

MINI-EXAM SAMPLE ANSWER

[*This case is based upon Walker Drug Co., Inc. v. La Sal Oil Co. 902 P.2d 1229 (Utah 1995). In that case the court found that operating a gasoline station with underground storage tanks was not an abnormally dangerous activity.*]

The defendants¹ are liable to the Walkers if we can prove that the defendants breached a duty toward the Walkers [and other elements, not to be analyzed here, are proven]. The two main areas in which this could be done would be by establishing negligence or by establishing strict liability.

Negligence

The defendants would be found negligent if they failed to exercise the care that a reasonably prudent person would exercise in the same or similar circumstances. Here the question would be whether or not something that the Walkers did (or failed to do) caused the gas leak and that their behavior didn't conform to the standard of a reasonably prudent person.

Once we find out what caused the leak, we might compare what was done with what is customarily done in the defendants' industry, the convenience store / gas station business. Falling below the custom of the industry is strong evidence of negligence; on the other hand, even if they complied with it, we might establish that the entire industry was too lax in preventing leaks of this kind.

We might also find some company policy that was violated, resulting in the leak. By contrast, we can't use the fact of post-accident repairs to argue that the defendants were negligent; that evidence would only be relevant if the defendants denied that in fact it was their gasoline that was leaking (no reason to think that from these facts).

The defendants may have made a decision about how to install the gas tanks or the pipes leading from the tanks that reflected a judgment about costs and benefits. We might be faced with an application of the Learned Hand formula (developed in the *Carroll Towing* case), which suggests that reasonable people would utilize a cost-benefit analysis to decide whether it was cheaper to have an accident or to take preventive measures to avoid it.

If there is no way of establishing what actually caused the gas leak, we might rely upon the doctrine of *res ipsa loquitur*, which allows the jury to infer negligence if the accident is of a type that ordinarily doesn't occur except where someone is negligent, if we can show that the cause of the accident was in the exclusive control of the defendants, and if we sufficiently eliminate other plausible causes. Finally, if we can show that the defendants' behavior constituted a violation of some statute (say, an environmental protection statute), we could argue that they were negligent as a matter of law, not requiring the jury to rule on whether it was reasonable.

Strict Liability

¹It's not clear exactly how La Sal and Rio Vista are related. Further investigation might require some additional legal analysis to make them jointly liable. That's beyond the scope of this memo.

We wouldn't have to prove negligence if the defendants' conduct was subject to strict liability. There are two categories that might apply here: abnormally dangerous activities and nuisance.

Abnormally Dangerous Activities. Strict liability is applied if the defendant is engaged in an abnormally dangerous activity, which is defined according to six criteria listed in the RESTATEMENT OF TORTS. I don't think we'd have much luck with that theory, since gasoline, although highly volatile, is very commonly used. In addition, we would have trouble showing that the injury resulted from that which makes it abnormally dangerous. There was no explosion here, so the proper connection may be lacking.

Nuisance. A property owner is entitled to damages and injunctive relief if a neighbor intrudes upon the owner's reasonable expectations for use and enjoyment of their property. Here the fumes and the construction mess interfered with the commercial expectations of the plaintiffs, and would likely be considered a nuisance. The fact that the plaintiffs moved in after the gas station was established wouldn't hurt them, since there was no pre-existing use of the property that put them on notice of the "character of the neighborhood."

Finally, we might look into other potential defendants, depending upon how the responsibility for the construction of the tanks is allocated. Perhaps the pipe manufacturer, the architect or the contractor were responsible for the problems identified above. In that case, the analysis would be shifted to the appropriate defendant.

1996 Torts I Mini-Exam CHECKLIST

- | | |
|---|---|
| <input type="checkbox"/> Overview | <input type="checkbox"/> Strict Liability |
| <input type="checkbox"/> Claim v. La Sal / Rio Vista | <input type="checkbox"/> Abnormally dangerous activity? |
| <input type="checkbox"/> Breach of Duty | <input type="checkbox"/> Restatement criteria |
| <input type="checkbox"/> Negligence Claim | <input type="checkbox"/> Injury didn't result from what which makes it abnormally dangerous |
| <input type="checkbox"/> Standard of Negligence | <input type="checkbox"/> |
| <input type="checkbox"/> Neg. Defined as Failure to use RC | <input type="checkbox"/> Nuisance |
| <input type="checkbox"/> Custom of the industry | <input type="checkbox"/> What are Ws' reasonable expectations? |
| <input type="checkbox"/> Custom is the floor, not the ceiling | <input type="checkbox"/> Timing —wouldn't anticipate problem |
| <input type="checkbox"/> Company policy / Rulebook | <input type="checkbox"/> |
| <input type="checkbox"/> Learned Hand test? | <input type="checkbox"/> Other Potential Defendants |
| <input type="checkbox"/> Post-accident repairs? | <input type="checkbox"/> Manufacturers of the tank, pipeline |
| <input type="checkbox"/> Res ipsa theory | <input type="checkbox"/> Contractor / architect |
| <input type="checkbox"/> Elements of Res ipsa | <input type="checkbox"/> |
| <input type="checkbox"/> Statutory violation? | |
| <input type="checkbox"/> | |

Exam Number _____