

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 ... '.

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 Evergreen, 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 (75 points)

You work for a personal injury law firm that represents Richard Sornborger. You have been asked to review the following information in order to prepare an assessment of his potential tort claims. (Note that some of the information is in the form of testimony obtained through pre-trial discovery.)

The accident. Maintenance worker Luis Torres died, and his fellow employee Richard Sornborger was injured, from burns they received at the Rhone-Poulenc chemical plant in Martinez on June 22, 1996, where they were both employed, when they were doused with sulfuric acid sludge which escaped from a valve manufactured by Xomox Corporation.

The valve in question is a Xomox six inch 067 plug valve which was installed at the Martinez plant in 1973. The valve has a device, variously described as a gear, operator or actuator, which, when turned with a crank, opens or closes the flow of material through a pipeline. The valve has a "cover-mounted" design, where the gear is attached to the valve with a bracket which is mounted with a set of bolts onto the cover or "bonnet" of the valve. The valve also has a "single-bolt" or "single-nut" design, where a single set of bolts, with one nut each, holds both the bracket and the cover on the valve. With this single-bolt cover-mounted design, a worker who removes the bolts to take the bracket off the valve will also loosen the cover of the valve.

The Xomox valve was part of a pipeline that lay in a three-foot deep "pit" leading out of Tank 301. Tank 301 contained sulfuric acid sludge which the Rhone-Poulenc plant recycles for nearby oil refineries. The valve was located two or three feet from the tank, attached on one side to a pipe leading out of the tank, and on the other side to an expansion joint further downstream. These parts were linked to the valve through flanges built into the sides of the valve. Flanges are donut-shaped rings with holes around the circumference, which are attached to flanges on adjacent objects with bolts through the flange holes. Downstream from the expansion joint were a reducer and a tee spool.

The project on which the accident occurred involved repairing leaks in the pipeline out of Tank 301. Maintenance worker Michael Thomas and his partner Edward Gallman replaced the tee spool, further leaks were found, and it was decided to replace the expansion joint and reducer. At that point, a week or two into the project, Gallman went on vacation and Sornborger and Torres took over the job from Thomas and Gallman. Sornborger had worked in the maintenance department for more than ten years, and he and Torres were the most experienced maintenance workers in the plant.

Breaking into a pipeline to fix leaks, in this instance by replacing the expansion joint and reducer, was a procedure known in the plant as a "line entry." Line entries were a common occurrence, and Sornborger had performed at least 300 of them prior to the accident. Sornborger said that there were three phases to line entries in nonemergency situations: preparation; briefing; and performance.

In the preparation phase, the workers close the valves upstream from the site of the entry, and place tags with a danger symbol on these valves to insure that they will not be opened until the entry is completed. The site of the entry is roped off with tape, and production personnel are notified of the entry. In the briefing phase, the workers consult with the maintenance foreman, Al Sammons. Sammons goes to the site, inspects the preparation, and issues a line entry permit which he and the workers sign. The permit verifies that the preparation has been completed and lists the protective gear to be worn during the entry. The workers then put on safety clothes, including rubber pants, coat, gloves and boots, hard hat, face shield and a respirator, before performing the entry in which the seal of the line is broken.

A line entry to replace the expansion joint and reducer downstream from the Xomox valve was scheduled for June 22, 1996. Sornborger said that when he arrived at work that day, Sammons told him to "go up and help Mike [Thomas]," who was working in the pit next to Tank 301. Sornborger interpreted this as an instruction to go to the site and begin the preparation phase of the entry. He and Torres first went to the maintenance shop, where they bolted the new expansion joint and reducer together, and then to the control room, where Sornborger noted that a gauge for Tank 301 showed it to be half full. Sornborger knew that Tank 301 contained sludge acid, and that the Xomox valve was the only seal in the line between the acid in the tank and the parts they would be replacing.

Sornborger said that part of the preparation phase was to assess any obstacles in the way of the entry, and that a common obstacle they encountered was corrosion in the bolts securing the flanges to be opened during the entry. Since corrosion would make it difficult to work with the bolts, and workers wanted to minimize their time in the hot and cumbersome protective clothing, they sometimes substituted new flange bolts--one at a time, to maintain the integrity of the line--for existing ones during the preparation phase. When Sornborger and Torres arrived at the pit beside Tank 301, they found that flange bolts in the parts to be replaced were in "very bad shape." They also found that the bracket on top of the Xomox valve blocked their access to two of the flange bolts that held the valve to the expansion joint.

The bracket on the valve was not the original Xomox bracket that had come with the valve when it was first installed in the plant. The original bracket was in an "L" shape, with the bottom of the "L" resting on the cover of the valve, and the side of the "L" standing on the upstream side of the valve, where the valve was attached to the pipe coming out of the tank. Thus, while the original "L" shaped bracket might have blocked access to the flange bolts on the upstream side of the valve, it would not have impeded access to the downstream flange bolts Sornborger and Torres wanted to reach on the day of the accident. The replacement bracket they encountered did not have the same "L" shape as the original one. It was shaped like the top half of a rectangle, with short vertical sides pointing downward on both sides of the valve. These sides blocked access to the downstream, as well as the upstream, flange bolts.

The bracket in use on the day of the accident was a modified version of a Xomox bracket the plant received from Xomox in March of 1987. At that time, the plant ordered a replacement bracket for the valve, and Xomox furnished the wrong kind of bracket, which was designed to be mounted on the flanges, rather than the cover, of the valve, and thus did not fit on the valve. To make the bracket fit, the plant cut it apart, welded on a different piece of metal, and mounted it on the valve cover with the normal direction of the mounting bolts reversed, so that the bolts were headed upward with nuts fastened at the top.

Sornborger testified that after he and Torres decided to install fresh flange bolts in preparation for the line entry, Mike Thomas told them that they would have to remove the bracket on the valve to reach the flange bolts connecting the valve to the expansion joint. Thomas, who was at the scene cleaning in his protective gear, testified that he did not instruct Sornborger or Torres to remove the bracket. Thomas recalled only that one of them--he could not remember who--mentioned that the bracket might have to be removed. Sammons testified that he instructed Sornborger and Torres only to investigate whether the bracket blocked access to the flange bolts. Sammons said that he did not tell them to remove the bracket and did not intend for them to do so.

Sornborger said that he was not familiar with the Xomox valve, and that he had never looked at the maintenance instructions for it. He said that he had never worked on a valve like it, although there were a number of them at the plant. However, he had removed valve brackets in connection

with other line entries, and he said that when Thomas told him the bracket would have to come off the valve he felt safe in removing it. He trusted Thomas, and presumed that the matter had been discussed in some detail because the repair project off of Tank 301 had been ongoing for some time. He "found it odd to have a bracket secured by the same bolts and securing the bonnet," but looking down into the pit where it was "very dark," he "could see some other bolts in there," which appeared to be "other means of what I perceived was integrity for this valve."

Thus, without donning their protective gear, he and Torres proceeded to remove the bracket from the valve. They removed the nuts on the bolts holding the bracket onto the valve, and then loosened the bracket with a series of hammer blows. The cover of the valve came loose along with the bracket, and Sornborger realized in an instant that they had broken the seal of the line. Acid spewed out of the line with such force that it knocked Sornborger's hat and glasses off.

Sornborger and Torres were helicoptered to a nearby hospital. Sornborger suffered second and third degree chemical burns over 50% of his body, and was disabled by the accident. Torres was burned over 90% of his body and died in the hospital on July 4, 1996.

Mistakes Made at the Plant. Our witnesses admit that the accident would not have occurred but for Rhone-Poulenc's replacement of the original bracket on the valve with a modified bracket that blocked access to the downstream flange bolts. Joseph Odrzywolski, the manager of the plant at the time of the accident, acknowledged that Rhone-Poulenc's modification had changed Xomox's specifications for the replacement bracket, and he conceded that the modification was unsafe insofar as it blocked access to the flange bolts. Robert Fukumoto, the head of the plant's maintenance department at the time of the accident, acknowledged that Rhone-Poulenc had done a "poor job" in modifying the bracket. One of our expert witnesses has admitted that Rhone-Poulenc's modification of the bracket was "not a good idea." He said that Xomox should have anticipated use of the valve in places like the trench out of Tank 301 where visibility was poor, but he conceded that reversing the direction of the bolts might have made the configuration of the valve more confusing. During discovery, Xomox has also elicited evidence of lax safety procedures at the plant, including failure of the plant's line entry procedure manual to define precisely when a line entry began.

Reference materials at the plant included diagrams of the Xomox valve which clearly showed its single-bolted cover-mounted design, and Sornborger has admitted that the accident would not have happened if he had checked those diagrams before he started working on the valve. It was also apparent that most of the injuries could have been prevented if Sornborger and Torres had been wearing their safety gear when the valve came apart. Thomas was in his gear at the scene and evidently escaped serious injury.

There were also a lack of consistency between Sornborger's current recollection of the accident and what he recalled when his deposition was taken; this inconsistency calls into question his claim that he did not realize he would be loosening the cover when he took the bracket off the valve. When Sornborger was first interviewed about the accident, he did not attribute it to any confusion about which bolts held the cover on the valve. He said that Sammons had given him a line entry permit and told him to go ahead and unbolt the line and install the new expansion joint and reducer. He said that he did not wear protective gear because he thought that Tank 301 was empty and that there was no acid in the line.

Sornborger has acknowledged these inconsistencies, but he attributes them to his pain and bitterness in the aftermath of the accident. He said that the references to a permit had been a psychological defense mechanism to deflect blame for the accident. Now, Sornborger blames the accident on the single-bolt cover-mounted design of the Xomox valve. It now seems "insane" to him that the bracket could not be removed without the valve coming apart. He admits that his perception

of fault changed when he learned the history of other accidents involving the Xomox valve.

The design of the valve. This type of Xomox valve had been involved in two or three previous accidents. In 1984, a worker at an Amoco refinery in Delaware was told to remove the actuator from a single-bolt cover-mounted Xomox valve in a pipeline which contained the volatile chemical polypropylene. Instead of removing the bolts that held the actuator to the bracket, the worker removed the bolts that held the bracket to the cover. The valve blew apart, causing an explosion and fire which killed five people, injured 28 others, and caused \$20 million in property damage. Another accident involving a single-bolt cover-mounted Xomox valve occurred in February of 1996 at the Cape Industries refinery in Castle Hayne, North Carolina. Although the parties offered somewhat differing accounts of the Cape Industries accident, it apparently involved another situation where people were injured because removal of the bracket caused the valve to come apart. There is also evidence of a 1981 accident at a Pemex factory in Mexico, where removal of a bracket broke the seal of a valve, causing an explosion which resulted in one death, 15 injuries, and \$5 million in property damage. It was unclear whether the Pemex accident involved a Xomox valve, and Xomox personnel said that they first learned of that accident during discovery in this case. However, it appeared that the valve which exploded at the Pemex factory had the same single-bolted cover-mounted design as the Xomox valves which were involved in the other accidents.

The Experts. Xomox's expert, Charles Morin, testified that the accident history proved that the valve had been properly designed. The evidence showed that Xomox sold thousands of single-bolted cover-mounted valves over nearly three decades beginning in the 1950's, and that the valves remained in service for 20 to 30 years. Based on the number of valves in use, the length of operation and the accident frequency, Morin calculated the risk of an accident per valve hour to be only 5.7×10^{-11} (.000000000057). Morin said that this meant the Xomox valve exceeded the safety standards set by the FAA for parts used in the airline industry. He said that aircraft parts with reliability ratings better than 10^{-9} (.000000001) are deemed to present no risk from an engineering perspective. Since there had been few accidents, and they had all involved some degree of worker error, Morin concluded that there was no design flaw. He explained that where design is causing a problem, the problem "will happen directly, in some direct assignable way to that design, and it will happen with some regularity."

Our experts draw different conclusions from the accident history. Based on that history, including the accident at the Rhone-Poulenc plant, safety engineer Robert Weiner has testified that the valve's single-bolted cover-mounted design was inadequate. In Weiner's opinion, Xomox should have used an alternative design--either double-nutting or flange-mounting--to obviate the problem of inadvertent removal of the valve cover upon removal of the bracket. With the double-nutted design, two nuts instead of one are put onto the bolts holding the bracket to the valve cover, one under the bracket and one over the bracket. Thus, a worker could remove the bracket by removing the top nuts while the lower nuts continued to hold the cover on the valve. Flange-mounted brackets are mounted on the flanges rather than the cover of the valve, so removal of the bracket does not disturb the cover.

Xomox Executive Vice President Michael Sandling testified that the company did not begin making double-nutted or flange-mounted valves until the late 1970's. Sandling said that these designs were implemented to accommodate different actuators then coming into use, and not to rectify any safety problem associated with the single-bolt cover-mounted design. He pointed out that Xomox introduced the new designs prior to the Amoco accident, at a time when it had no notice of any accidents involving single-bolted cover-mounted valves.

However, Weiner indicated that in 1973, when the valve in question was installed at the

Rhone-Poulenc plant, at least one other manufacturer made valves that did not rely on single-bolt cover-mounting, and he opined that Xomox should have been aware of the danger associated with that design even before the Amoco accident. In Weiner's view, proper design took into account potential errors, and Xomox should have designed the valve to eliminate the potential for a catastrophic accident from the simple removal of a bracket during maintenance. Weiner and our other expert, psychologist Kenneth Zeidman, were also critical of Xomox's response to the accidents involving the valve.

The record includes internal memoranda reflecting concerns at Xomox in the wake of the Amoco accident about inadvertent removal of covers on valves with the single-bolt design. To address those concerns, Xomox stopped selling single-bolt cover-mounted valves, and retrofitted its inventory of those valves with double-nut mounting. In May of 1987, Xomox added a warning to maintenance and replacement instructions for the valve which noted that removal of a "an older model cover-mounted bracket" would release the valve cover, and "strongly recommended" that such mounting arrangements "be replaced with the newer arrangement which secures the valve cover independently of the mounting bracket." This warning was included in materials furnished to purchasers of replacement parts for the valves, but it was not added to the instructions until shortly after the Rhone-Poulenc plant ordered the replacement bracket for the valve next to Tank 301 in March of 1987. During the interval between the Cape Industries accident in February 1996 and this accident in June of that year, Xomox drafted a product safety reminder on the risk associated with single-bolt cover-mounted valves, but then decided against sending it out.

Xomox's witnesses testified that it would have been impossible for the company to track down the owners of all of their single-bolt cover-mounted valves because it had sold thousands of those valves, and the sales were mostly to distributors who resold the valves to thousands of industrial facilities throughout the world. They said that Xomox had little success with product recalls when it contacted distributors to try to identify the owners of defective valves.

Our witnesses Weiner and Zeidman have opined that Xomox should have made more of an effort to warn the owners of single-bolt cover-mounted valves of the risk confirmed by the Amoco accident. Weiner opined that Xomox improperly delayed in waiting three years after that accident to add a warning to its instructions for the valves. He said that the warning should have been added before the Rhone-Poulenc plant ordered the replacement bracket for the valve that injured Torres and Sornborger. Zeidman opined that the warning should have been given in a separate document, rather than imbedded in instructions which were furnished only with new sales, where it was less likely to be noticed. Zeidman also said that the instructions originally furnished when the valve was first installed did not adequately highlight the problem of inadvertent removal of the cover.

* * * * *

The firm would like to send a letter updating the client on the status of the case and the prospects for this case if it goes to trial. Please prepare a draft of the analysis that would be included in such a letter.

QUESTION 2 (60 points)

On January 5, 1996, Kevin Kolodziej was admitted to the Evergreen State Medical Center (State Hospital) for self-inflicted stab wounds. State Hospital determined that Kolodziej also suffered from psychiatric disorders. A plan was adopted to admit Kolodziej to the Evergreen State Mental Health Department (Mental Health) pursuant to Welfare and Institutions Code § 5150 after

he was treated for his stab wounds. This section provides in pertinent part: "When any person, as a result of mental disorder, is a danger to others, or to himself or herself, ... the state may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated ... as a facility for 72-hour treatment and evaluation." Meanwhile, State Hospital attempted to treat his psychiatric disorder while an in-patient at State Hospital.

On January 17, 1996, Kolodziej was still being treated for his stab wounds. He nevertheless walked out of State Hospital and into the adjoining neighborhood. State Hospital immediately notified the Evergreen State Patrol and requested that they locate and return Kolodziej to the State Hospital.

Within the hour, officers John Snowling and Alex Marquez of the Evergreen State Patrol located Kolodziej and discovered that he had broken into homes in the neighborhood. The officers determined that Kolodziej did not represent a danger to himself or others. Kolodziej promised to walk back to the hospital. The officers allowed him to do so, but did not notify State Hospital. Shortly thereafter, Kolodziej entered the home of Mrs. Velasta Johnson, 90 years of age, and found her in a living room chair. He proceeded to stab her with a kitchen knife. Minutes later, Mrs. Johnson's son and daughter-in-law, Mark and Cindy Johnson, found Velasta profusely bleeding. Mrs. Johnson later died as a result of the stab wound.

You are employed by the State of Evergreen in the department of claims management. A demand letter has been received written by an attorney on behalf of Mark and Cindy Johnson, demanding \$3,000,000 in damages arising out of this incident. Please prepare a memo analyzing the potential exposure of the State.

SELECTED STATUTES OF THE STATE OF EVERGREEN
ANNOTATED EVERGREEN CODES
CIVIL CODE
SECTION 2. EFFECT OF DEATH

§ 377.20. Cause of action survives; limitations; loss or damage simultaneous with death

(a) Except as otherwise provided by statute, a cause of action for or against a person is not lost by reason of the person's death, but survives subject to the applicable limitations period.

(b) This section applies even though a loss or damage occurs simultaneously with or after the death of a person who would have been liable if the person's death had not preceded or occurred simultaneously with the loss or damage.

§ 377.34. Damages recoverable

(1) In an action or proceeding by a decedent's personal representative or successor in interest on the decedent's cause of action, the damages recoverable are limited to the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement.

(2) In an action under this article, damages may be awarded that, under all the circumstances of the case, may be just.

§ 377.60. Persons with standing

A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent's personal representative on their behalf:

(a) The decedent's surviving spouse, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse, who would be entitled to the property of the decedent by intestate succession.

(b) Whether or not qualified under subdivision (a), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, or parents. As used in this subdivision, "putative spouse" means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid.

(c) A minor, whether or not qualified under subdivision (a) or (b), if, at the time of the decedent's death, the minor resided for the previous 180 days in the decedent's household and was dependent on the decedent for one-half or more of the minor's support.

(d) This section applies to any cause of action arising on or after January 1, 1993.

(e) The addition of this section by Chapter 178 of the Statutes of 1992 was not intended to adversely affect the standing of any party having standing under prior law, and the standing of parties governed by that version of this section as added by Chapter 178 of the Statutes of 1992 shall be the same as specified herein as amended by Chapter 563 of the Statutes of 1996.

CIVIL CODE
DIVISION 3. OBLIGATIONS

§ 1430. Effect of contributory fault

In an action based on fault seeking to recover damages for injury or death to person or harm to property, 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. This rule applies whether or not under prior law the claimant's contributory fault constituted a defense or was disregarded under applicable legal doctrines, such as last clear chance.

§ 1431. Joint liability

An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except as provided in Section 1431.2, and except in the special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

§ 1431.1. Findings and declaration of purpose

The People of the State of Evergreen find and declare as follows:

(a) The legal doctrine of joint and several liability, also known as "the deep pocket rule," has resulted in a system of inequity and injustice that has threatened financial bankruptcy of local governments, other public agencies, private individuals and businesses and has resulted in higher prices for goods and services to the public and in higher taxes to the taxpayers.

(b) Some governmental and private defendants are perceived to have substantial financial resources or insurance coverage and have thus been included in lawsuits even though there was little or no basis for finding them at fault. Under joint and several liability, if they are found to share even a fraction of the fault, they often are held financially liable for all the damage. The People--taxpayers and consumers alike--ultimately pay for these lawsuits in the form of higher taxes, higher prices and higher insurance premiums.

(c) Local governments have been forced to curtail some essential police, fire and other protections because of the soaring costs of lawsuits and insurance premiums.

Therefore, the People of the State of Evergreen declare that to remedy these inequities, defendants in tort actions shall be held financially liable in closer proportion to their degree of fault. To treat them differently is unfair and inequitable.

The People of the State of Evergreen further declare that reforms in the liability laws in tort actions are necessary and proper to avoid catastrophic economic consequences for state and local governmental bodies as well as private individuals and businesses.

§ 1431.2. Several liability for non-economic damages

(a) In any action for personal injury, property damage, or wrongful death, based upon principles of comparative fault, the liability of each defendant for non-economic damages shall be

several only and shall not be joint. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount.

(b)(1) For purposes of this section, the term "economic damages" means objectively verifiable monetary losses including medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment and loss of business or employment opportunities.

(2) For the purposes of this section, the term "non-economic damages" means subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation.

§ 1431.3. Law of immunity

Nothing contained in this measure is intended, in any way, to alter the law of immunity.

§ 1432. Contribution among joint obligors

A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

ANNOTATED EVERGREEN CODES GOVERNMENTAL CODE

§ 815. Liability for injuries generally; immunity of public entity; defenses

Except as otherwise provided by statute:

(a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.

(b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

§ 815.2. Injuries by employee within scope of employment; immunity of employee

(a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

(b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability. Nor is any public entity liable for any punitive damages.

§ 815.3. Intentional torts

A public entity is not liable to a plaintiff under this part for any act or omission of an employee or elected official, which act or omission constitutes an intentional tort, including, but not limited to, harassment, sexual battery, and intentional infliction of emotional distress. For purposes of this section, harassment in violation of state or federal law constitutes an intentional tort, to the extent permitted by federal law.

§ 815.6. Mandatory duty of public entity to protect against particular kinds of injuries

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

§ 820. Liability for injuries generally; defenses

(a) Except as otherwise provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person.

(b) The liability of a public employee established by this part (commencing with Section 814) is subject to any defenses that would be available to the public employee if he were a private person.

§ 820.2. Discretionary acts

Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.

§ 820.4. Execution or enforcement of laws; exception

A public employee is not liable for his act or omission, exercising due care, in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment.

§ 820.8. Acts or omissions of others

Except as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person. Nothing in this section exonerates a public employee from liability for injury proximately caused by his own negligent or wrongful act or omission.

§ 856.2. Escape of persons confined

(a) Neither a public entity nor a public employee is liable for:

(1) An injury caused by an escaping or escaped person who has been confined for mental

illness or addiction.

- (2) An injury to, or the wrongful death of, an escaping or escaped person who has been confined for mental illness or addiction.
- (b) Nothing in this section exonerates a public employee from liability:
- (1) If he acted or failed to act because of actual fraud, corruption, or actual malice.
 - (2) For injuries inflicted as a result of his own negligent or wrongful act or omission on an escaping or escaped mental patient in recapturing him.

