF EVERGLADE

Title 32. Judicial Remedies

Chapter 32-21. Death by Wrongful Act

§ 32-21-01. When action for death by wrongful act maintainable

Whenever the death of a person shall be caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would have entitled the party injured, if death had not ensued, to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation, limited liability company, or company 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 or of the tort-feasor, and although the death shall have been caused under such circumstances as amount in law to felony.

§ 32-21-02. Measure of recovery

In an action brought under the provisions of this chapter, the jury shall give such damages as it finds proportionate to the injury resulting from the death to the persons entitled to the recovery.

§ 32-21-03. Who may bring action

The action shall be brought by the following persons in the order named:

1. The surviving husband or wife, if any.
2. The surviving children, if any.
3. The surviving mother or father.
4. A surviving grandparent.
5. The personal representative.
6. A person who has had primary physical custody of the decedent before the wrongful act.

If any person entitled to bring the action refuses or neglects so to do for a period of thirty days after demand of the person next in order, that person may bring the action.

§ 32-21-04. Recovery exempt from decedent's debts

The amount recovered shall not be liable for the debts of the decedent, but shall inure to the exclusive benefit of the decedent's heirs at law in such shares as the judge before whom the case is tried shall fix in the order for judgment, and for the purpose of determining such shares, the judge after the trial may make any investigation which the judge deems necessary.