

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

Since 1906 there has been a lead processing plant located at 2545 Aramingo Avenue in the City of Delphi. National League Industries (NLI) purchased the plant in 1960 and has been operating it continuously since then. NLI recycles batteries from cars and other sources and produces lead ingot that can then be processed into new batteries and other industrial uses. Part of the plant is a smelter, which is used to reduce the plates from automobile batteries; the smelting process results in the emission of lead particulates and sulfoxide gases. To reduce these emissions, the plant employs a filter system, commonly known as a "bag house," to intercept these lead particulates which otherwise would be emitted into the atmosphere. The "bag house" is a building containing fiber bags. The smoke emitting from the furnace is passed through two cooling systems before passing through the "bag house" so that the fiber bags will not catch fire. If properly installed and used, an efficient "bag house" will recover over 99% of the lead emitted. On two occasions, the cooling system at the smelting plant has failed to function properly, resulting in the "bag house's" catching fire on both occasions.

Your law firm is general counsel to NLI, and you have been furnished a copy of a letter written by an attorney on behalf of individuals, firms and entities (complainants) who have lived or worked within a half-mile radius of the plant. According to this letter, the complainants have suffered from health and environmental damage, as well as a decline in property values, as a result of the operation of NLI's plant.

In the course of your research, you have come across the following statement from the Delphi Air Management Code, § 3-301(1):

The City Council of the City of Delphi finds: (a) that the atmosphere over the City is polluted to a degree which (.1) is harmful and detrimental to the health, welfare and safety of the inhabitants, (.3) interferes with the comfortable enjoyment of life, property and recreation, and with the comfort and operation of business and industry, (d) that effective control and elimination of air contaminants is essential to the furtherance of the health and welfare of the City's inhabitants, to the conduct of the normal pursuits of life, recreation, commerce and individual activity, and to sustaining life in an urban area; (e) that the emission of toxic air contaminants into the community air increases the risks respecting acute and long-term health effects; (f) that the presence of toxic substances in a workplace is a potential source of toxic emissions into the community air.

Section 3-301(17) of the Code provides: "Nothing in this Title shall be construed as limiting the rights of any person to redress in a court of law for any injury to persons or damage to property caused by air pollution."

NLI would like an analysis of the exposure that they face if the complainants choose to file suit. Please prepare a draft of that analysis.