

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.

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 may be liable to A because"

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 140. 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.

DOUBLE SPACE!

GOOD LUCK!

HAPPY HOLIDAYS!

Question 1 (80 points)

Joseph Paltin purchased a Trail Cruiser dirt bike, manufactured by Tryco Corporation, from a local store called Sports-N-Mor, in December 1987. Paltin bought the bike for his son Perry. He decided to buy the Trail Cruiser after comparing prices with other models, and after Perry had showed him an advertising brochure put out by Tryco showed several riders, looking like teenagers (but hard to distinguish because of the helmets they were wearing) in mid-air, astride their Trail Cruisers, in what appeared to be a moto-cross race. The owner's manual for the bike came with the following instructions:

THIS VEHICLE WAS MANUFACTURED FOR OFF-THE-ROAD USE ONLY. DO NOT OPERATE ON PUBLIC STREETS, ROADS OR HIGHWAYS. ALWAYS KEEP TIRES PROPERLY INFLATED. ALWAYS WEAR A HELMET. MINORS SHOULD RIDE ONLY WITH ADULT SUPERVISION.

Perry received the bike on Christmas Day, 1987, when Perry had just turned 11 years old. To try out his new acquisition, and in celebration of the holiday, Perry rode the bike briefly when he first received it, but because the weather was poor throughout the winter it was not extensively used until the summer of 1988. The bike was primarily used at a local facility called The Riding Range. Riding Range, a non-profit organization, was set up by a group of parents who wanted a place for their children to ride trail bikes. Riding Range was open from March to November, and consisted of a large field that had been converted into a riding course. Most of the time the course was open for riding on an individual basis, but on weekends it was used as a racecourse. Parents took turns supervising, and there was a small shop on the facilities with an air compressor for pumping up tires, and tools for doing repairs on the bikes. Perry usually got to the Range by having Joe drive him there with the Trail Cruiser carried in the bed of his pickup.

The terrain of the race course was quite varied. There was a lot of up-and-down that created a chance for the rider to "jump" over the top of a hill and land his bike on the other side. When a rider lost control of the bike on a jump, he could avoid injury by wearing protective clothing and a helmet. Originally the bottom of the "jumps" was soft dirt, but after continued use the dirt often eroded, leaving some exposed rock or hard ground underneath. Perry was an enthusiast for the jumping, and prided himself on his ability to land bike after a jump and keep riding. However, the continued pounding of the front rim onto the hard ground meant that he had problems with the front tire and tube, and kept replacing them.

On Saturday, June 3, 1989, Perry arrived at the Range early because he had to install the third tire and tube replacement, which he had purchased from a local B.F. Goodrich dealer. The tire and tube were difficult to put on in part because the rim had been pounded so often that it was irregular in shape. Perry used a pair of heavy-duty pliers to try to bend the rim back into a shape more closely resembling a circle, but it left a jagged area in the rim where it was bent.

After several times around the course he noticed that the front tire was flat, and so he filled it up with air. The tire deflated again, and so he stopped at the shop to inflate it with air. Because he was scheduled for a race in a few minutes, and to keep his tire filled with more air, he pumped the tire with extra air. On his first trip around the race course he went for a high jump off the first turn. While he was in mid-air the front tire seemed to explode, and when he landed the front rim broke at the point where it had been bent with the pliers, and one end of the broken rim punctured his riding jacket and entered his abdomen. Perry had to endure extensive surgery, involving removal of his spleen and shortening of the large intestine.

Perry's father has come to your law firm seeking advice. In the course of your investigation and preparation of the case you have discovered the following things:

- (1) An expert you have hired has told you that in his opinion the rim fractured as a result of metal fatigue. Because the rim was continually bent from impact, and particularly when the pliers were used to bend it back into shape, the metal suffered fatigue, and collapsed the way paper clip breaks after you bend it back and forth several times. Trail Cruiser bikes now use a different alloy in the rims, one which is less susceptible to metal fatigue.
- (2) The Riding Range has been redesigned so that the low spots, where the bikes are likely to land, are soft dirt. Privately, the parents and other persons connected with the Riding Range have expressed a sense of responsibility for at least part of the injury. Unfortunately, however, no one connected with the Range has any assets and the only available insurance coverage is a \$50,000 liability policy carried by the Riding Range.
- (3) The medical expert you have consulted indicates that Perry will have a serious lifetime disability, disfiguring scars, and significant discomfort and embarrassment. In talking with other plaintiffs' lawyers you have determined that the jury range for a case like this, including pain and suffering damages, would be about \$500,000.

The insurance carrier for the Riding Range has contacted your office and would like to discuss settling the case. You have notified the Paltins of this development, and they have scheduled an appointment to discuss the case in general, with a particular eye toward what advice you should give them in considering potential settlement offers from the Riding Range. How would you advise the Paltins?

Question 2 (60 points)

Heather Josephs consulted her gynecologist, Dr. Brenda White, in 1975. One of her requests was family planning advice. After an examination and consultation, Dr. White prescribed Estro 80, an oral contraceptive containing estrogen, manufactured by the

Estronomical Corporation. The literature accompanying Estro 80 included the following information for the prescribing physician:

Estro 80 may cause hypertension (high blood pressure) in some women. In a small number of cases hypertension may have serious adverse consequences.

Although she experienced some tenderness and a little water retention as a result of using Estro 80, Heather was generally pleased with its effectiveness, and she had her prescription renewed every year for ten years, until 1985, when Heather and her husband decided to have children. (In the intervening ten years, Heather had heard some stories about isolated problems with oral contraceptives, but her impression was that it was superior, because of its reliability, to most other contraceptives.) Heather had two children, and in 1988 she made an appointment with Dr. White, prior to returning to her job as an account supervisor for a local brokerage firm. Heather was about 40 pounds heavier than her pre-pregnancy weight, but her blood pressure was within normal limits, and so Dr. White again prescribed Estro 80. After a few months Heather began experiencing abdominal pain. She attributed the pain to the stresses of juggling her job and her child-care responsibilities, and to her problems controlling her weight. She found herself taking antacids on a regular basis, but finally made an appointment with Dr. White in 1989. Dr. White discovered that Heather's blood pressure was very high, and worse, her abdominal pain was caused by serious kidney failure. Dr. White immediately discontinued the prescription of Estro 80 and Heather's blood pressure quickly returned to normal levels. However, significant kidney failure had set in, and eventually a kidney transplant was required.

Heather has now come to your office for advice as to whether she has any claim against Estronomical. She says that she did a blood pressure check at the local drug store shortly after returning to work and knew her blood pressure was up, but never considered the birth control pills, since she had taken them for years. A medical expert you consult tells you that although the number of women experiencing problems with hypertension is small, other forms of birth control should be explored, since the consequences can be devastating. In her opinion, the kidney failure in this case was the result of the hypertension induced by Estro 80. (The antacids had no effect.) She also tells you that some other estrogen-based oral contraceptives contain lower doses of estrogen to avoid adverse reactions.

Heather doesn't think Dr. White did anything wrong, and she doesn't want to sue her in any event, but she would consider suing Estronomical. What would you tell her about her prospects for recovery?