

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

The Nashua Corporation owns and operates a manufacturing plant in Springfield, West Dakota. Nashua contracted with W.S. Bunch Co. (Bunch) to paint the interior of three underground storage tanks located on its property outside the plant. Two of Bunch's employees, Mike Anderson and Eddie Donner, were assigned to do the work.

On December 21, 1998, Anderson and Donner began to paint the first of the three tanks with an epoxy paint. The paint put off flammable vapors as it cured. The tank was 8 or 9 feet in diameter and 15 to 20 feet long. There was a single round entrance, approximately 18 inches in diameter, located in the middle of the top of the tank. A single non-explosive-proof light bulb was hanging over this entrance. Donner mixed the paint, which was supplied by Nashua, outside the tank. Anderson used a spray gun to apply paint to the inside of the tank. The first coat was applied without incident and dried overnight. The next day, when Anderson was almost finished with the second application, he started to signal Donner to send a ladder down for him. As he did so, he looked up at the manhole and noticed that the glove on his left hand had caught fire. The flames quickly spread over the rest of Anderson's body, and soon the tank was full of flames. Donner initially covered the manhole in an effort to snuff out the flames, but later pulled Anderson from the tank.

Anderson was badly burned and is now unable to work as a consequence. He has come to you for advice. In the course of your research you have found a West Dakota state that provides:

In every factory, mill, or workshop, mercantile or mechanical establishment, or other building where one or more persons are employed, if a process is carried on by which dust or fumes are caused, which may be inhaled by the persons employed therein, or if the air shall become exhausted or impure, there shall be provided a fan or other such mechanical device as will substantially carry away all such dust or fumes or other impurities, subject to the approval of the Department of Labor.

Because of worker's compensation statutes, neither Anderson's employer (Bunch) nor his co-employee (Donner) can be sued. Do you have any advice on how Anderson might recover tort compensation for his injuries?