

MINI-EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

While you are waiting for the exam to begin, be sure that you have written the LAST FOUR digits of your SOCIAL SECURITY NUMBER on each bluebook, that you have read these instructions, and that you are otherwise ready to begin.

This exam will last 60 minutes. Plan on spending at least 10 MINUTES reading the question and outlining your answer. REREAD the question to be sure you haven't missed anything.

Please discuss only the kinds of issues that would be raised as a result of what you have learned through Chapter 1. Please **OMIT** from your analysis any discussion of issues that are covered beyond that point, including proximate cause, the assessment of the amount of recoverable damages, contributory fault, or any other affirmative defense.

DOUBLE-SPACE your answer in the blue-book(s).

If you use more than one bluebook, label each bluebook, *e.g.*, "Book 1"; "Book 2"; etc.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, "Andropov (A) would sue Brezhnev (B). B would be liable to A if"

Plan on spending at least 10 minutes at the end **PROOFREADING** your answers. You may not write **ANOTHER WORD** after time is called.

You may **KEEP** your copy of the exam questions if you wish.

REMEMBER THE HONOR CODE: DO NOT IDENTIFY YOURSELF

DOUBLE SPACE!

GOOD LUCK!

DOUBLE SPACE!

Question

Don and Louise Parker live on property adjacent to that of Gary and Nancy Davidson, in a residential area of Harbortown, Anystate. On December 3, 1999, two of the Davidsons' large hemlock trees fell over during a windstorm, damaging the roof on the Parkers' house.

The Parkers approached the Davidsons to see if they would be willing to pay for the cost to repair the roof. The Davidsons said they didn't see why they should, since they had no idea that the trees were at risk of falling over. True, Gary Davidson acknowledged, windstorms had knocked down other trees on his property and other property nearby in previous years. He also said that one tree on his property or a neighbor's property fell on or near a neighbor's truck some years previously. During severe windstorms, including the one on December 3, 1999, he would have his mother stay at his house instead of in her mobile home that was set among the trees. About a week after the windstorm at issue here, another windstorm had knocked a tree onto his mother's mobile home.

Don claimed that he and Louise expressed concern to the Davidsons about the trees toppling over in the wind. Louise stated that she expressed concerns to Davidson about the trees swaying in the wind and that both Gary and Nancy Davidson told her that they would do something about the trees. Louise also said that right after the trees fell on their roof, Gary Davidson had said something to the effect that he should have done something sooner about the trees.

Wait a minute, said Gary. The trees that damaged the Parker house were natural growth and he had no reason to believe that they were any more dangerous than any other trees on his property under normal conditions. He could not recall participating in discussions with Louise regarding the latter's concerns about the trees but said if such discussions took place, they probably related to a different parcel in the neighborhood, which had a "terrible problem" with falling trees. Davidson also said that after the damage to the Parker house he cut down other hemlock trees located near their house upon the recommendation of the local utility district.

Realizing that this might turn ugly, the Davidsons have obtained a statement from Doug Truax, a professional forester who inspected the stump of one of the fallen trees. Truax stated that he found no evidence of rot or disease in the stump or other trees. He concluded that the tree that fell on the Parker house was no more dangerous than any other tree standing on the Davidsons' property. Truax stated that even healthy trees blow over in heavy winds and that there was no way for the Davidsons to determine beforehand whether any one of their trees would fall over.

The Parkers have also been doing their homework. They obtained a statement by a meteorologist who provided data from a recording station located about three miles from their home. The meteorologist reported that data showed that the maximum sustained wind at that location on the night in question was 25.7 mph with a maximum gust to 38.7 mph. The meteorologist concluded that such winds were "fairly common" at that location during that particular time of year and did not constitute an "extraordinary" or "highly unusual wind event."

Having apparently exhausted the possibility of an amicable agreement, the Parkers have now come to you to find out whether they can legally force the Davidsons to pay for the damage to their roof. What would you tell them?