

1. As you leave your apt. building, you notice a barrel of toxic waste tipped on its side with liquid soaking into the ground. Who is a potentially responsible party (PRP) in these facts?

A. You notice a label on the barrel with the name of a toxic waste and an electronics company. Can the electronics company be held liable when they did nothing wrong?

B. The electronics company has a manifest showing that it gave the barrel to a trucking company for transport to the dump. Is the electronics company liable? Is the trucking company?

C. The DA prosecutes the trucking company for illegal dumping. Can the trucker also be sued for damages under Superfund law?

D. The apt. owner sues the trucker and the electronics company for negligence, trespass, nuisance and strict liability. Can the apt. owner collect?

1. The person responsible for the toxic spill under CERCLA (the national contaminated property cleanup law; RCRA is the prevention law) is the owner of the land the spill is on, the transporter of the barrel (the person who left it on the land), and the generator, or company that produced the toxic waste. All three can be held responsible for the contaminated property clean up. **CORRECT**

A. Yes, the electronic company can be held responsible for the toxic spill because they are the generator of the toxic waste and under RCRA the generator can be held for strict liability. They are responsible from start to finish. **CORRECT**

B. Yes, the electronics company is liable for the toxic spill and for the cleanup because they are the generator. It does not matter if they have a paper trail, it is still their responsibility. The electronics company has to make sure that they hire a reliable and credible source to transport and dump the toxic barrels. Yes, the trucking company is also responsible for the contaminated property clean up because under RCRA the transporter is also responsible for proper disposal. **CORRECT**

C. (Not really sure of the Superfund Law, I think I understand it but not sure). I want to say that yes, the trucking company could be sued for damages under the Superfund Law if the city already choose to clean up the property, taking responsibility and using their funds to clean it up, before the trucking companies case was finished. **CORRECT. You can be prosecuted criminally and sued for damages civilly for the same action.**

D. Nuisance- Yes, because it is interfering with the use of the apartment complex. The residents will have to avoid the area and possibly evacuate, in addition the area of the spill will be unusable to the property owner. **CORRECT because you used the "interference with use" magic words, and related the facts to the magic words. however, as a judge, I would say that this was not a nuisance. Nuisance is an**

interference with use of someone's property from on another property. An example might be noise from a concert interfering with use on nearby resident's property, or a railroad train's vibrations cracking an adjacent building.

Trespass- Yes, because it was a physical invasion to the property. The transporter physically invaded the property, leaving behind a toxic substance that is not part of the owner's property. **CORRECT**

Negligence- Yes, because a reasonable person would not dump toxic substances in an improper dumping area. A reasonable person would dispose of the substance at the correct site, not an apartment complex. **CORRECT**

Strict Liability- Yes, because the substance is toxic and dangerous to the owners property, the property owner, and the residents on the property. **CORRECT**

2. Congress enacts a law requiring everyone who has a car without pollution controls to stop using it. The Wise Use Society sues in federal court to block the law.

- If you were the US Attorney, what arguments would you make to justify the law under the Constitution?
- If you were Wise Use's attorney, what arguments would you make to block the law?

The US attorney could use the **interstate commerce law** because the cars can cross the state lines and the gases from the cars do not confine themselves inside one state. Wise Use would use the **takings law** because the government is taking their transportation, their vehicle, without offering anything in return. **CORRECT**

Wise Use's arguments against the law: **Due process**: car owner was not given notice of hearing, an opportunity to participate, or sufficient time to put pollution controls on his car. **Equal protection**: trucks/SUVs without pollution controls were not made illegal. cars were unfairly discriminated against. Delegation: Congress delegated too much authority to EPA to develop the regulations. Congress must specify what is to be done, and this law gave too much discretion to the administrative agency.

These last 3 involve some creativity that is not the normal approach to a question. But your goal is to make me think you understand the 4 restrictions above. The delegation answer can be memorized and work for any question that you might get. Due process is similar; just say that no hearing or opportunity to participate were given. Equal protection involves finding someone who seems to be in the similar situation, but is not being regulated.