

Dickinson
Workers' Compensation
Spring 1997

Question 1 (80 minutes)

Beverly was employed at Farm and Home Insurance Agency as a claims adjuster. Her seven-year marriage to Ned had been very rocky. Three years ago, Ned began to abuse her physically after he had been drinking. At first, he only slapped Beverly, but soon he was hitting her with a closed fist. She left him twice to stay with friends, but each time was persuaded to return by Ned's pleas and promises to reform. Then one night in November Ned came home drunk, took offense at something Beverly said and hit her with a heavy glass statue that decorated their living room. Beverly was knocked unconscious and woke up in the hospital with a fractured skull. Ned was charged, of course, but released after a plea bargain to a lesser charge.

With the help of a local battered women's shelter, Beverly obtained a protective order requiring Ned to keep at least 500 yards from her at all times, and not to attempt to communicate with her except through her lawyer. The shelter also helped Beverly secretly find an apartment in another part of town so that Ned could not find her again.

All of the above was known to Beverly's employer and co workers at the agency. Recently Ned called the agency on Beverly's day off and told the receptionist that he needed her new address because he had to relay a message concerning her mother (who was in poor health). The receptionist hesitated and tried to get Ned's number so Beverly might call him, but Ned refused, saying that to do so would put him in violation of the protective order issued by the court. Finally, the receptionist, who was the only person in the office at the time, gave Beverly's address to Ned. The receptionist then tried to call Beverly, but there was no answer.

That evening, when Beverly returned from grocery shopping, Ned

was in her apartment waiting for her. He was drunk, and mad. When she reached for the telephone, Ned picked up the same glass statue and struck her repeatedly. Beverly was found the next morning by a neighbor with whom she sometimes rode to work, unconscious and bleeding profusely. She was taken to the hospital where she was diagnosed as having sustained head injuries that would leave her without speech, and spinal injuries that would probably leave her a paraplegic for life.

Ned is in jail and penniless, of course. Beverly is in an extended care facility, learning to live with her disabilities and hoping to become self-sufficient once more. It is clear that she will never work as a claims adjuster again, and may not be able to work at all. Beverly's medical bills are staggering and as yet unpaid.

Your partner, Blaise, now represents Beverly. Blaise's research to date indicates that the receptionist may be liable in tort for negligently failing to protect Beverly when giving her home address to Ned. And, Beverly's employer may be vicariously liable for the receptionist's negligence as well. Blaise is concerned, however, that Beverly may have a claim under the Workers' Compensation Act. Accordingly, you have been assigned to write a memorandum on that question, including specifically a discussion of, and analysis under, the five risk tests that may be employed in determining this matter.

Question 2 (40 minutes)

Recently several states have amended their statutes, or adopted new ones, to follow the wage impairment approach to Workers' Compensation.

- a. What are the arguments favoring this change?
- b. What is the other common approach to Workers' Compensation? What are the arguments favoring it?

c. Should the Ohio Legislature decide to revise the current Workers' Compensation statute, which approach would you recommend and why?

Question 3 (60 minutes)

Stan was the owner of his own painting service. He employed 14 painters, organized into three teams so that he could schedule one large job, or three smaller jobs, easily. Each team had a truck equipped with an air compressor and several paint sprayers, as well as the usual brushes, rollers, ladders, and drop clothes. Stan was very conscientious about business matters, and paid into the state fund to provide Workers' Compensation coverage for his employees.

On June 15th, Stan and four of his employee's arrived at a small warehouse to paint the outside of the building. The warehouse was open to the public, which meant that Stan had to assure safe ingress and egress through the heavy door at the center of the building. When the painting crew came to that part of the job, Stan himself put the ladder up directly in front of the door, although he failed to put yellow warning tape around the site, or across the door, to alert anyone entering or exiting of the danger overhead. Bob, one of his employees, climbed up the ladder to paint the eave 15 feet above.

Just as Bob reached the top of the ladder, Gertrude came out of the door carrying a large box. Gertrude's carton knocked the ladder down as she past. Bob fell, breaking three ribs and dislocating a shoulder. He was hospitalized for three days (resulting in \$2,100 in medical bills) and was out of work for 15 days (for which he received \$500 temporary disability), all of which was paid by the state fund.

Bob filed a negligence action against Gertrude. Gertrude, in turn, filed a negligence action against Stan (she suffered a sprained wrist when Bob's paint can fell on her), and is seeking indemnity from Stan for any damages that Bob may receive from her. The jury awarded Bob

\$15,000, and awarded Gertrude \$400 for her own injuries. It also determined that Stan was 60% responsible, and Gertrude was 40% responsible for the injuries.

You may assume that: (i) the jurisdiction's Workers' Compensation statute provides employers with immunity from suit by employees for compensable injuries; (ii) it has adopted statutes providing for comparative negligence and contribution among tortfeasors.

Discuss the issues presented by Gertrude's demand for indemnity. What are the possible outcomes? Which do you favor? Why?
