

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 STUDENT ID 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 or issue.

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

On March 13, 2002, Kristin Kempe was on her lunch hour heading toward Burger Heaven. Traffic was snarled and while she was waiting for it to clear she decided to check Instant Messaging on her cellular phone. Instead of a love note from her boyfriend of six weeks she found a message from her boss telling her that he found a flaw in the proposal they had been working on and he would be lucky to finish it in time for his 5 pm flight. Would it be possible to pick up his son from kindergarten and take him to afterschool care? The traffic finally started moving again so Kempe put down her cell phone and continued driving. She noticed on the dashboard clock that it was 12:25, and 5-year-old Justin would soon be in the herd of 5-year-olds waiting for their parents to pick them up. She was thinking of just how much she hated having to deal with that ill-mannered brat when she felt something hit her heel. It startled her and she looked down to see what it was. When she looked up she saw the brake lights on the car in front of her and she applied the brakes to her car. She then stopped the car (she estimates she was only going three miles per hour at the time) and did not realize that she had hit the car in front of her. She felt some impact and thought the car behind her may have hit her car, but she noticed the person in front of her motioning her to go into the gas station on the corner.

Kempe drove into the gas station and got out of her car. She then noticed that the object that had hit her was a pen that had fallen from her center console. She did not see any physical damage to either her car or the other person's car. However, Perry Dadras, the owner of the other car, pointed out scratches on his bumper. He also expressed concern that the collision may have jeopardized some delicate back surgery that he had recently undergone.

Dadras has come to your law firm for advice. Another partner in the firm is working with Dadras on establishing the amount of damages, including whether or not Dadras' back was harmed in the collision. Your job is to focus on the prospects for a finding of liability. In your research you have found § 21703 of the Vehicle Code which provides, "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway."

Please evaluate Dadras' claim and the prospects for success.