

TORTS I
Fall 1997
December 16, 1997

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—Fall '97—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, you are responsible for Chapters 1, 2 and 3A of the casebook. 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)).

The following scenarios occur in the hypothetical state of Anystate.

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

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 (80 points)

On July 15, 1995, Deon McLeod and several of his male friends were on their way to an outdoor concert being held on the Couch sand pits property in Dale County, Anystate. They stopped at approximately 7:30 p.m. at the Cannon Oil station, where Deon, a minor, purchased beer. (McLeod didn't drink himself, but he was the oldest looking of the group and bought the beer to accommodate his friends.) The Cannon cashier, John Mapes, asked McLeod for identification, but that he told her he did not have any. Mapes allowed him to buy the beer anyway.

Deon and his friends went to the concert, but left when it began to rain. They returned to the Cannon Oil station at approximately 8:30 p.m., when Deon purchased more beer. Another cashier was on duty by this time, Myra Beals. (Beals later claimed that, based upon Deon's appearance, she believed that Deon was 25 years old and sold the beer to him without question.)

The group (except for McLeod) consumed the beer and the group then went to a McDonald's restaurant and then stopped by Deon's house. They returned to the concert, with Brent Head driving. As they entered the property, their car was behind a slow moving van. Head attempted to pass the van but lost control of the car and it plunged into Lake Arrowhead. All of the young men except Deon McLeod were able to swim to shore. Deon drowned. A blood alcohol test was done on Head and his blood alcohol was twice the legal limit.

Deon's parents have approached your law firm to consider taking the case to recover damages for their son. Another partner in the law firm has analyzed the relevant wrongful death statute and has assessed potential damages at \$1,000,000. Your assignment is to analyze the chances for establishing liability. Please do so.

QUESTION 2 (55 points)

On March 27, 1995, Violet Trefney was a customer at a store owned and operated by National Grocery. After grocery shopping, she was leaving the store by way of an automatic door, manufactured by the Schultz Door Company, which was controlled by Schultz' "Vision Pulse" stick and which swung outward. When she was only partly through the door, it swung backward, striking her in the chest and knocking her to the ground. As a result of the fall, she sustained serious injury.

The morning of the accident, the assistant manager of the store had unlocked the door and had checked to see if it opened. He had not, however, tested the operation of the door by walking completely through it. After the accident, that same assistant manager walked through the door to see if it was working. When it worked properly, he kept the door in service. He notified Schultz (with whom National had a service agreement) of the problem with the door. Schultz found that the activation side of the Vision Pulse stick was inoperable; and, two days after the accident, replaced the Vision Pulse stick and the "end caps" on the door.

You represent National Grocery. Assume for purposes of your analysis that you have employed an expert engineer who has analyzed the design and manufacture of the Schultz Door and

has determined that neither the design nor the manufacture of the Schultz Door nor the Vision Pulse stick compnent was defective in any way.

Assume for purposes of your analysis that Violet's damages, should she prove that she is entitled to recover, would amount to \$500,000. Please prepare an analysis of Violet's chances for recovering damages for her injuries.

MICHIE'S ANYSTATE CODE
TITLE 6 CIVIL PRACTICE
CHAPTER 5 ACTIONS
ARTICLE 6 ILLEGAL LIQUOR AND DRUG SALES; PENALTIES

§ 6-5-70 Unlawful sale, etc., to minors; right of action.

Either parent of a minor, guardian or a person standing in loco parentis to the minor having neither father nor mother shall have a right of action against any person who unlawfully sells or furnishes spirituous liquors to such minor and may recover such damages as the jury may assess, provided the person selling or furnishing liquor to the minor had knowledge of or was chargeable with notice or knowledge of such minority. Only one action may be commenced for each offense under this section.

ANYSTATE ALCOHOLIC BEVERAGE CONTROL BOARD
RULES AND REGULATIONS

§ 20-X-6-.10 Proof of Identification

When making a sale, the seller shall require that the purchaser produce acceptable documentation for the determination of his age:

1. Pursuant to the Board's responsibility to promote temperance, to suppress the evils of intemperance, and to regulate and control the manufacture, purchase, bottling, sale, distribution, transportation, handling, advertising possession, dispensing, drinking and use of alcoholic, vinous, malt and brewed beverages, it shall be unlawful:

a. For any person to sell, furnish, give to or purchase for any minor person any malt or brewed beverages, any wine or liquor, or any alcoholic or intoxicating beverage, or to attempt to sell, furnish, give to or purchase for any minor person any of said beverages.

2. A licensee or his employee may only accept any one or more of the following documents for the purpose of determining the age of a person purchasing or attempting to purchase alcoholic beverages:

- a. A valid driver's license of any state;
- b. United States active-duty military identification;
- c. Passport;
- d. A valid identification card issued by any agency of a state for the purpose of identification along with another form of identification.