

PRACTICE EXAM

Instructions

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

THIS IS A CLOSED BOOK EXAM.

BLUEBOOK USERS: Write your *midsemester* exam # on the bluebook.

EXAMSOFT USERS: Enter your *midsemester* exam # where you are prompted, and fill out the other information. Before beginning the exam, read these instructions, and make sure that you are otherwise ready to begin.

This exam will last 60 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 negligence, governmental immunity or liability, medical malpractice, product liability, or any other issue other than the theories of liability we have covered in Chapter 1.

**Bluebook users should DOUBLE-SPACE** their answers; Examsoft users should single-space (the printout will automatically be in double-space).

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

On July 4, 2005, a party was held at the residence of defendants Milo and Laura West. Their son Brian West, along with Shane Krehbiel, co-hosted the party. Brent Pullen was among the invited guests; he knew that a fireworks display was planned, but he was not planning to assist with the display.

Pullen assisted Krehbiel in bringing some of the fireworks in his own truck, arriving at the party between 2 and 3 p.m. Before the fireworks display, Brian West observed Krehbiel and Pullen shooting some of the fireworks, trying to blow up a tree root. Pullen estimated that he had consumed 6 to 8 beers and half of a pina colada during the course of the party. (Later tests showed that his blood alcohol level was .144%, almost twice the legal limit for operating a motor vehicle of .08%)

Krehbiel supplied the fireworks and was in control of the fireworks display. Later that evening, he asked Pullen and several people at the party to assist him in shooting off the fireworks. Krehbiel instructed those assisting in the fireworks display. Milo had previously identified the fireworks to be used that night and told them where to put the 30-gallon barrels designed to hold the mortar cylinders used to launch the night works display. Milo also told them not to drink alcohol while shooting off the fireworks.

Krehbiel instructed the shooters to verify that the firework was sitting firmly in the mortar tube, to twist the fuses together when lighting more than one firework at a time, and to back off about 10 to 15 feet from the barrel after lighting the fuses. Krehbiel provided him with a cigar to light the fuses, but Pullen was not provided with any safety equipment to use during the display. Krehbiel testified that he told the shooters not to drink while shooting off fireworks.

The fireworks shot during the display were commercial class B fireworks, which are more powerful than consumer fireworks used by the general public. A statute in the State of Linden authorizes the State Fire Marshal to adopt regulations to enhance fire safety, and the Fire Marshal has adopted the National Fire Protection Association's Code for the Outdoor Display of Fireworks. Section 1123 of that Code requires (1) a permit to discharge class B fireworks; (2) a licensed operator to be in charge of and supervise the display site set-up, proper training of assistants, provision of safety equipment; and (3) practices consistent with safety, such as keeping spectators at a safe distance, competent (and sober) operators, etc. None of these requirements were met by the Wests or Shane Krehbiel.

The fireworks were launched from three 30-gallon barrels which were filled 2/3 up with dirt. Three mortars tubes (paper and PVC plastic) were buried in each of the barrels. The first and third barrels accommodated 3- and 4-inch mortars, and the middle barrel accommodated 3-, 4-, and 6-inch mortars. Krehbiel estimated that each of the mortar tubes were used for 75 to 100 launchings the evening of the fireworks display. The barrels were set up about 20 yards from the house and about 15 yards apart. Hugh Castillo and Lance James manned the first barrel, Krehbiel manned the middle barrel, and Stuart Peters and Pullen manned the third barrel.

Pullen had assisted in lighting fireworks during the 90-minute fireworks display without incident. Krehbiel then said, "Stop, everybody stop," in anticipation of preparing a "cake" or special firework display that would serve as the grand finale. Six to 10 seconds later, Krehbiel heard a firework go off and saw Pullen on the ground about a foot from the 30-gallon barrel Pullen was using to fire off the mortars. Pullen was taken to the hospital and as a result of his injury, he was blinded in one eye, suffered nerve damage, memory loss, and required steel plates to be inserted in his head.

You represent Brent Pullen. Please analyze his prospects for obtaining tort compensation for his injuries.