

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 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 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

In 1962, Courtaulds Fibers Inc. began manufacturing rayon fabric at its plant factory in Axis, Anystate. In the manufacture of this fabric, Courtaulds uses carbon disulfide (CS₂). CS₂ has been designated by the Federal Government as a hazardous material. Some amount of CS₂ is released into the environment during Courtaulds's production of rayon. In 1974 the Horace L. Long Jr. came into possession of a tract of land in Creola, Anystate, that is located approximately three to four miles from Courtaulds's Axis plant. In 1995, Long began to keep horses on a portion of this land; in 1996 he married and he and Mrs. Long moved into a house he had built on the property. Mr. Long states that he noticed the smell of CS₂ before 1997, and that beginning in that year the smell became a problem for him. Specifically, he complains that it caused a burning sensation in his nose and throat and prevented him from enjoying the use of his property.

The emissions level at Courtaulds's plant increased from 30,000,000 pounds of carbon disulfide in 1986, to slightly less than 40,000,000 pounds in 1997, an increase of approximately 10,000,000 pounds annually. For one year in the 1990s, the emissions level reached 45,500,000 pounds. There was testimony that at the 1986 emissions level, the odor was "not a problem" on the Longs' property, but that, at the much higher levels produced in the mid 1990s, the smell was strong enough to irritate the nose and throat. There was testimony that, at these levels, the smell was occasionally strong enough to force the Longs temporarily to vacate their property.

In 1996, the Longs noticed that the horses they kept on the property were beginning to lose weight and to have difficulty breathing. They had the horses examined by a number of veterinarians. Two of these horses died, and the Longs consulted veterinary experts. One veterinarian, Dr. Frederick W. Oehme, testified that expert told the Longs that the horses had died as a result of exposure to a toxic substance. Another expert, Dr. Linda Gardner, told the Longs that she believed the CS₂ caused the illness and death of the horses.

The Longs have written a letter to the President of Courtaulds, demanding payment for the losses suffered from the emission of CS₂ and threatening that if their demands are not met, they will seek an injunction to prohibit further operation of the plant until the emissions are reduced or eliminated.

You have found a provision of the Revised Code of Anystate that provides:
"No agricultural, manufacturing or other industrial plant or establishment, or any farming operation facility, any of its appurtenances or the operation thereof shall be or become a nuisance, private or public, by any changed conditions in and about the locality thereof after the same has been in operation for more than one year when such plant, facility, or establishment, its appurtenances or the operation thereof was not a nuisance at the time the operation thereof began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such plant...."

How would you advise Courtaulds?