

MINI-EXAM

Instructions

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

BLUEBOOKS: If you are using bluebooks, make sure you have written your EXAM 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).

Assume that this case arises in the state of Linden.

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 5 minutes or so 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

Arthur and Judy Hambley ("Hambleys") own property directly across the street from a gasoline station, which at one time was owned by Phillips Petroleum Co. ("Phillips"). During its ownership Phillips installed a flexible neoprene hose to connect the gasoline tanks to the dispensing lines that supply gasoline to the pumps. In 1987, Phillips sold the station to Dan Wykstra. Phillips continued to supply the gasoline to the station.

In 2000, Wykstra discovered a gasoline leak at the station. A contractor hired by Wykstra was replacing the old gasoline tanks. This contractor dislodged the buried tanks and lines and left them lying on the ground. During this excavation process, the contractor ran over a gasoline line with a backhoe. The next time a customer used the pump connected to that line, gasoline spurted into the air.

Wykstra immediately turned off the line and called the Linden Department of Natural Resources ("DNR"). The DNR representative determined that the ground water below the tank might have been contaminated by the gasoline. A private consulting company verified that ground water contamination had occurred.

There is some dispute concerning the cause of the leak. In his affidavit, a DNR representative indicated that the leak came from the flexible connector installed by Phillips. Wykstra testified that when the contractor ran over the line with the backhoe, it stretched the flexible connector. This caused the connector to leak the next time someone used the pump. The report of the private environmental consulting company stated that there was no evidence of any prior gasoline leak at this station. Tank tightness tests had been performed in 1998. After the investigation was completed, Wykstra disposed of the old tanks, the old lines, and the flexible connector.

In 2004, Hambleys attempted to secure financing for their car rental company, which was located directly across the street from the gasoline station. Because of the ground water contamination, no financing was available.

Hambleys have now come to your office asking if they have any tort remedies against Phillips Petroleum Company. Please prepare an analysis of their prospects.