

**QUESTION 7 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK
III OR IN EXAMPLIFY ANSWER SCREEN 7**

Mike and his dad Steve went to Mike's Michigan apartment to remove his last big pieces of furniture. When they pulled into the driveway and exited the vehicle, they both saw a large pothole, roughly two feet wide and a foot deep. The pothole was located in the driveway where the front walk to the apartment met the driveway. Mike said to Steve, "Geez dad, that's about as big as the Grand Canyon, we better watch out for that one!" The first piece of furniture to bring out was a large desk. Steve picked up one end and Mike the other, and Steve started to move backwards toward the door. Mike asked his dad if he wanted Mike to take that end, and be the one to walk backwards while carrying the desk. After all, Mike said, his dad's right ankle was weak from an old hockey injury, and it might be easier for him to carry the desk while moving forward. Steve declined, not wanting his son to think he had lost a step now that he was over 50. As they carried the desk towards the car, however, Steve's right ankle started to hurt, and he wanted to get to the car quickly. As they left the front walk and entered onto the driveway, Steve stepped backwards and his right ankle went into the pothole, causing his ankle to twist and his leg to break.

Steve sued the owner of the apartment, defendant Apartments R Us, in tort arguing that the owner was liable for his injuries. After discovery was complete, defendant moved to dismiss, arguing (1) it had no responsibility for injuries occasioned by the pothole, and (2) Steve can't recover for his broken leg because his pre-existing weak ankle caused the leg to break.

Discuss each of defendant's arguments, and whether defendant will prevail on either argument.

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