

MID-TERM EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

THIS IS A CLOSED BOOK EXAM! While you are waiting for the exam to begin, be sure that you have written your EXAM NUMBER on EACH bluebook, that you have read these instructions, and that you are otherwise ready to begin.

IMPORTANT: This exam will last THREE HOURS. You should plan on spending AT LEAST 20 minutes reading the questions carefully and outlining your answers on a separate sheet of paper. Before writing your answers, REREAD each question to be sure you haven't missed anything.

DOUBLE-SPACE your answers in the bluebook.

Use SEPARATE BLUEBOOKS for EACH QUESTION. Label each bluebook according to each question and, if necessary, book number, e.g., "Question 1, Book 1"; "Question 1, Book 2"; "Question 2"; etc. When you are finished, turn to the back cover of the first bluebook, and place the second, third, fourth, etc. bluebook in order inside the end of the first bluebook, so the whole makes a single package and can be read from front to back. Then put it in the box at the front.

You are welcome to use abbreviations, but indicate what they are, e.g., 'Andropov ("A") would be sued by Brezhnev ("B"), alleging that A would be liable to B'!

Plan on spending at least 15 minutes at the end PROOFREADING your answers. You may not write ANOTHER WORD after time is called.

The exam covers Chapters 1-2 and Chapter 3A of the casebook. Do not address any issues beyond that point, such as contributory fault, governmental liability, or other issues.

There is no STATUTORY APPENDIX provided for these questions. If you would ordinarily look to statutory law for guidance on a particular point, please comment on the likely alternatives.

Each question has been assigned a point total, and the exam as a whole has a point total of **135**. Spend the amount of time on each question reflecting its relative worth.

You may KEEP your copy of the exam questions if you wish.

REMEMBER THE HONOR CODE! Don't identify yourself.

DOUBLE SPACE!

DOUBLE SPACE!

DOUBLE SPACE!

GOOD LUCK!!!

QUESTION 1 (65 points)

On November 24, 1999, Johann Ulrich Hansler and Chedly Saheb-Ettaba (Johann's girlfriend and partner in his magic act), visited the Synergia Ranch in Santa Fe County in the State of Linden. The Ranch was owned and operated by Stanley Bass. One of the activities in which the guests were permitted to participate was the "Wild West Target Range." Johann and Chedly went to the Wild West Target Range and paid for an hour of shooting a deer rifle, along with 50 cartridges. Chedly fired a few times, but didn't like the experience. Johann used up about a dozen cartridges firing at a paper target that had been set up, but then started firing at some other objects that were available on the range. One was an old abandoned refrigerator.

Johann's first shot at the refrigerator ricocheted off the side, but his next shot hit the center of the refrigerator—at least Johann assumed it did, because almost immediately after Johann pulled the trigger, there was a huge explosion that sent steel parts—almost like shrapnel—all over the range. The good news was that it only hit one person, but the bad news was that it was Chedly. A jagged piece hit her in the face, causing profuse bleeding and frightening her enormously.

Chedly was rushed to the hospital, where she stayed for three weeks, receiving surgical treatment that included extensive plastic surgery. The doctors have told her that she will probably require three or more follow-up visits to finish the plastic surgery on her face, but it will never be a perfect reconstruction.

Chedly and Johann have come to your office for advice on what to do. They have done some research and have the following facts to tell you:

- (1) Stanley Bass purchased the Synergia Ranch in 1997 with the intent of converting it into a vacation property. At the time he purchased it there were several rundown buildings on the property and very little in the way of amenities.
- (2) In 1998 Bass instituted a renovation plan, which he called Project Touchstone, which was completed in August 1999. A company named Synopco acted as general contractor to salvage, weatherproof and finish construction of a Western style ranch house and additional buildings used at the ranch. The construction contract required Bass to pay Synopco for materials "used on site, plus 10%." It specifically excluded from costs any "materials not used directly in the construction of Project Touchstone."
- (3) During construction, Synopco used dynamite to excavate several areas. To store the dynamite, Synopco used an old refrigerator that they found on the site, which prevented the daytime temperature extremes in the desert conditions from overheating the dynamite.
- (4) Phil Hawes, president of Synopco, supervised the construction, together with other supervisors hired by Synopco. As far as Hawes recalls, in August 1999, after termination of the project, Synopco removed all unused materials and supplies from the construction site.
- (5) Beginning in September, Bass hired a crew to prepare Synergia for being opened as a vacation spot, including someone to clean the guest rooms, maintenance personnel, a supervisor at the Target Range, and someone to work the front desk.
- (6) No one has a specific recollection of who it was, but it appears that sometime in late October or early November an employee of Synergia Ranch hauled the refrigerator, along with other pieces of "junk" lying around the property, to the target range to serve as items to shoot at.

Chedly would like your assessment of the likelihood that she could recover for her injuries. What would you tell her?

QUESTION 2 (70 points)

In April, 1998, Theolonius Paige was an employee of the Turnpike Furnace Company (Turnpike Furnace). On the morning of April 22, 1998, Paige and a coworker, Osvaldo Cano, were assigned to clean two boilers (boiler number one and boiler number two) that were part of the heating system at St. Andrews Church. Cano was the "leadman" on the job, with the plaintiff acting as his assistant. Paige and Cano had worked together as leadman and assistant once or twice a week for approximately six months prior to April 22, 1998.

St. Andrews' properties consisted of: (1) a church; (2) a convent located across the street from the church; and (3) a rectory located at the top of a hill on the street where the church was located. The church was a two-story facility that consisted of: (1) a church that could hold approximately 800 people; (2) a school that instructed approximately 210 students in grades one through eight; and (3) a parish hall that could hold approximately 350 people. The boilers provided heat to both the church and the school, and were located in a separate room, near the parish hall, on the lower level of the church. A person could access the boiler room from the church, the school or the parish hall, without ever having to go outside of the facility.

St. Andrews employed approximately twenty persons, including three priests, three nuns, eight lay teachers, one school principal, two secretaries, three custodial workers, one housekeeper and one cook. Of these employees, only the teachers,¹ the principal, the custodial workers and the priests worked in the church building. The secretaries, the cook and the housekeeper worked up the hill in the rectory, and the nuns resided in the convent across the street.

On April 22, 1998, the date of the accident, the school was not in session because of a spring recess. Two painters, Gary D'Amico and Carl Coletta, who were not employees of the church, were working inside of the building. Juan Hernandez, the maintenance supervisor, was scheduled to work from 9 a.m. to 5 p.m. on April 22, and visited the boiler room upon arriving at work and spoke for several minutes with Paige and Cano, who were already at work.²

That same day, masses were held at 7 a.m. and at 12:10 p.m. Father John E. Gilmartin celebrated the 7 a.m. mass, and a different priest celebrated the 12:10 p.m. mass. The temperature on April 22 reached forty-two degrees fahrenheit at 7 a.m., fifty-one degrees at 10 a.m., and fifty-six degrees at 1 p.m.

At 8:30 a.m., when Paige and Cano arrived at the church, the building and the boiler room were unlocked. They noticed that boiler number two was warm to the touch and glowing fluorescent orange, indicating that it recently had been in operation. As was generally the practice

1. The evidence indicates that of the five nuns who lived in the convent across the street, three worked for the parish. It is not clear whether they were employed as teachers or in some other capacity.

2. Hernandez testified that on April 22, 1998, he had a crew of two persons working with him, and that he and his crew had been at lunch, away from the church, from approximately 11 a.m. to 12 p.m. Hernandez testified that he had learned about the accident upon returning from lunch at several minutes before noon.

before cleaning a boiler, Cano checked to make sure that each of the switches on the control panel was in the off position. Although boiler number two felt warm, it was not running at the time that Paige and Cano arrived, and the control panel switch indicated that both boilers were off. According to Paige's expert, based on the amount of time the boiler ordinarily would take to cool down, the boiler must have been operating within six to ten hours of Paige's and Cano's arrival. Both boilers remained off from the time that the boiler cleaners arrived, until Paige was injured.

Due to the size of the two boilers, it was necessary to clean them from the inside. After it was decided that Paige would take the first turn at working on the inside, and that Cano would pass him the necessary equipment from the outside, Paige entered boiler number one. Paige was wearing a protective suit and face mask, which served to protect him against breathing in or absorbing soot into his skin.

Approximately one-half hour after Paige had entered boiler number one, its oil burner was activated. Flames blocked the hatchway doors, rendering it impossible for Paige to escape. Upon hearing Paige's screams, Cano pulled the vacuum hose that was used in the cleaning process out of the boiler, and attempted to pull Paige through the hatchway door. Unable to free Paige, Cano ran to the boiler room door and screamed for help. The painters heard his screams and came to the boiler room. While Coletta was spraying the flame with a fire extinguisher, Cano began hitting the switches in an attempt to extinguish the flame. Cano found, however, as he relayed to the fire marshal who arrived on the scene shortly after the accident, that the switches were already in the off position.³

Coletta eventually was able to pull Paige from the boiler. Fire and paramedical assistance arrived shortly thereafter, and Paige was taken to the hospital. As the result of the accident, Paige suffered extensive third and fourth degree burns over two thirds of his body, with burns down to the bones on his legs and his ankles. With the exception of his head, his upper arms and a portion of his upper torso, Paige remains scarred over most of his body.

You are a new associate in the law firm hired by St. Andrews to prepare a memorandum evaluating the risk that St. Andrews faces in the event that Paige files suit to recover for his injuries. Please prepare such a memorandum.

3. During his first deposition, Cano testified that when he turned toward the switches intending to turn them off, he noticed that they were already in the off position, and that he had told this to the fire marshal who arrived on the scene shortly thereafter. At a second deposition, however, he testified that he had never moved or turned away from the boilers. Nonetheless, when his original deposition testimony was read back to him, he conceded that his original recollection, as indicated in the statement that he had signed in May, 1998, was that the burner switches were off immediately following the incident.