

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 50 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, or any other issue other than the theories of liability we have already covered in class.

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

During the 1970's, Steven Staner operated a dairy farm in Springfield, Anystate. In 1978, Staner purchased Thimet, a highly toxic insecticide containing phorate, used to kill corn rootworm. Staner ceased farming in 1981. In 1985, the United States Environmental Protection Agency listed phorate as a restricted-use pesticide, which could only be purchased by a person with a restricted-use license.

In May of 1996, David Polson ("tenant") entered into a lease agreement with Staner ("lessor") to lease the dairy farm, consisting of a dairy barn, a hay barn, a pole barn in which equipment was stored, and a house. Before tenant took possession, Staner auctioned off most of the equipment in the pole barn with the exception of a corn picker.

In July 1996, tenant took possession of the farm, moving his farm equipment and fuel into the pole barn, and bringing or purchasing a total of 90 head of cattle. In February 1997, tenant's farmhands dumped a load of ear corn in the pole barn because the entrance to the hay barn was blocked. The corn was dumped seven or eight feet from some granular material that had been spilled on the dirt floor of the barn ever since tenant moved in, which he assumed was fertilizer. Tenant had the corn ground at the local feed store.

On Wednesday, February 26, 1997, tenant took the last of the corn to the feed store to be ground, and then had his farmhand feed it to the cows while tenant began milking. The cows became violently ill. Fifty-seven cows died, and the rest had to be sold at less than market value because they could no longer be used for milking, having been contaminated.

David Scott, an agronomic products inspector employed by the Anystate Department of Agriculture, was assigned to investigate the incident. When he visited the farm on March 12, 1997, he examined a pile of granular material on the floor of the pole barn. In the pile, he found a scrap of paper bearing directions for applying a pesticide. Laboratory tests conducted on samples of the corn and soil sent for analysis by the milk sanitarian, Donald Lerch, revealed this pesticide contained phorate.

Staner tells you that he purchased one or two 80-pound bags of Thimet in 1978, used most of it, and stored the remainder of the single bag of Thimet adjacent to a Massey Harris corn picker in the pole barn. The corn picker wasn't moved until it was sold in June 1996. The partial bag of Thimet was apparently forgotten about with the junk piled all around. The bag may have been knocked over or run over at some point, but Staner is unsure.

You represent Staner. Please provide an analysis of whether or not he is likely to be found liable for the damages which Polson has suffered.