

FINAL 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 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 and can be read from front to back. 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 ... '!

PLEASE IGNORE issues relating to legal causation; assume that any but-for cause of an injury is also a proximate cause of that injury.

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 Suspense, 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 (65 points)

In 1962, Betty J. Keep contacted Talitha Fiandt, the director of the Suspense State Department of Public Welfare (DPW), expressing her desire to adopt an infant boy. In late December of that year, Fiandt informed Keep that a "fine healthy boy" who came "from a good background" was available for adoption. On December 23, 1962, three-week-old G. was delivered to Keep.

When G. was nearly two years old, Keep recognized that he was a "special needs" child because he would not talk. It was eventually determined that G. had a severe hearing and learning disability and suffered from a permanent mental deficiency. Keep also learned that G.'s I.Q. was approximately sixty-eight.

Sometime in late 1995 or 1996, G. asked Keep if he had any brothers or sisters. In response, Keep contacted Hugh Fowler, a "searcher" who assisted adoptees locate their birth parents and siblings. On September 22, 1997, Keep requested and obtained certain redacted records of G.'s birth and adoption from the DPW. The documents indicated that G. was born on December 5, 1962, that G.'s mother was born on March 5, 1950, and that she had become pregnant at age twelve. The records also revealed that G.'s mother had suffered a severe case of measles while she was pregnant with G. and had an I.Q. of approximately eighty-six. The DPW indicated that no information was available regarding G.'s father. Keep also met with Dennis Graft, an attorney with the DPW. At that meeting, Graft informed Keep that he suspected G. was a product of an incestuous relationship. However, Graft did not state any basis for his belief.

As Keep continued to search for the full name of G.'s birth mother, she eventually learned the mother's last name from the DPW. Fiandt then told Keep that G.'s mother became pregnant when she was twelve years old. Sometime in 1998, Fowler informed Keep of the mother's full name. On July 8, 1998, Keep spoke with the mother on the telephone who told her that G.'s father was the birth mother's fourteen-year-old brother. Keep confirmed this information on August 4, 1998, when she obtained unredacted copies of G.'s records from the DPW.

Keep has now come to your office to inquire as to whether there might be any tort remedies to which she would be entitled. Keep acknowledges that she did not take any action against the DPW after initially learning about G.'s birth mother in September of 1997 because her husband did not want her to pursue the matter.

How would you advise Keep?

QUESTION 2 (70 points)

On 7 January 1997, Shirley Finney and her husband J.W. Finney, Jr. went to Rose's Value Center in Waynesville, Suspense. On display in the Sporting Goods section of the store were electric treadmills for home use. Shirley Finney stepped onto a treadmill manufactured by Diversified Products and she began to touch the control panel of the treadmill. Unaware that the treadmill was plugged in, plaintiff touched the on/off control button and was thrown from the treadmill. As a result she sustained injuries to her back and knee.

Finney and her husband have filed suit against Rose's. Your law firm has been hired by the insurance company to defend Rose's. Please provide an analysis of what exposure, if any, you think Rose's faces.

ANNOTATED SUSPENSE CODE
TITLE 34. CIVIL PROCEDURE

ARTICLE 13. CAUSES OF ACTION: CLAIMS AGAINST THE GOVERNMENT
CHAPTER 3. TORT CLAIMS AGAINST GOVERNMENTAL ENTITIES AND PUBLIC
EMPLOYEES

§ 34-13-3-2 Applicability of chapter to bureau of motor vehicles

Sec. 2. This chapter applies to a claim or suit in tort against any of the following:

- (1) A member of the bureau of motor vehicles commission established under SC 9-15-1-1.
- (2) An employee of the bureau of motor vehicles commission who is employed at a license branch under SC 9-16, except for an employee employed at a license branch operated under a contract with the commission under SC 9-16.

§ 34-13-3-3 Immunity of governmental entity or employee

Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from:

- (1) the natural condition of unimproved property;
- (2) the condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable;
- (3) the temporary condition of a public thoroughfare that results from weather;
- (4) the condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area;
- (5) the initiation of a judicial or an administrative proceeding;
- (6) the performance of a discretionary function; however, the provision of medical or optical care, as provided in, SC 34-6-2-38 shall be considered as a ministerial act;
- (7) the adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment;
- (8) an act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid, if the employee would not have been liable had the statute been valid;
- (9) the act or omission of anyone other than the governmental entity or the governmental entity's employee;
- (10) the issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law;
- (11) failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety;
- (12) entry upon any property where the entry is expressly or impliedly authorized by law;
- (13) misrepresentation if unintentional;
- (14) theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission;

(15) injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter;

(16) injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under SC 12-23, a minimum security release program under SC 11-10-8, or a community corrections program under SC 11-12;

(17) design of a highway (as defined in SC 9-13-2-73), if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition;

(18) development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system; or

(19) injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under SC 20-8.1-5.1-7(b).

§ 34-13-3-4 Limitation on aggregate liability; punitive damages prohibited

Sec. 4. The combined aggregate liability of all governmental entities and of all public employees, acting within the scope of their employment and not excluded from liability under section 3 of this chapter, does not exceed three hundred thousand dollars (\$300,000) for injury to or death of one (1) person in any one (1) occurrence and does not exceed five million dollars (\$5,000,000) for injury to or death of all persons in that occurrence. A governmental entity is not liable for punitive damages.

§ 34-13-3-5 Judgment against or settlement by government entity

Sec. 5. (a) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee whose conduct gave rise to the claim resulting in that judgment or settlement. A lawsuit alleging that an employee acted within the scope of the employee's employment must be exclusive to the complaint and bars an action by the claimant against the employee personally. However, if the governmental entity answers that the employee acted outside the scope of the employee's employment, the plaintiff may amend the complaint and sue the employee personally. An amendment to the complaint by the plaintiff under this subsection must be filed not later than one hundred eighty (180) days from the date the answer was filed and may be filed notwithstanding the fact that the statute of limitations has run.

(b) A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:

(1) criminal;

(2) clearly outside the scope of the employee's employment;

(3) malicious;

(4) willful and wanton; or

(5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

(c) Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when:

(1) the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss; and

(2) the:

(A) governor in the case of a claim or suit against a state employee; or

(B) governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;

determines that paying the judgment, compromise, or settlement is in the best interest of the governmental entity.

(d) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(e) This chapter shall not be construed as:

(1) a waiver of the eleventh amendment to the Constitution of the United States;

(2) consent by the state of Indiana or its employees to be sued in any federal court; or

(3) consent to be sued in any state court beyond the boundaries of Indiana.

§ 34-13-3-6 Notice to attorney general and state agency involved

Sec. 6. (a) Except as provided in sections 7 and 9 of this chapter, a claim against the state is barred unless notice is filed with the attorney general or the state agency involved within two hundred seventy (270) days after the loss occurs. However, if notice to the state agency involved is filed with the wrong state agency, that error does not bar a claim if the claimant reasonably attempts to determine and serve notice on the right state agency.

(b) The attorney general, by rule adopted under SC 4-22-2, shall prescribe a claim form to be used to file a notice under this section. The claim form must specify:

(1) the information required; and

(2) the period of time that a potential claimant has to file a claim.

(c) Copies of the claim form prescribed under subsection (b) shall be available from each:

(1) state agency; and

(2) operator of a state vehicle.

§ 34-13-3-7 Administrative claim for inmate's recovery of property

Sec. 7. (a) An offender must file an administrative claim with the department of correction to recover compensation for the loss of the offender's personal property alleged to have occurred during the offender's confinement as a result of an act or omission of the department or any of its agents, former officers, employees, or contractors. A claim must be filed within one hundred eighty (180) days after the date of the alleged loss.

(b) The department of correction shall evaluate each claim filed under subsection (a) and determine the amount due, if any. If the amount due is not more than five thousand dollars (\$5,000),

the department shall approve the claim for payment and recommend to the office of the attorney general payment under subsection (c). The department shall submit all claims in which the amount due exceeds five thousand dollars (\$5,000), with any recommendation the department considers appropriate, to the office of the attorney general. The attorney general, in acting upon the claim, shall consider recommendations of the department to determine whether to deny the claim or recommend the claim to the governor for approval of payment.

(c) Payment of claims under this section shall be made in the same manner as payment of claims under SC 34-4-16.5-22.

(d) The department of correction shall adopt rules under SC 4-22-2 necessary to carry out this section.

§ 34-13-3-8 Claims against political subdivisions; notice requirement

Sec. 8. (a) Except as provided in section 9 of this chapter, a claim against a political subdivision is barred unless notice is filed with:

- (1) the governing body of that political subdivision; and
- (2) the Indiana political subdivision risk management commission created under SC 27-1-29;

within one hundred eighty (180) days after the loss occurs.

(b) A claim against a political subdivision is not barred for failure to file notice with the Indiana political subdivision risk management commission created under SC 27-1-29-5 if the political subdivision was not a member of the political subdivision risk management fund established under SC 27-1-29- 10 at the time the act or omission took place.

§ 34-13-3-9 Incapacitated plaintiffs; notice requirement

Sec. 9. If a person is incapacitated and cannot give notice as required in section 6 or 8 of this chapter, the person's claim is barred unless notice is filed within one hundred eighty (180) days after the incapacity is removed.

§ 34-13-3-10 Notice requirement; form of statement

Sec. 10. The notice required by sections 6, 8, and 9 of this chapter must describe in a short and plain statement the facts on which the claim is based. The statement must include the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, the amount of the damages sought, and the residence of the person making the claim at the time of the loss and at the time of filing the notice.

§ 34-13-3-11 Approval or denial of claim by government entity

Sec. 11. Within ninety (90) days of the filing of a claim, the governmental entity shall notify the claimant in writing of its approval or denial of the claim. A claim is denied if the governmental entity fails to approve the claim in its entirety within ninety (90) days, unless the parties have reached a settlement before the expiration of that period.

§ 34-13-3-12 Notice requirements; service

Sec. 12. The notices required by sections 6, 8, 9, and 11 of this chapter must be in writing and must be delivered in person or by registered or certified mail.

§ 34-13-3-13 Denial of claim as prerequisite to suit

Sec. 13. A person may not initiate a suit against a governmental entity unless the person's claim has been denied in whole or in part.

§ 34-13-3-14 Compromise or settlement of claim by governor

Sec. 14. Except as provided in section 20 of this chapter, the governor may compromise or settle a claim or suit brought against the state or its employees.

§ 34-13-3-15 Attorney general; powers and duties

Sec. 15. Except as provided in section 20 of this chapter, the attorney general:

- (1) shall advise the governor concerning the desirability of compromising or settling a claim or suit brought against the state or its employees;
- (2) shall perfect a compromise or settlement which is made by the governor;
- (3) shall submit to the governor on or before January 31 of each year a report concerning the status of each claim or suit pending against the state as of January 1 of that year; and
- (4) shall defend, as chief counsel, the state and state employees as required under SC 4-6-2.

However, the attorney general may employ other counsel to aid in defending or settling those claims or suits.

§ 34-13-3-16 Compromise or settlement of claim by political subdivision

Sec. 16. Except as provided in section 20 of this chapter, the governing body of a political subdivision may compromise, settle, or defend against a claim or suit brought against the political subdivision or its employees.

§ 34-13-3-17 Enforcement of judgments against governmental entities

Sec. 17. A court that has rendered a judgment against a governmental entity may order that governmental entity to:

- (1) appropriate funds for the payment of the judgment if funds are available for that purpose;
- or
- (2) levy and collect a tax to pay the judgment if there are insufficient funds available for that purpose.

§ 34-13-3-18 Time for payment of claim or judgment; interest rate

Sec. 18. (a) A claim or suit settled by, or a judgment rendered against, a governmental entity shall be paid by the governmental entity not later than one hundred eighty (180) days after the date of settlement or judgment, unless there is an appeal, in which case not later than one hundred eighty (180) days after a final decision is rendered.

(b) If payment is not made within one hundred eighty (180) days after the date of settlement or judgment, the governmental entity is liable for interest from the date of settlement or judgment at an annual rate of six percent (6%). The governmental entity is liable for interest at that rate and from that date even if the case is appealed, provided the original judgment is upheld.

§ 34-13-3-19 Applicability of SC 34-13-3-18; settlement

Sec. 19. Section 18 of this chapter does not apply if there is a structured settlement under section 23 of this chapter.

§ 34-13-3-20 Liability insurance; prohibitions

Sec. 20. (a) A political subdivision may purchase insurance to cover the liability of itself or its employees. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance. If such a policy is purchased, the terms of the policy govern the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the political subdivision or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount that exceeds the insurance coverage without the approval of the mayor, if the claim or suit is against a city, or the governing body of any other political subdivision, if the claim or suit is against such political subdivision.

(b) The state may not purchase insurance to cover the liability of the state or its employees. This subsection does not prohibit any of the following:

- (1) The requiring of contractors to carry insurance.
- (2) The purchase of insurance to cover losses occurring on real property owned by the public employees' retirement fund or the Indiana state teachers' retirement fund.
- (3) The purchase of insurance by a separate body corporate and politic to cover the liability of itself or its employees.
- (4) The purchase of casualty and liability insurance for foster parents (as defined in SC 27-1-30-4) on a group basis.

§ 34-13-3-21 Attorney's fees; allowance to governmental entity; action for abuse of process

Sec. 21. In any action brought against a governmental entity in tort, the court may allow attorney's fees as part of the costs to the governmental entity prevailing as defendant, if the court finds that plaintiff:

- (1) brought the action on a claim that is frivolous, unreasonable, or groundless;
- (2) continued to litigate the action after plaintiff's claim clearly became frivolous, unreasonable, or groundless; or
- (3) litigated its action in bad faith.

This award of fees does not prevent a governmental entity from bringing an action against the plaintiff for abuse of process arising in whole or in part on the same facts, but the defendant may not recover such attorney's fees twice.

§ 34-13-3-22 Persons or entities deemed political subdivisions

Sec. 22. (a) For purposes of this chapter, the following shall be treated as political subdivisions:

- (1) A community action agency (as defined in SC 12-14-23-2).
 - (2) An individual or corporation rendering public transportation services under a contract with a commuter transportation district created under SC 8-5-15.
 - (3) A volunteer fire company (as defined in SC 36-8-12-2) that is acting under:
 - (A) a contract with a unit or a fire protection district; or
 - (B) SC 36-8-17.
- (b) The treatment provided for under subsection (a)(2) shall be accorded only in relation to a loss that occurs in the course of rendering public transportation services under contract with a commuter transportation district.

§ 34-13-3-23 Structured settlement; discharge; limits

Sec. 23. (a) With the consent of the claimant, a political subdivision may compromise or settle a claim or suit by means of a structured settlement under this section.

(b) A political subdivision may discharge settlement of a claim or suit brought under this chapter by:

- (1) an agreement requiring periodic payments by the political subdivision over a specified number of years;
- (2) the purchase of an annuity;
- (3) by making a "qualified assignment" of the liability of the political subdivision as defined by the provisions of 26 U.S.C. 130(c);
- (4) payment in a lump sum; or
- (5) any combination of subdivisions (1) through (4).

(c) The present value of a structured settlement shall not exceed the statutory limits set forth in section 4 of this chapter; however, the periodic or annuity payments may exceed these statutory limits. The present value of any periodic payments may be determined by discounting the periodic payments by the same percentage as that found in Moody's Corporate Bond Yield Average Monthly Average Corporat

§ 34-13-3-24 Appropriations for payment of claims and expenses

Sec. 24. There is appropriated from the state general fund sufficient funds to:

- (1) settle claims and satisfy tort judgments obtained against the state; and
- (2) pay expenses authorized by this chapter, including:
 - (A) liability insurance premiums;
 - (B) interest on claims and judgments; and
 - (C) expenses incurred by the attorney general in employing other counsel to aid in defending or settling claims or civil actions against the state.

§ 34-13-3-25 Presentation of vouchers and issuance of warrants for appropriations

Sec. 25. The attorney general shall present vouchers for the items or expenses described in section 24 of this chapter to the auditor of state. The auditor shall issue warrants on the treasury for the amounts presented.

TITLE 34. CIVIL PROCEDURE
ARTICLE 51. DAMAGES
CHAPTER 2. COMPENSATORY DAMAGES: COMPARATIVE FAULT

§ 34-51-2-1 Applicability of chapter

Sec. 1. (a) This chapter governs any action based on fault that is brought to recover damages for injury or death to a person or harm to property, except as provided in subsection (b).

(b) This chapter does not apply to an action:

(1) brought against a qualified health care provider under SC 16-9.5 (before its repeal), SC 27-12 (before its repeal), or SC 34-18 for medical malpractice; or

(2) that accrued before January 1, 1985.

§ 34-51-2-2 Governmental entities and public employees excepted

Sec. 2. This chapter does not apply in any manner to tort claims against governmental entities or public employees under SC 34-13-3 (or SC 34-4- 16.5 before its repeal).

§ 34-51-2-3 Causation

Sec. 3. In an action brought under this chapter (or SC 34-4-33 before its repeal), legal requirements of causal relation apply to:

(1) fault as the basis for liability; and

(2) contributory fault.

§ 34-51-2-4 Defendant as single party

Sec. 4. For purposes of sections 6 through 10 of this chapter, a defendant may be treated along with another defendant as a single party where recovery is sought against that defendant not based upon the defendant's own alleged act or omission but upon the defendant's relationship to the other defendant.

§ 34-51-2-5 Effect of contributory fault

Sec. 5. In an action based on fault, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery except as provided in section 6 of this chapter.

§ 34-51-2-6 Barring of recovery; degree of contributory fault

Sec. 6. (a) In an action based on fault that is brought against:

(1) one (1) defendant; or

(2) two (2) or more defendants who may be treated as a single party;

the claimant is barred from recovery if the claimant's contributory fault is greater than the fault of all persons whose fault proximately contributed to the claimant's damages.

(b) In an action based on fault that is brought against two (2) or more defendants, the claimant is barred from recovery if the claimant's contributory fault is greater than the fault of all persons whose fault proximately contributed to the claimant's damages.

§ 34-51-2-7 Jury instructions; single party defendant

Sec. 7. (a) This section applies to an action based on fault that is:

(1) brought against one (1) defendant or two (2) or more defendants who may be treated as a single party; and

(2) tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

(1) The jury shall determine the percentage of fault of the claimant, of the defendant, and of any person who is a nonparty. The jury may not be informed of any immunity defense that is available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendant and no further deliberation of the jury is required.

(3) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury then shall determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of the defendant by the amount of damages determined under subdivision (3) and shall then enter a verdict for the claimant in the amount of the product of that multiplication.

§ 34-51-2-8 Jury instructions; multiple defendants

Sec. 8. (a) This section applies to an action based on fault that:

(1) is brought against two (2) or more defendants; and

(2) is tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

(1) The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. The jury may not be informed of any immunity defense that might be available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendants and no further deliberation of the jury is required.

(3) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury shall then determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of each defendant by the amount of damages determined under subdivision (3) and shall enter a verdict against each defendant (and such other defendants as are liable with the defendant by reason of their relationship to a defendant) in the amount of the product of the multiplication of each defendant's percentage of fault times the amount of damages as determined under subdivision (3).

§ 34-51-2-9 Trial without jury; award of damages

Sec. 9. In an action based on fault that is tried by the court without a jury, the court shall make its award of damages according to the principles specified for juries in sections 7 and 8 of this chapter.

§ 34-51-2-10 Intentional torts; full recovery of damages from convicted defendant

Sec. 10. In the case of an intentional tort, the plaintiff may recover one hundred percent (100%) of the compensatory damages in a civil action for intentional tort from a defendant who was convicted after a prosecution based on the same evidence.

§ 34-51-2-11 Forms of verdicts; disclosure requirements

Sec. 11. The court shall furnish to the jury forms of verdicts that require only the disclosure of:

- (1) the percentage of fault charged against each party and nonparty; and
- (2) the amount of the verdict against each defendant.

If the evidence in the action is sufficient to support the charging of fault to a nonparty, the form of verdict also shall require a disclosure of the name of the nonparty and the percentage of fault charged to the nonparty.

§ 34-51-2-12 Contribution; indemnity

Sec. 12. In an action under this chapter (or SC 34-4-33 before its repeal), there is no right of contribution among tortfeasors. However, this section does not affect any rights of indemnity.

§ 34-51-2-19 Liens or claims to diminish in same proportion as claimant's recovery is diminished

Sec. 19. If a subrogation claim or other lien or claim that arose out of the payment of medical expenses or other benefits exists in respect to a claim for personal injuries or death and the claimant's recovery is diminished:

- (1) by comparative fault; or
- (2) by reason of the uncollectibility of the full value of the claim for personal injuries or death resulting from limited liability insurance or from any other cause;

the lien or claim shall be diminished in the same proportion as the claimant's recovery is diminished. The party holding the lien or claim shall bear a pro rata share of the claimant's attorney's fees and litigation expenses.