

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 1 HOUR. 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 the end of Chapter 1, "Breach of Duty." Please **OMIT** from your analysis any discussion of issues that are covered beyond that point, including proximate cause and contributory fault. In other words, address whether or not the plaintiff could establish that any prospective defendant breached a duty such as would give rise to legal liability.

DOUBLE-SPACE your answers in the blue-book.

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 1 (60 points)

Nelstad Materials Corp. operates a cement manufacturing plant in New Rochelle, Anystate, in an area dominated by heavy industry. The plant has been operating since 1937. A residential neighborhood was developed adjacent to the industrial area beginning in 1968. In 1986 Nelstad purchased the plant and greatly expanded its operations to process roughly three times the amount of cement compared to its former capacity. The operating hours begin at 6 a.m. and continue until 7 p.m., six days a week. The worksite creates the sound of diesel engines, front-end loaders, CB radios, back-up beepers, and the rattle of sand and gravel being poured down metal chutes. At night high-intensity security lights shine down on the perimeter of the plant, which is visible to many of the neighbors. The plant operation produces a fine white powder that is airborne, visible at times as dust clouds, and some residents have installed special windows to keep the dust from coming into their houses.

Lou Caposella, the owner of Nelstad, has set up an appointment with your law firm to discuss a letter he recently received from a lawyer representing a group of homeowners who have demanded that he either shut down the plant or eliminate the noise, light and dust problems. If he refuses to do so, they are threatening to sue him. Nelstad is a relatively small plant; most of the cement in the country is produced by a small number of very large plants, with the balance composed of "mom-and-pop" outfits like Nelstad. There is equipment available for large plants that simply isn't economically feasible on small plants like Lou's. The Environmental Protection Agency has been pressuring Lou to adopt more aggressive approaches to reducing dust and noise, but so far he has gotten extensions from them on the target compliance date.

In preparation for the meeting with Lou, please identify the kinds of questions that you need to have Lou answer, and be prepared to present him with your advice on what terms he should be thinking about in further discussions with the residents' lawyer.