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Products Liability

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Gonzaga Law School

FINAL 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 your **EXAM NUMBER** on each bluebook, that you have read these instructions, and that you are otherwise ready to begin.

This exam will last 3 HOURS. You will have 30 MINUTES to read and outline your answer. **DO NOT BEGIN WRITING** your answer until I announce that 30 minutes is up. You will then have 2½ hours to answer the questions. Before outlining your answer, **REREAD** each question to be sure you haven't missed anything.

Please **OMIT** from your analysis any discussion of (1) contributory/comparative fault; (2) cross-claims by one defendant against another.

DOUBLE-SPACE your answers in the blue-book.

Use **SEPARATE BLUEBOOKS** for EACH QUESTION. Label each bluebook according to each question, and if necessary, book number, e.g., "Question 1, Book 1"; "Question 1, Book 2"; "Question 2" etc.

You are welcome to use abbreviations, but indicate what they are, e.g., "Andropov (A) would sue Brezhnev (B). B owed A the duty of"

Plan on spending at least 10 minutes at the end **PROOFREADING** your answers. You may not write **ANOTHER WORD** after time is called.

Each question has been assigned a point total, and the exam as a whole has a point total of 130. Spend the amount of time on each question reflecting its relative worth.

You may **KEEP** your copy of the exam questions if you wish.

REMEMBER THE HONOR CODE: DO NOT DO THINGS THAT TEND TO IDENTIFY YOURSELF, SUCH AS:

- (1) Ask questions like "Is it okay if I forgot to double- space?" "Is it okay if I used purple ink?" "Can I just leave this loose sheet like this?"
- (2) Make comments before or after the exam having the same effect.

DOUBLE SPACE!

GOOD LUCK!

HAPPY HOLIDAYS!

Question 1 (90 points)

Mick Agger is a guitar player with a world-famous band. His rock-'n'-roll music requires the use of large amplifiers to achieve optimum sound quality. He is constantly in search of better amplifiers with better sound quality, and has made it clear that he has plenty of money to spend if it will improve sound quality. Although he occasionally uses an acoustic guitar (one that, like a traditional guitar, utilizes the hollow sound box of the guitar to make the guitar heard (it can then be amplified like the human voice through a microphone and sound system)), he prefers his electric guitar, which requires the use of an amplifier to pick up the vibration of the guitar strings to make them audible.

The Bumper Co. makes amplifiers in the old-fashioned style, with lots of tubes (rather than transistors) and appeals to the "purist" musician. Bumper wants very badly to get Agger to use one of their amplifiers, since it would help their image and sales. After a call to Agger's manager, Bumper's President writes Agger the following letter:

Dear Mr. Agger:

We are pleased to announce the introduction of a new line of amplifiers, the "Rolling Rock" series, that is superior in performance to any amplifier currently on the market. We would be happy to ship you one of the first production models, at no charge, provided that if you use the amplifier in one of your concerts, we can use that fact and your likeness in our marketing brochures and advertising. We are confident that you will be so pleased with its performance that it will become your amplifier of choice. We of course will make any necessary repairs to the amplifier during its normal life, and it will be yours to keep regardless of your decision. Please phone our sales department if you would like a "Rolling Rock" amp on this basis.

Sincerely,

/s/ The Bumper Co.

Bumper then receives a call from Agger's manager telling them to ship the amplifier. They do so, and when Agger connects it to his guitar he is indeed very impressed with the sound quality. During a subsequent studio session the bass player brings a pitcher of margaritas and sets it on top of the Rolling Rock amplifier. In the middle of his guitar solo Agger swings the neck of his guitar around, hitting the pitcher and drenching the amplifier with its contents. An electrical circuit is instantly formed by the margarita mix from the high voltage tubes in the amplifier through the metal in the guitar neck to Agger's hands, and Agger receives rather nasty electrical burns in addition to a terrible shock. While Agger is in the hospital his lawyer then writes a very nasty letter to the Bumper Co. demanding full compensation for his injuries as well as punitive damages.

You have just been hired by Bumper's legal department. They have asked you for

your evaluation of Agger's claim. In the course of your investigation, you have learned the following things: (1) In response to publicity about the accident, Bumper recently redesigned the Rolling Rock amplifiers to include a "ground-fault-interruption" circuit--similar to the kind incorporated in bathroom electrical fixtures--that will greatly reduce the risk of electrical shock. (2) Bumper's chief engineer tells you that although drinks are frequently spilled on amplifiers, no previous incident like this had been reported. He tells you--to your surprise--that pure water does not conduct electricity; rather, it is the dissolved minerals in water that make it conductive, and margaritas, unlike most drinks, contain a very high concentration of salts and minerals, without which this freakish accident could never have occurred. (3) The amplifier's tubes cannot be completely enclosed. Because, unlike transistors, they carry relatively high voltage electrical current and generate considerably more heat, they must be ventilated at the side. The Rolling Rock series uses tubes because they are preferred by some "purists" like Agger.

Write a memo to the Board of Directors of Bumper analyzing Bumper's potential exposure to Agger and its options.

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Question 2 (40 points)

Max Malone was one of three carpenters employed by Jack's Cabinet Shop. The cabinet shop buys cherry, oak, and other woods, which are cut into standard-size pieces and formed into cabinets. Salesmen take orders from customers, make sure that the cabinets are assembled per the order, then load them onto a truck for delivery and installation at the customer's home. The cabinets are assembled with nails and large quantities of "Glue-All" (manufactured by Foremost Industries). One of Glue-All's primary ingredients is formaldehyde, a common chemical compound (HCHO) that is contained in various amounts by such things as spinach, toothpaste, human cells, tobacco smoke, embalming fluid etc. Every wood glue on the market contains about the same amount of formaldehyde. Glue-All is shipped in 5-gallon cans. At the cabinet shop each carpenter has a glue gun with a large reservoir and when it is low he pours Glue-All from the can into the reservoir. (When the trigger on the gun is squeezed glue squirts through a nozzle onto the wood.)

The label of the 5-gallon cans reads as follows:

GLUE-ALLThe Finest Wood Glue Available!Guaranteed waterproof
Resists mildew and termites

Dries completely in 4 hours

CAUTION: Contains formaldehyde.
Use only with adequate ventilation

Prior to March 1987 Max was a part-time aerobics instructor and physically very fit. In March 1987 he experienced breathing difficulties and visited a doctor. After conducting several tests the doctor concluded that Max had developed an asthmatic condition, apparently formaldehyde-related. Now Max periodically has asthma attacks that require supplemental oxygen from a portable tank to prevent lung failure.

Max comes to you to find out whether he has a products liability claim. In your investigation you talk at length with his doctor and learn that while most persons have a reaction (irritated eyes and throat membranes) when exposed to large amounts of formaldehyde, all symptoms disappear when the exposure ends. About one in a thousand, however, develops a permanent "hypersensitivity" to formaldehyde; that is, small amounts will give such persons the same symptoms as those of a "normal" person who is exposed to large quantities of formaldehyde. About one in fifty thousand will eventually develop an asthmatic reaction like Max's. You also talk at length with Jack, Max's employer. He tells you that during good weather the shop is kept open and fully ventilated. During the winter, however, the shop is closed up, except when the trucks are loaded and unloaded and the large garage doors are kept open. He had also heard quite a bit about formaldehyde, but because particleboard, plywood, and other wood products have formaldehyde, Jack didn't know what to do. Max says he noticed that he would cough and get a headache when it was "stuffy"--he thought it was from all the sawdust in the air--but any symptoms always disappeared by the time he worked out at the gym and went home. Also, he was surprised that the Glue-All label contained a warning at all, since he only come in contact with it when he was loading up the reservoir in his glue gun (about once every two months).

Please draft a memo to the file analyzing Max's product liability theories and his chances of recovery.