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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. Before outlining your answer, REREAD each question to be sure you haven't missed anything.

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 135. 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 (60 points)

Annie Armonk ran a large grocery store called Peachauers. Peachauers carried a wide variety of food and convenience items. There was a section for "Household" and "Hardware," including electrical items like light bulbs, extension cords, fuses, etc. She also had plumbing supplies like washers, parts for fixing toilets, etc. It also had some home handyman items like hammers, nails, etc. One of the items they carried was saw blades. For \$9.99 you could get a replacement blade for a circular saw.

Bobby Blanchard shopped regularly at Peachauers. Mostly he got groceries, and he avoided the hardware and housewares because in general they were priced higher than the large hardware stores. But occasionally he would pick things up there because it was easier than driving all the way downtown, particularly on a weekend when things weren't always open. Peachauers was open from 6 in the morning until 11 at night, and so there were times when he did home projects that it came in handy.

Blanchard was working on a dollhouse for his 5-year-old daughter Suki. It was a rather involved affair, measuring about 3 feet high and about 3 feet square. He was using a 7-1/4" circular saw to cut large sheets of plywood into the right shape for him to use in the dollhouse. The hardest work was making the smaller cuts and gluing everything together, but he found the circular saw was handy because it made straighter cuts and was faster than the little handsaw he used to do the fine work. Blanchard was in the middle of cutting a 4'x8' sheet of 1/8" plywood in half (that is, into 2 sheets of 4' x 4') when he heard a sound from the saw. He pulled the saw out and looked at it. It appeared that one of the teeth on the blades had gotten bent, and so he decided that he'd have to get a new blade. It was 6 p.m. on a Saturday night and so he figured he'd just go to Peachauers to get the replacement blade and finish the job. He got in his car and drove there and got the blade for \$10.78 (with tax). He drove home and then got out his tools to replace the blade. He loosened the nut the holds on the blade (that took a little bit of muscle power, because they are put on pretty tight), and then removed the old blade. He didn't really look at the new blade packaging, because he'd replaced blades before. The new blade went on without difficulty, and he tightened down the nut as tight as he could.

Then he started sawing again. He noticed a funny kind of smell when the saw blade first started operating, but he assumed it was just some kind of oil on the surface of the blade or other packaging. However, all at once the saw jammed in the wood and "kicked" backward, knocking him over and causing him to hit his head on the cement basement floor, injuring him severely.

Blanchard comes to you for advice about what kinds of tort remedies he might have. In the course of your investigation you discover the following:

- (1) The saw blade packaging contained the following:

CLEAR-CUT BLADES. Quality Replacement Parts for Your Saw. Style 444. For use in cutting 2x4 and other dimensional lumber. For plywood, particleboard, and other composite woods, use Blade Style 555.

Use only as a replacement blade for 7-1/4" circular blades. Always use protective eyewear and caution with this as well as with other power tools. Quality guaranteed or your money cheerfully refunded.

- (2) The blade was inspected after the accident by Dr. Frankl, and he found that the blade was not perfectly straight. He admits that it is possible that the blade might have been bent as a result of falling on the ground after the accident, but he doesn't think so.

(3) Dr. Frankl has worked as a consultant for saw manufacturers. He says that home handymen frequently just buy one saw blade and use it for a variety of different woods. Blades differ in the size of the teeth and the arrangement of the teeth, making some better for 2x4's and other lumber that is just one kind of wood. Other saw blades work better for particleboard and plywood, which are sandwiched together using lots of glue.

Please prepare an analysis of the potential tort claims that might be brought on Blanchard's behalf.

Question 2 (75 points)

Peter Pluto is a dentist, but one of his hobbies is restoring old cars. He bought a classic 1956 Dragonmaster, which had been kept in a garage by a little old lady. It hadn't been driven much, and the seats were in great condition, but the exterior of the car was showing its age. In particular, the chromework (there was about 5 acres of it) was in bad shape. But Peter liked to do the work so much that it didn't bother him in the least. In fact, he rather enjoyed it.

Peter had the car parked out in the driveway one lovely spring afternoon, and was polishing the front grille. He had a large can of EverBright, a chrome cleaner that had lots of petroleum distillates in it. It was the large size that was ordinarily sold to commercial buyers, but Peter got it in that quantity because he went through it the way most people go through motor oil. In any event, he had a rag in one hand and the EverBright in the other hand when the phone rang from his commodities broker. Peter had installed a phone in his car, and he used it to answer the call, after putting the rag and the can on the ground. However, the broker needed some more information that Peter had in the house, so he put the car phone on hold and went into the house to get the papers. He picked up the phone in there to continue the call. While he was on the phone Jimmy Jones, 3 years old, who lived next door, wandered over. He saw this big can on the driveway that had milky stuff around the edges, and he thought it might be a milkshake. (He'd seen Peter come home with milkshakes from McDonald's.) Peter picked it up (it took two hands) and brought it closer to check it out. The cleaner spilled over his face and he fell down, crying. Grandma, who had been babysitting for Jimmy's parents, heard him cry, but stayed for the last minute of the soap opera she was watching. When it was over she came out and found Jimmy with this stuff all over his face and then she looked at the can. The can said "Warning! Poison! Do not take internally!" Grandma concluded that he been drinking the stuff and was about to die. She fell into a swoon. Peter then came out and took control. Jimmy was taken to the emergency room to be checked out, but aside from having some irritations on his face where the cleaner had sat for a couple of minutes, he was fine. Grandma, however, was permanently paralyzed from a stroke.

Jimmy's parents have been appointed by the court to handle any claims that might be brought. You have been assigned by the lawyer representing the parents to analyze the tort claims that might be filed. Please draft a memo analyzing those claims.