

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 1 HOUR. 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, p. 93—issues of negligence and strict liability. Please **OMIT** from your analysis any discussion of issues that are covered beyond that point, including proximate cause, contributory fault, and the assessment of the amount of recoverable damages.

DOUBLE-SPACE your answer in the blue-book.

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

Bob Benson is a farmer. He grows sweet corn for sale as animal feed; to facilitate growth of the corn (as well as to manufacture and sell honey), he keeps several hives of bees. During the growing season the bees venture beyond his property to that of his neighbor, Dan DeLuccia, who is also a corn grower. The bees pollinate DeLuccia's corn and return with the wherewithal to make honey.

In June of 1992 Dan noticed that some of his sweet corn fields were infested with corn borers and earworms. In order to control these pests, Dan contracted with Ag-Aire, Inc., to spray the pesticide Sevin on the affected fields. On June 13, 1992, Benson observed an Ag-Aire helicopter aerially spraying Dan's sweet corn field. After the spraying Benson noticed that many of the bees in an observation hive at his home were dead or dying. Benson also observed severe damage to several other of his colonies in the vicinity of the sprayed field. His damages amount to \$50,000.

Benson has come to your office to find out if he can recover for his losses. In the course of your investigation you discover the following facts:

The Sevin label included the following warning:

"BEE CAUTION: MAY KILL HONEYBEES IN SUBSTANTIAL NUMBERS
"This product is highly toxic to bees exposed to direct treatment or residues on crops
....

"Do not use when value of honeybees as pollinators is more important than insect control. Before applying, warn beekeepers to locate hives beyond bee flight range until one week after application or to take other equally effective precautions."

The Administrative Code of this state provides, § 29.10(1): "No person shall use ... pesticides contrary to label directions, or in a careless or reckless manner." The Code provides civil forfeitures for violations and criminal penalties for knowing violations of the statutes or regulations.

How would you advise Bob?