

TORTS I
Summer 1994
July 8, 1994

PROFESSOR DEWOLF

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 and "TORTS—SUMMER '94—MIDTERM EXAM" 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 plan on spending AT LEAST 20 minutes reading the questions carefully and outlining your answers on a separate sheet of paper. Before writing your answers, REREAD each question to be sure you haven't missed anything.

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. When you are finished, turn to the back cover of the first bluebook, and place the second, third, fourth, etc. bluebook in order inside the end of the first bluebook, so the whole makes a single package. Then put it in the box at the front.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, `Andropov ("A") would be sued by Brezhnev ("B"), alleging that A would be liable to B ... !

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 defendant.

In other words, you should concentrate on the evaluation of the prima facie case that would be presented by your client(s) (if you represent plaintiff(s)) or against your client(s) (if you represent the defendant(s)).

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 the law of this jurisdiction, the State of Linden, 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! Don't identify yourself.

DOUBLE SPACE!

DOUBLE SPACE!

DOUBLE SPACE!

GOOD LUCK!!!

QUESTION 1 (60 points)

Mario Medley purchased a home abutting the thirteenth hole of the Azure Shores Country Club. Between Medley's patio and the thirteenth fairway are approximately 20 to 30 feet of rough, and located in that golfer's no-man's-land is a natural barrier of 45- to 60-foot-high trees. Although plaintiff's real property line runs parallel to the thirteenth fairway, the direct and proper line of flight from the tee to the green was at a substantial angle to the right of the property line and the rough. It was thus, as any golfer would know, far to the right of the plaintiff's property line and patio, and it was not a "dog leg."

On June 30, 1993 Larry Lacopo, a trespasser on the golf course, struck a ball from the thirteenth tee. At that time the rough was dense and the trees were in full foliage. The shot, a high, bad one, 'hooked' and crossed over into the area of plaintiff's patio and there hit Mario's grandson, Jason, aged 4. The impact of the golf ball caused serious head injury, including brain damage and disfigurement of the area above his left eyebrow. Lacopo could not see anyone through the thick stand of trees and did not shout the traditional golfer's warning: "Fore!"

You have been appointed by the Court as guardian ad litem (legal representative) for Jason, and you have been asked for a legal analysis of the tort claims that could be brought on Jason's behalf. Please prepare your analysis accordingly.

QUESTION 2 (75 points)

Charles Creighton owns and operates a farm located on Highway 35 in LaPorte, Exhaustion. Creighton works in BigCity, Exhaustion during the week (about 75 miles distant) and spends his weekends at his LaPorte farm. On his approximately 200-acre farm Creighton has a residence, several barns, buildings, and fields.

In 1993, Creighton had five horses, including one Arabian mare which was with foal. He contained the horses in a 600 foot by 150 foot corral. The gate to the corral was secured with a chain and padlock. The corral was connected to an adjacent field and a barn. The field was fenced-in and the fence gate was secured by a bolt and chain lock. The connecting barn's front door opened into the corral to permit free ingress and egress by the horses. The barn's south side door was secured with latches on both sides, and opened into the adjacent fenced-in field. The horses could not jump the fence or open the gates or latches themselves. No horse had ever escaped from the corral-barn- field enclosure.

Creighton employed Allen McDaniel, an inmate of the Summitt Farms Work Release Center of the Exhaustion State Department of Corrections, part-time to feed his horses. Officials from the Summitt Farms Work Release Center transported McDaniel to Creighton's farm every day about 7:30 a.m. and picked him up at 2:00 p.m. McDaniel also worked five days per week at a restaurant from 3:00 p.m. until approximately midnight. Creighton usually talked to McDaniel from Chicago by telephone daily or every two or three days. However, Creighton did not expect McDaniel to answer the telephone each time he called. On or about March 7, 1993, Creighton reprimanded

McDaniel after catching him asleep during working hours. On March 9, 1993, McDaniel quit without notice, and Creighton did not discover this until March 12 or 13.

Sometime before March 11, 1993, the side door to the horse barn was opened and the gate to the fenced-in field adjacent to the corral and barn was unlocked and left open allowing Creighton's horses to get loose. There is no evidence who opened the gate. On March 11, 1993, at approximately 11:30 p.m., Brandon Briggs was on his way to work when he passed by the Creighton farm and collided with Creighton's Arabian mare which had wandered out of its enclosure and onto the highway. The collision was so severe that Briggs died as a result. Briggs was survived by his wife of seven years and his two children, aged 9 and 4.

Creighton was in BigCity at the time of the collision and did not return to his LaPorte farm until the evening of March 12. Creighton did not discover that his horses were not in their enclosure until he saw them running loose on the morning of March 13, 1993. Creighton did not learn of Briggs' collision with his Arabian mare until later that day.

You have been hired by the insurance carrier to represent Creighton. The insurance company would like an assessment of the likelihood of as well as the extent of their legal exposure in the event a tort suit is filed against Creighton. Please prepare such an assessment.

EXHAUSTION STATUTES ANNOTATED
TITLE 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE
SUBTITLE 6. SPECIFIC CIVIL ACTIONS
CHAPTER 15. SURVIVAL OF ACTIONS

2A:15-3. Actions which survive; torts to decedent; funeral and burial expenses

Executors and administrators may have an action for any trespass done to the person or property, real or personal, of their testator or intestate against the trespasser, and recover their damages as their testator or intestate would have had if he was living.

In those actions based upon the wrongful act, neglect, or default of another, where death resulted from injuries for which the deceased would have had a cause of action if he had lived, the executor or administrator may recover all reasonable funeral and burial expenses in addition to damages accrued during the lifetime of the deceased.

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:31-3. Limitation of actions

Every action brought under this chapter shall be commenced within 2 years after the death of the decedent, and not thereafter.

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. If any of the persons so entitled 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.

2A:31-6. To whom amount recovered paid; release or cancellation of judgment

When an action is commenced by an administrator ad prosequendum under this chapter, no payment in settlement thereof or in satisfaction of a judgment rendered therein shall be made to him, but such payment shall be made only to the duly appointed general administrator of the estate of the decedent, who has filed a bond or supplemental bond adequate to protect the persons entitled to receive the amount so paid.

No release or cancellation of a judgment, whether by warrant or otherwise, by an administrator ad prosequendum or by his attorney of record or attorney in fact shall release the

person making payment from liability to the persons entitled to any intestate personal property of the decedent, shall operate as a valid cancellation of the judgment or be an authority to the clerk of any court to cancel the judgment of record.

RULES OF COURT
PART IV. RULES GOVERNING CIVIL PRACTICE IN THE SUPERIOR COURT, TAX
COURT AND SURROGATE'S COURTS
CHAPTER IX. PROBATE MATTERS
RULE 4:95. MISCELLANEOUS ACTIONS

4:95-3. Persons Entitled to Intestate Distribution

Where a decedent should die leaving no will or other document of succession, the property belonging to the estate of the decedent shall be distributed as follows: if the decedent should leave a spouse, then the property shall be distributed to the spouse; if no spouse be living, then to the children of the decedent, in equal parts; if no child shall be living, then to the brothers and sisters of the decedent, in equal parts; and if no brother or sister shall be living, then to the parents of the decedent. If no living relative of the decedent previously mentioned shall be alive at the time of the decedent's death, then the estate of the decedent shall pass to the general treasury of the State of Exhaustion.

4:95-4. Certificate as to Further Security; Death Act, etc.

When a payment is to be made to an administrator for damages due under E.S.A. 2A:31-1 to 6, inclusive (death by wrongful act) or for damages sustained by the decedent prior to death, the administrator shall, prior to receiving payment, furnish to the person liable a certificate of the Surrogate setting forth the amount of the payment and certifying that the administrator has furnished adequate security in accordance with the statute.