

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 55 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

Norris Industries, a manufacturer of zinc-plated cartridge cases, constructed a waste treatment facility to dispose of certain emulsions from its plating plant. Part of the new facility consisted of two storage tanks: one for sodium bisulfite and one for sulfuric acid. Because of the differing natures of these chemicals, the pipe leading to the sodium bisulfite tank was to be constructed of plastic, while the pipe leading to the sulfuric acid tank was required to be of stainless steel.

The construction was performed by Gregory Construction Co. As a result of an error in construction, the pipes were switched, the plastic pipe being hooked to the sulfuric acid tank and vice versa. When this was noticed Norris consulted with Gregory to determine how to solve the problem. It was concluded that the problem could be solved by relabeling the tanks, since the tanks themselves were otherwise identical and were thus interchangeable. Prior to being delivered to the site, the tanks had been labeled with stenciled letters on the north side of the tanks. To relabel the tanks, a Gregory employee spray-painted the stenciled portion on the north side of the tank in the same gray color as the tanks themselves, and painted new labels on the south side of each tank.

In time, the paint began to fade. Thus, the old labels could be seen underneath the now-faded paint, and the new labels were not easily visible. On Tuesday, May 18, 1999, Norris called Post Transportation Co. for delivery of a tanker truck full of sulfuric acid on Friday, May 21. Post's dispatcher said that Charles Edwards, the usual driver who made deliveries to Norris, would perform the task. However, on Thursday night, May 20, Edwards' daughter was seriously injured in an automobile accident and Edwards called in the next morning to say that he would not be able to come to work. Instead, the dispatcher called on Nathan Jones to make the delivery. Jones had not previously made deliveries to Norris, and was unaware of the history of the tanks and of the switch in labeling. As he approached the area where the delivery was to be made, he saw what appeared to be labels on the north side of the tank. The words "Sulfuric Acid" were visible through the faded paint. As a result, Jones pulled up to that tank and began to pump the contents of his tanker truck. The material was thus introduced into the sodium bisulfite tank, which unfortunately contained a residue of sodium bisulfite and water. A severe and immediate chemical reaction followed which resulted in toxic gas being released from the tank. Jones was overcome by the gas and suffered severe injuries.

Jones has received some worker's compensation benefits from his employer, but he wants to know if he has any tort remedies as a result of the accident. Please analyze his prospects.