

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.

The exam covers Chapters 1-3 of the casebook. Do not address any issues beyond that point, such as contributory fault, governmental liability, or other issues.

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)

You have been hired as a summer intern at Texaco Oil Company. You have been handed a file containing the following information:

In 1969, Donald W. Rule and his father built a service station at 930 Lacey Road in Lacey Township, Linden. The station was built according to plans provided by Atlantic Richfield Oil Co. (Arco). Because of a dispute with Arco over the number of service bays, Rule abandoned his plans to operate the station for Arco. While the station was still under construction, Forte and Matthews, who were employees of Kalsch-Forte Oil Co., Inc. (Kalsch-Forte), a distributor of Texaco's products, offered to supply the Rules with products, equipment, and services supplied by Texaco.

Rule agreed to sell Texaco products and operate the station as "Rule's Texaco." Kalsch-Forte supplied Rule with Texaco products and installed the underground gasoline storage tanks and other equipment. Rule obtained uniforms and Texaco patches from a uniform dealer in Philadelphia. After his father died in 1971, Rule incorporated the business as "Rule's Service Station."

Kalsch-Forte leased the underground tanks and other equipment to Rule for the nominal rent of one dollar per year, a sum that Rule did not remember ever paying. No written agreement evidenced the 1969 understanding between Rule and Kalsch-Forte. In 1982, however, when Kalsch-Forte supplied Rule with new underground gasoline storage tanks, the parties entered into a written "Customer's Equipment Lease." The lease required Rule to maintain the equipment and signs advertising Kalsch-Forte brands of products. In addition to the gasoline tanks, the lease listed the fuel oil and kerosene tanks, lights and light poles, air compressor, and lift, as Kalsch-Forte equipment. The name "Texaco" appeared on the signs, the pumps, the products, and attendants' uniforms.

Kalsch-Forte increased the underground gasoline storage capacity at the service station from 6,000 gallons in 1969 to 17,000 gallons in 1985, when Rule sold the station. During that time, Kalsch-Forte distributed products to Rule.

In August 1985, Rule sold the station to the Ritchies. Initially the Ritchies continued to purchase Texaco petroleum products from Kalsch-Forte and operate as a Texaco station. In October 1985, however, they purchased the underground tanks and other equipment from Kalsch-Forte and converted to an Exxon station. (Kalsch-Forte has since gone out of business and cannot be sued. Similarly, Rule has gone out of business and has no assets from which any judgment could be satisfied.) The Ritchies installed new underground storage tanks and fuel islands in 1991. They removed the old fuel islands, pumps, and all underground tanks except for one, which they drained and filled with concrete. One of the tanks showed signs of extensive corrosion.

In December 1994, residents of the neighboring Barnegat Pines subdivision complained of foul-smelling well water. Investigators from the Linden Department of Environmental Protection (LDEP) found gasoline-related contamination in fourteen residential wells. The LDEP circumscribed a contaminated area covering fifteen blocks (a "red line area") and determined that Rule's Service Station was the most likely source of contamination. They sued Rule, the Ritchies, Exxon, and Texaco.

Exxon commissioned a subsequent hydrogeologic study that residents' experts endorsed. The study revealed that discharges occurring after the Ritchies bought the station could not have affected wells located outside a one-and-a-half block radius from the station. On January 5, 1999, the trial court granted summary judgment for Exxon and the Ritchies, dismissing all claims except those asserted by residents living within that radius of the station. Texaco, which had asserted a

cross-claim against Ritchie, did not oppose the summary judgment motion. Exxon and the Ritchies settled with the remaining residents, who stipulated to a dismissal with prejudice.

Residents now claim that discharges of gasoline and other petroleum products from the gas station occurred between 1969 and 1985, when Rule operated the Texaco station, contaminated their wells. In support of their allegations, residents have obtained testimony of Albert D. Young, a petroleum distribution consultant and retired Exxon executive. Young testified that he believed that above-ground gasoline spills "probably happened more frequently than not" during Rule's ownership of the station. According to Young, in the 1970s, as the capacity of fuel trucks increased, the trucks commonly pumped more fuel into the tanks than they could hold, thereby causing overflow and spills. He theorized that such spills, which were common during the 1970s and 1980s, had occurred at Rule's station. Young postulated that soil contamination in the areas around the underground tank and fuel islands indicated that spills had occurred during the delivery of gas or the pumping of fuel to customers' cars between 1969 and 1991. Young admitted on cross-examination, however, that he had never visited the service station, had never spoken with Rule or any of his employees, knew nothing about the operating practices at the station, and knew of no spills or leaks having occurred at the station from 1969 to 1991.

Texaco has obtained testimony of Lloyd LaBrie, a consulting engineer. LaBrie stated that activities at the station after 1985 could have contaminated some of residents' wells. Ritchies. According to LaBrie, post-1985 discharges from the station could have contaminated the residential wells located beyond the one-and-a-half block radius.

Please evaluate the risks that Texaco faces from this litigation.

QUESTION 2 (75 points)

On Friday, May 1, 1997, Robert Strever, age eleven, contacted his mother at work and requested permission to go on a weekend fishing trip with his friend, Brent McKellip. Robert's mother instructed him to contact his grandmother, Josephine Strever, and have her speak with Brent's father to get the details of the trip. Josephine called the McKellip home and spoke with an individual who represented himself as Mr. McKellip. He stated that the boys would be leaving for the fishing trip on Friday evening and that they would return to Springfield on either Saturday or Sunday.

When the boys came to collect Robert's clothing for the weekend trip, Josephine expressed her suspicions of Mr. McKellip's youthful sounding voice. Robert and Brent told her that it was due to Mr. McKellip having a sore throat. (Later, it came to light that the fishing trip was a ruse and that fourteen-year-old Steven Cline pretended to be Mr. McKellip to obtain permission for Robert to spend the weekend with Brent.)

On Saturday evening, May 2nd, Robert, Cline and another boy, Bowen Racine, attended a movie. After leaving the movie theater, the boys decided to enter several parked vehicles in the neighborhood and steal their contents.

Tom Susanj was in Springfield that weekend to visit his father who had been transferred to St. Vincent's Hospital for medical care. Susanj had parked his pickup on the street in front of a relative's home and had left it for the night. Located in the cab of his pickup were a Spectrum radar detector, keys, a micro cassette recorder, jumper cables, a Black & Decker car light, Bushnell binoculars, a Shakespeare fishing rod and case, a tape case with 30 cassette tapes, a small tool box, and a Fujica camera. Underneath the seat of the pickup, in a white bag, was a Ruger 22-caliber semiautomatic pistol and ammunition.

In the early morning hours of May 3rd, the three boys entered Susanj's pickup and removed several items. Although Susanj testified that it was his normal practice to lock his pickup, there was no evidence of forced entry. Susanj was not aware, nor had he reason to be aware, of a crime problem, if any, in that neighborhood.

Sixteen-year-old Thomas Morris joined Robert, Cline and Racine after noticing them near Susanj's pickup. All four boys then returned to the pickup to search for more items to steal. Morris took the white bag from under the driver's seat and discovered that it contained the handgun and ammunition. An animated discussion ensued over who should have the gun. After removing the gun from the bag, Morris either handed the gun to Cline at Cline's request or Cline took the gun from Morris. Either way, Cline gained control of the gun. Prior to the incident, Cline had been drinking alcohol and had informed Morris he was "high."

(In fact, Cline had purchased alcohol from four different convenience stores in Springfield (7-11, Circle K, Maid O'Clover, and Zip Trip). At each of the convenience stores he used a forged ID to obtain a 6-pack of Keystone Light. Cline had consumed 6 beers and had a blood alcohol content of .14 at the time of the events that follow.)

Morris testified that Cline waved the gun around while his finger continually rested on the trigger. In the process of examining the gun, Cline ejected a live shell from the chamber. Cline was attempting to remove the ammunition clip from the gun when the gun discharged. The bullet passed through the window of the truck and fatally struck Tyrone Prescott, who was passing by on the sidewalk. (Susanj later stated that he did not keep the clip in the gun. However, Morris and Cline testified that the clip was in the gun when they took it from the bag.)

After Prescott fell to the ground, the boys panicked. Strever, Morris and Racine ran down an alley and Cline followed, still carrying the gun. Morris and Racine urged Cline to put the gun down and he complied. Cline went to a nearby convenience store and called the police. The police later retrieved the gun from the spot where Cline placed it. Cline was convicted of negligent homicide for the death of Tyrone Prescott.

Prescott's widow, Samantha, has come to your office inquiring of the prospects for a recovery for her husband's death. What would you tell her?

SELECTED STATUTES OF THE STATE OF LINDEN
ANNOTATED LINDEN CODES
TITLE 16. ALCOHOL AND TOBACCO
CHAPTER 3. CONTROL OF LIQUOR, BEER, AND WINE
PART 3. RETAIL SALES RESTRICTIONS

§ 16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age

(1) It is unlawful for a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for any licensee, his or her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 21 years of age;

(b) any intoxicated person or any person actually, apparently, or obviously intoxicated.

(4) Any person under 21 years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee is equally guilty with said licensee and, upon conviction thereof, is subject to the penalty provided in 45-5-624. However, nothing herein contained may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(5) It is further mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard as issued by the department stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

(6) For purposes of this title and 45-5-623, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

TITLE 23. FISH AND GAME, WILD BIRDS AND ANIMALS
CHAPTER 4. GAME, WILD BIRDS AND ANIMALS
ARTICLE 2. MANNER, MEANS AND TIMES OF HUNTING

§ 23-4-204 Transport or possession of firearms in motor vehicle; penalty

No person may transport, possess, or have in their control a firearm in a motor vehicle unless the firearm is unloaded and contained in a closed and securely fastened case, or locked in the trunk

of the motor vehicle. A person violating this section shall be liable to a civil penalty of not less than \$50.00 nor more than \$200.00.

TITLE 27. CIVIL LIABILITY, REMEDIES, AND LIMITATIONS
CHAPTER 1. AVAILABILITY OF REMEDIES -- LIABILITY
PART 5. RIGHT TO BRING ACTION OR ASSERT DEFENSE

§ 27-1-501. Survival of cause of action or defense -- death or disability or transfer of interest

(1) An action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his death or disability or transfer of interest therein, it survives and may be maintained by his representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of his representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, L.R.Civ.P.

(2) Actions brought under this section and 27-1-513 must be combined in one legal action, and any element of damages may be recovered only once.

§ 27-1-512. Action by parent or guardian for injury to or death of child or ward

Either parent may maintain an action for the injury to or death of a minor child and a guardian for injury to a ward when such injury is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or, if such person be employed by another person who is responsible for his conduct, also against such other person.

§ 27-1-513. Action for wrongful death

When injuries to and the death of one person are caused by the wrongful act or neglect of another, the personal representative of the decedent's estate may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his conduct, then also against such other person.

§ 27-1-514. Who may sue for whose seduction

(1) The rights of personal relations forbid the seduction of a spouse, child, orphan, or servant.

(2) Either parent may prosecute as plaintiff for the seduction of the child and the guardian for the seduction of the ward, though the child or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards and there be no loss of service.

(3) An unmarried person may prosecute as plaintiff an action for his or her own seduction and may recover therein such damages, pecuniary or exemplary, as are assessed in such person's favor.

TITLE 27. CIVIL LIABILITY, REMEDIES, AND LIMITATIONS
CHAPTER 1. AVAILABILITY OF REMEDIES -- LIABILITY
PART 3. MEASURE OF DAMAGES

§ 27-1-308. Collateral source reductions in actions arising from bodily injury or death -- subrogation rights

(1) In an action arising from bodily injury or death when the total award against all defendants is in excess of \$50,000 and the plaintiff will be fully compensated for his damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right.

(2) Before an insurance policy payment is used to reduce an award under subsection (1), the following amounts must be deducted from the amount of the insurance policy payment:

- (a) the amount the plaintiff paid for the 5 years prior to the date of injury;
- (b) the amount the plaintiff paid from date of injury to date of judgment; and
- (c) the present value of the amount the plaintiff is thereafter obligated to pay to keep the policy in force for the period for which any reduction of an award is made pursuant to subsection (3).

(3) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that the plaintiff has been or may be reimbursed from a collateral source that does not have a subrogation right. If the trial judge finds that, at the time of hearing, it is not reasonably determinable whether or in what amount a benefit from such a collateral source will be payable, he shall:

- (a) order any person against whom an award was rendered and who claims a deduction under this section to make a deposit into court of the disputed amount, at interest; and
- (b) reduce the award by the amount deposited. The amount deposited and any interest thereon are subject to the further order of the court, pursuant to the requirements of this section.

(4) Except for subrogation rights specifically granted by state or federal law, there is no right to subrogation for any amount paid or payable to a plaintiff from a collateral source if an award is reduced by that amount under subsection (1).

§ 27-1-323. Wrongful death

In every action under 27-1-513, such damages may be given as under all the circumstances of the case may be just.