

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 55 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.

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

Don W. and Lila R. Nutting have made an appointment to see the lawyers in a law firm where you are employed. A receptionist has taken the following information from a telephone interview with the clients:

Don and Lila owned a mobile home in rural Linden County in the state of West Carolina. On June 23, 1998, they telephoned Linden Gas & Electric ("LGE") to request the installation of a propane gas transmission line from an exterior propane tank into their mobile home, in order to supply propane gas to an existing water heater. On July 10 Mike Jones from LGE performed the installation. Approximately two weeks later, a fire, which originated in the closet housing the water heater, destroyed the home. An expert hired by the Nuttings, Jim Lee, suggests two possible theories of the fire's origin, both involving propane leaks. According to the Nuttings, at the time Jones installed the propane line, he discovered a slight leak in the gas control valve of the water heater itself, which he pointed out to the Nuttings, suggesting that they have an appliance company repair.

The Nuttings also believe that there was another gas leak because Jones negligently failed to tighten a connection in the gas line. In support of this theory, Lee examined the site a week after the fire, and found the connection to be loose. When confronted with this evidence, LGE disputed this claim. Jones' supervisor, Bob Smith, examined the site (it's not entirely sure whether this was before or after Lee's inspection) and has stated that the leak in the control valve of the water heater was not a danger and could not have permitted sufficient gas to escape to ignite and cause the fire. Jones also denies the Nuttings' contention that a connection was loose in the gas line that Jones installed. LGE claims to have a statement by a fireman who inspected the gas line immediately after the fire and found that the connection was sufficiently tight that he could not loosen it with his gloved hands. Smith maintains that, even if the connection were leaking as the Nuttings allege, any leaking gas could not have been ignited by the water heater's burner, which was two feet away.

The Nuttings admit that until about an hour before the fire they had been working in a room adjacent to the water heater closet and that the door to the closet had been removed. Even though propane gas is odorized, no one smelled gas either then or at any other time during the two weeks between the installation of the gas lines and the time of the fire. Smith has stated that he believes that the fire was probably caused by a downdraft, flaring the water heater main burner which ignited combustible material that had been stored too near the water heater. At the time of the fire, winds were blowing in excess of eighty miles per hour outside the house. There is dispute regarding the contents of the water heater closet at the time of the fire. However, Nuttings admit storing shoes, a cardboard box, a duffel bag, and magazines in the closet. The same fireman who was provided evidence about the gas line has stated that he found the remains of cloth, clothes, wood, paint cans, and a glue gun in the closet and a ruptured aerosol can under the water heater.

At the time of the occurrence in question in this case, the following standard relative to propane gas systems were incorporated in a statute of the state of West Carolina:

§ 4.1.5 Detection of Leaks and Defects

- a. The piping system shall withstand the test pressure specified without showing any evidence of leakage or other defects.

The senior partner of the firm would like your preliminary analysis of the case based upon the facts you have been provided. Please provide such an analysis.

Don William NUTTING and Lila Rose Nutting, Plaintiffs-Appellants,
v. NORTHERN ENERGY, INC., Defendant-Appellee. No.
93CA0391. Colorado Court of Appeals, Div. I.

April 7, 1994. Homeowners sued gas company for negligence after fire, which allegedly began in closet housing water heater, destroyed home. The District Court, Boulder County, Richard C. McLean, J., entered judgment on jury verdict for gas company, and homeowners appealed. The Court of Appeals, Briggs, J., held that: (1) owners did not establish that fire was more likely than not caused or initially fueled by propane leak and thus were not entitled to res ipsa loquitur instruction, and (2) jury could have found that any duty of care owed to homeowners by gas company did not include repair of water heater itself. Affirmed.