

MID-TERM EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS. THIS IS A CLOSED BOOK EXAM

While you are waiting for the exam to begin, be sure that you have written your EXAM NUMBER on each bluebook, that you have read these instructions, and that you are otherwise ready to begin.

IMPORTANT: This exam will last THREE HOURS. You should spend the first 30 MINUTES reading the questions carefully and outlining your answers on a separate sheet of paper. You will then have TWO AND ONE-HALF HOURS (150 minutes) to write your answers in the bluebooks provided, including proof-reading. Before writing your answers, REREAD each question to be sure you haven't missed anything.

In answering the questions, please DO NOT DISCUSS ANY of the following ISSUES:

- Contributory negligence on the part of any plaintiff;
- Comparative fault as between defendants;
- Claims against governmental bodies;
- Any affirmative claims or defenses that would be raised by any defendants.

In other words, you should concentrate on the evaluation of the prima facie case that potential plaintiffs might assert against potential defendants. You are responsible only for those types of damages that have been covered through Chapter 4, §B1 (Wrongful Death).

DOUBLE-SPACE your answers in the bluebook.

Use SEPARATE BLUEBOOKS for EACH QUESTION. Label each bluebook according to each question, and if necessary, book number, *e.g.*, "Question 1, Book 1"; "Question 1, Book 2"; "Question 2"; etc.

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

Plan on spending at least 15 minutes at the end PROOFREADING your answers. You may not write ANOTHER WORD after time is called.

A statutory appendix is provided that gives excerpts from the law of this jurisdiction (the mythical state of New Columbia) on some issues. If no law is specified on the point you are interested in, please comment on the possible alternatives.

Each question has been assigned a point total, and the exam as a whole has a point total of **135**. Spend the amount of time on each question reflecting its relative worth.

You may KEEP your copy of the exam questions if you wish.

Remember the Honor Code. Do not disclose your identity.

DOUBLE SPACE!

GOOD LUCK!

DOUBLE SPACE!

Question 1 (85 points)

On March 1, 1991, at 9:30 p.m., a Sentinel Transportation truck being driven by John Moonoo was headed southbound on Highway 286, a two-lane highway where the speed limit was 55 mph in each direction. Moonoo was traveling between 60 and 65 mph when a deer attempted to cross the road. Moonoo put on his brakes to avoid a collision and the back end of the truck "jack-knifed" to the right. It struck a stopsign that controlled access to the highway from Renton Road, knocking it over. Moonoo was able to regain control of his truck, and with the squeal of the brakes and the concern over maintaining control, he didn't even notice the collision with the stop sign, and proceeded toward his destination. The next morning he saw evidence of a collision on the rear of his truck, and reported this to the state police.

On March 1, 1991, at 10:30 p.m., one hour after the previous incident, Gregory Gimbel was traveling east on Renton Road, heading toward Highway 286. He was expecting to come to a stop sign where Renton Road intersected Highway 286. As he approached the intersection at 40 mph he noticed that there was something that looked like the remains of a stop sign, but by the time he realized that he was actually entering Highway 286 it was too late; his car struck Kari Williams, aged 24, who was driving southbound on Highway 286. Williams' car crashed into a concrete pier. Emergency vehicles were summoned and Kari was rushed to a local hospital. Despite excellent care she died two weeks later.

Kari was survived by her parents, Shirley Ann and William "Bill" Williams, who were near 50 years of age at the time of Kari's death. Shirley Ann and Bill Williams had been married for 31 years, throughout which they have lived in Springfield, New Columbia. Both Shirley Ann and Bill Williams are employed. Kari had an older sister, two younger sisters, and an older brother. The day after she was graduated from high school, Kari began employment in the office of Timmerman Feedyards near Springfield. At the time of her death her salary was \$19,000 annually. Gerald Timmerman, owner of the feedyard, described Kari as an "extraordinary" employee who displayed "[u]nlimited" potential and a combination of "a business manner and a very personal manner ... a talent, you know, that God gives somebody, you don't develop that." According to Timmerman, "the only thing that ever meant more to [Kari] than her work and her friends was her family." In Timmerman's view, the Williams family was the "utmost first" priority in Kari's life.

Shirley and Bill have come to your office asking what remedies, if any, they have for Kari's death. What would you tell them?

Question 2

On October 6, 1990, a driver for Matomco Oil Company noticed a leak in a 1983 Fruehauf multi-compartment tanker trailer used by Matomco in its fuel delivery business. Matomco's business included the delivery of diesel fuel, gasoline and JP4 aviation fuel. The crack which developed in the tanker was discovered while the tanker was being used to haul JP4 to the Perry Airport. After discovering the leak, the driver transferred the jet fuel from the Matomco tanker into an empty southbound tanker owned by Big State Equipment. On October 8, 1990, John Hendricks,

a Matomco Oil Company employee, delivered the tanker to C & S Welding for the repair of a crack on the right front side of the tanker. Hendricks told Darcy Campbell at C & S that the tanker had last contained diesel. JP4 aviation fuel is more volatile than, yet similar to, diesel.

Darcy Campbell took the tanker inside the garage in which C & S did its work. He planned to weld a small metal patch over the leak, and to prepare the surface he began buffing the area around the leak with a large grinding wheel containing an abrasive. The buffing action ignited fumes from the tanker, and the resulting explosion sent metal parts flying into the adjacent parking lot, seriously injuring Rusty Rose, who was there to retrieve his snowmobile. Miraculously, Darcy was not hurt. (He did, however, say to one of his fellow workers, "I never thought diesel and JP4 were so different. I sure know better now.")

Rusty Rose's lawyer has contacted Matomco about a possible lawsuit. In anticipation of being sued by Rusty Rose for his injuries, Matomco would like an assessment from you as to their potential liability. Please prepare a memo outlining your assessment.

Statutory Appendix

CHAPTER 18. OCCUPATIONAL SAFETY CODE ARTICLE 6. CONFINED SPACES

§ 18-614. Hot Work

(1) Used Containers. No welding, cutting, or other hot work shall be performed on used drums, barrels, tanks or containers until they have been cleaned so thoroughly as to make absolutely certain that there are not flammable materials present or any substances such as greases, tars, acids, or other materials which subjected to heat might produce flammable or toxic vapors. Any pipe lines or connections to the drum or vessel shall be disconnected or blanked.

(2) Venting and purging. All hollow spaces, cavities or containers shall be vented to permit the escape of air or gasses before preheating, cutting or welding. Purging with inert gas is recommended.

CHAPTER 30. DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY ARTICLE 8. WRONGFUL DEATH ACTIONS

§ 30-809. Wrongful death; action authorized.

Whenever the death of a person shall be caused by the wrongful act, neglect or default, of any person, company or corporation, 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.

§ 30-810. Action for wrongful death; limitation; in whose name brought; judgment; disposition of proceeds; compromise of claim; procedure.

Every such action, as described in section 30-809, shall be commenced within two years after the death of such person. It shall be brought by and in the name of the person's personal representative for the exclusive benefit of the widow or widower and next of kin. The verdict or judgment should be for the amount of damages which the persons in whose behalf the action is

brought have sustained. The proceeds thereof shall be paid to and distributed among the widow or widower and next of kin in the proportion that the pecuniary loss suffered by each bears to the total pecuniary loss suffered by all such persons. A personal representative shall not compromise or settle a claim for damages hereunder until the court by which he or she was appointed shall first have consented to and approved the terms thereof. The amount so received in settlement or recovered by judgment shall be reported to and, if so ordered, paid into such court for distribution, subject to the order of such court, to the persons entitled thereto after a hearing thereon and after notice of such hearing and of the time and place thereof has been given to all persons interested by publication three successive weeks in a legal newspaper published within the county or, if no legal newspaper is published within the county, then in a legal newspaper published in an adjoining county, except that the court for good cause shown may provide for a different method or time of giving notice and a person, including a guardian ad litem, conservator, or other fiduciary, may waive notice or any other requirement for the mailing or receipt of instruments by a writing signed by him or her and filed in the proceeding. Such amount shall not be subject to any claims against the estate of such decedent. When the amount of such settlement or judgment is ordered to be paid into the court and is five thousand dollars or more, the county court shall forthwith upon such settlement or payment of such judgment place such amount in interest-bearing certificates of deposit or a savings account in a banking institution pending the entry of an order of distribution by the court, and such interest that may accumulate pending the entry of such order shall be distributed in the same proportions as the settlement or judgment. The hearing to approve the terms of the compromise or settlement and the hearing for distribution of the amount so received in settlement or recovered by judgment may be combined into one hearing.

CHAPTER 39. HIGHWAYS AND BRIDGES
ARTICLE 6. NEW COLUMBIA RULES OF THE ROAD
(A) RULES OF THE ROAD; GENERAL OPERATING RULES

§ 39-601. Declaration of legislative purpose.

The purposes and policies of sections 39-601 to 39-6,122 are:

- (1) To make more uniform highway traffic laws between states;
- (2) To educate drivers so that they can develop instinctive habits resulting in safer emergency reactions;
- (3) To educate drivers and pedestrians of all ages to more readily understand each other's responsibilities and privileges when all obey the same rules;
- (4) To promote economic savings by relieving congestion and confusion in traffic;
- (5) To increase the efficiency of streets and highways by the application of uniform traffic-control devices;
- (6) To reduce the huge annual loss of life and property which occurs on New Columbia highways; and
- (7) To assist traffic law enforcement by encouraging voluntary compliance with law through uniform rules.

§ 39-616. Flashing signals; exception.

Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(1) When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if there is no such line then before entering the crosswalk on the near side of the intersection, or if there is no crosswalk then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign;

(2) When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution; and

(3) This section shall not apply at railroad grade crossings.

Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules set forth in sections 39-601 to 39-6,122 pertaining to such railroad grade crossings.

§ 39-617. Lane direction control signals; signs.

When lane direction control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a specified or appropriate green signal is shown, but shall not enter or travel in any lane over which a specified or appropriate red signal is shown. When such signals are in use, signs adequate to advise motorists of the meaning of such signals shall be erected.

§ 39-618. Arterial highways designated; stopping on entering.

All state highways are hereby declared to be arterial highways as respects all other public highways or private ways, except that the state department of transportation has the authority to designate any county road or city street as an arterial having preference over the traffic on the state highway if traffic conditions will be improved by such action.

The operator of any vehicle entering upon any arterial highway from any other public highway or private way shall come to a complete stop before entering the arterial highway when stop signs are erected as provided by law.

§ 39-619. Interference with official traffic-control devices, or stop signs or signals; prohibited;

No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any traffic-control device or any stop sign or signal or any part thereof.

§ 39-662. Basic rule; speed, maximum limits; signs.

(1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Any person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(2) Except when a special hazard exists that requires lower speed for compliance with subsection (1) of this section, the limits set forth in this section and section 39-666 or set pursuant to section 39-663 shall be maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

(a) Twenty-five miles per hour in any residential district;

(b) Twenty miles per hour in any business district;

(c) Fifty-five miles per hour upon any freeway except as provided in subdivision (f) of this subsection;

(d) Fifty-five miles per hour upon any part of the state highway system other than a freeway or any dustless-surfaced highway other than a freeway except as provided in subdivision (f) of this subsection;

(e) Fifty miles per hour upon any highway or road that is not dustless surfaced and not part of the state highway system; and

(f) Sixty-five miles per hour upon the National System of Interstate and Defense Highways, except that when such highways are located within an urbanized area of fifty thousand population or more as designated by the United States Bureau of Census, the limit shall be fifty-five miles per hour.

For purposes of this subsection, urbanized areas shall mean all portions of the National System of Interstate and Defense Highways located in the counties of Douglas and Dakota and that portion of the National System of Interstate and Defense Highways designated as Interstate 180 and that portion designated as Interstate 80 from reference post 395.41 to reference post 401.41 in the county of Lancaster.

(3) The maximum speed limits set forth in this section may be altered as set forth in section 39-663 or 39-666.

(4) The Department of Roads and local authorities may erect and maintain suitable signs along highways under their respective jurisdictions in such number and at such locations as they shall deem necessary to give adequate notice of the speed limit upon such highways.