

LAW 7115-03: TORTS II

MID-TERM EXAMINATION, SPRING 2009

Prof. Tom W. Bell

Monday, March 9, 2009, 1:15 p.m. to 2:30 p.m.

Please write your exam number here: _____ and turn in this exam with your answers. If you fail to turn in your exam you may forfeit some or all of your grade.

This exam consists of 10 multiple-choice questions and one essay question. The multiple-choice section is closed book and counts for 3/8ths of your grade for this exam. You have 18 minutes to complete the multiple-choice section, or an average of 1.8 minutes per question. Indicate the one best answer to each multiple-choice question by filling in your Scantron sheet as directed.

The essay section is partial open book. You may use your casebook, any material that I handed out for class, and any notes that you or your study group prepared. You may not use other materials, such as nutshells or commercial outlines. The essay section counts for 5/8ths of your grade for this exam. You have 30 minutes to complete it. Before you begin writing any essay answer I suggest that you: 1) read the question carefully; 2) think about exactly which issues you need to address; and 3) outline your answer. Good organization and good analysis almost always go hand-in-hand.

Write on only one side of each page, on every other line. If you use more than one bluebook, please number the booklets so that I can easily follow their intended sequence. Please write as clearly as possible. I cannot grade what I cannot understand.

Unless otherwise indicated, all events described below take place in a generic common law jurisdiction.

If you have any procedural questions about taking this exam, please contact the Registrar. If you think it necessary to assume an unstated fact in order to answer a question you may do so, but you should clearly indicate that you are making an assumption and briefly explain why you consider it reasonable to do so.

Do not turn the page until told to begin the exam.

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Multiple Choice Questions

3/8ths of exam's total grade
(maximum time: 18 minutes, or 1.8 minutes/question)

[redacted]

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Essay Question

5/8th of exam's total grade
(maximum time: 30 minutes)

Chemco produces a variety of chemicals for industrial use. In 2000, it entered into a contract with Disposal, Inc., under which the latter would receive and dispose of toxic by-products of Chemco's manufacturing processes. Disposal, Inc., purchased remote desert land for that purpose.

Disposal appointed its employee, Geo, to supervise the preparation of the dump site. Geo conducted a hydrogeological survey to assess water flow through the site and prepared lined trenches for receipt of the chemicals. Reasoning that leaks were highly unlikely, though, and eager to save money, Geo did not drill monitoring wells around the site's periphery to detect the escape of contaminants.

In 2001, Disposal began to store Chemco waste at the site. In 2006, nearby residents became concerned about the environmental impacts of Disposal's site, prompting an investigation by the Environmental Protection Agency. The investigation concluded that several years of unusually heavy rains had overwhelmed Disposal's containment barriers, causing small amounts of toxic waste to flow into the local aquifer. The EPA barred Disposal from storing any more waste at the site and advised nearby residents to discontinue using water from wells tapping the aquifer, which it estimates may have been contaminated for as long as 3 years.

Several of those residents have joined in suing Chemco, Disposal, and Geo, accusing the defendants of having exposed them and their property to chemicals known to cause permanent physical harm. Specifically, the plaintiffs claim that they have suffered damages from chemical poisoning, fear of increased cancer risks, pain and suffering, lost wages, and decreases in the value of their real property. They also seek punitive damages. Among other defenses, Chemco, Disposal, and Geo counter that any chemicals in the groundwater are more likely to have come from abandoned mines, military bases, and other sources of toxic chemicals in the area.

Assess the rights and remedies of the plaintiffs under tort law and against Chemco, Disposal, and Geo.