

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 YOUR EXAM NUMBER on each bluebook, that you have read these instructions, and that you are otherwise ready to begin.

This exam will last 50 minutes. Plan on spending at least 5 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 5 minutes or so 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

Heritage Estates, Inc. is a corporation that develops large tracts of land for residential housing. In 1995 Heritage built Pheasant Run in rural Anystate, an area known for its harsh winters. In doing so, Heritage hired Jackson Construction to build a high pressure water main underground to supply water to the homes in Pheasant Run. A fire hydrant was connected to the main by a vertical pipe called a barrel and a horizontal pipe. Apparently no precautions were taken to prevent the hydrant from breaking due to frost jacking.¹ The original plans for the hydrant did not call for wrapping the barrel to prevent frost jacking, although many of Heritage's developments in cold climates did specify wrapping.

On February 1, 2000, the connection between the barrel and the horizontal pipe attached to the main, called the "shoe," broke. This break released large amounts of water which flooded the homes of Perry Olmstead and Phillip Tenzing, who had purchased homes in Pheasant Run in 1998. Heritage dispatched a crew which repaired the break. In the course of their repairs Heritage wrapped the barrel with Visqueen and replaced the broken "shoe." The broken shoe was apparently discarded.

You are a lawyer in a law firm that represents plaintiffs in personal injury claims. Olmstead and Tenzing have come to your office and would like an analysis of their chances for recovery for the property damage in this case. In the course of your investigation, you have learned that Jackson Construction filed for bankruptcy in 1997 and has since been dissolved. (On their way to financial ruin, Jackson stopped paying insurance premiums and there is no coverage for their work in 1995.)

You have also discovered that Heritage Estates typically operated the local water and sewer facilities until the development was more or less complete, at which time ownership was transferred to a local utilities district or homeowners association. By a strange coincidence, the transfer to the Pheasant Run Water District was to become effective on February 1, 2000.

How would you advise Olmstead and Tenzing?

¹. "Frost jacking" is a phenomenon where moist soil around the barrel freezes and adheres to the barrel, pushing the barrel up toward the surface as the soil below freezes and thus expands. Experts say that frost jacking can be avoided in most cases by the use of frost-free fill material. Other precautions include wrapping the hydrant pipe with material such as Visqueen or Teflon that may prevent freezing soil from adhering to the hydrant barrel.

There is no evidence as to what type of soil was used to fill the area around the hydrant.

