

SAMPLE ANSWER TO MINI-EXAM

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This case is roughly based on *Inland Steel Co. v. Pequignot*, 608 N.E.2d 1378 (1993).

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In order to recover from any of the parties involved, we would have to prove that a duty was breached by the defendant(s). I would suggest that we consider filing suit against (1) Hinds; and (2) Zirconium Specialties. The claim against Hinds seems strong (but his ability to pay is questionable); on the other hand, the case against Zirconium is weak.

Hinds ("H")

The best case against H would be based upon negligence. Negligence is the failure to use reasonable care. Our best method of proving negligence in this case would be to take advantage of Hinds' statutory violation in running a red light. Hinds received a ticket for running a red light, which is a statutory violation. Since he disputes this, it is possible that a jury might find that he did not actually violate the statute. However, assuming they found that he in fact was violating the statute, in many jurisdictions an unexcused statutory violation is considered negligence per se. (I am also assuming the statute was designed to prevent accidents like this. Certainly the statute prohibiting running a red light would be considered as having the purpose of preventing accidents like this one.)

*Excuse.* Although H tried to justify his conduct by saying that he was afraid of spilling his cargo, I don't think his excuse would be sufficiently reasonable to allow the jury to take it into consideration. If this is a Cardozo-type jurisdiction, and if the jury finds that he did indeed enter the intersection after the light had turned red, then negligence will be found as a matter of law. On the other hand, if this is a jurisdiction that simply uses statutory violations as a matter of evidence for the jury, then it would be a jury question whether his behavior was negligent. I am reasonably confident that a jury would find that his conduct was negligent.

A second possibility is that he might be found strictly liable, but that seems dubious, for the same reasons that are described below.

Zirconium Specialties ("Z")

A second alternative would be to sue Z, on either of three theories. The first theory is that Z should be strictly liable for engaging in an abnormally dangerous activity, namely transporting low-level radioactive waste. Unfortunately, it doesn't appear that the waste had anything to do with the accident; that is, the thing that makes the cargo abnormally dangerous (being radioactive) didn't cause the accident. Instead, it was an accident no different from any other cargo. The only positive wrinkle is that Hinds seemed to be reluctant to risk spilling his cargo, but that's a pretty big stretch. I don't think a court would buy that argument.

A second theory is that Z would be vicariously liable for H's negligence. Unfortunately, Z doesn't appear to have the right to control the way in which H conducts his driving. Although they control the way in which the pick-ups and deliveries are made, it seems likely that H would be considered an independent contractor, thus preventing a finding of vicarious liability. (An even weaker case would be presented vis-a-vis the owner of the tractor-trailer, Interstate, since they

simply leased the equipment to him.)

A third theory is that Z was negligent in "employing" someone who seems to be careless. Perhaps we'd find in Hinds' driving record some negative information suggesting that he should not have been employed to haul these materials. I don't think that theory would fly either. But further investigation might produce some better evidence.

An additional point that might prove useful is the fact that Hinds was fired after the accident. This would be considered a "post-accident repair" by Z. Ordinarily, post-accident repairs are inadmissible to establish that the condition necessitating the repair was negligently allowed to exist.

### CHECKLIST

- Overview
- Claim v. Hinds
- Proving Negligence
- Negligence defined
- Use of statutory violation
- dispute over facts = jury question
- unexcused* violation
- unreasonableness* of purported excuse
- statutory purpose includes this accident
- does jx. use NPS or just evidence?
- SL
  
- Case v. Zirconium
- Strict Liability for ADA
- § 519 - Abn. Danger didn't cause accident
- Vicarious Liability?
- Independent Contractor, not employee
- Right to control?
- Some aspects were controlled, but driving?
- Negligent hiring theory
- What's H's past driving record?
- Post-accident repair issue
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