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Torts I

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SAMPLE ANSWER TO MINI-EXAM

This case is based on *Long v. Courtaulds Fibers, Inc*., 779 So.2d 198 (Ala. 2000), in which reversed a jury verdict in favor of the plaintiffs, refusing to hold the manufacturer strictly liable for the injuries sustained, and finding the evidence inadequate to support a verdict on the basis of negligence.

Courtaulds Fibers Inc. ("CFI") faces potential liability from a number of quarters. The plaintiffs ("Ls") are entitled to recover damages if they can prove that CFI breached a duty owed to them. They can do that by establishing either that (1) CFI has acted negligently; or (2) that CFI is engaging in an activity that is abnormally dangerous.

Negligence. CFI can be found negligent if they have failed to act as a reasonably prudent person would have under the same or similar circumstances. One way to establish the standard of reasonable care is by using a standard established by Judge Learned Hand, which compares the burden of preventing the injury against probability of injury multiplied by the magnitude of the potential loss. The information supplied doesn't allow a comparison, but if it turns out that the CS_2 emissions could be reduced at a modest cost compared to the environmental consequences, a reasonable person would be expected to apply those measures. Another benchmark used to judge reasonable care is the custom observed within the defendant's industry. If CFI's practices are consistent with what is standard within the rayon production industry, then that would support their claim of using reasonable care. On the other hand, Ls can certainly suggest to the jury that the entire industry has lagged behind the standard of reasonable care.

Another argument would be to consult the standards established by statute or EPA regulation. If CFI is out of compliance with those standards, such violations could be considered negligence per se, or negligence as a matter of law. The statute recited in the fact pattern doesn't illuminate what the standard for CS_2 emission is, but seems to offer some support to CFI on the nuisance issue, considered below.

The doctrine of res ipsa loquitur would probably not be of any use in this case, since it applies to cases where evidence to explain how the accident happened is missing. That doesn't seem to be the case here. In addition, if CFI had in place standards or policies of its own that were violated during the 1994-97 period, Ls would argue that those standards or policies were a minimum level of reasonable care and that CFI's violation of those standards is itself negligent.

Strict Liability. Two theories could be used to establish that CFI should be held strictly liable. First, the activity may be considered abnormally dangerous. To make that determination, courts apply a test found in the Restatement of Torts, §§ 519-520, which measures the advisability of applying strict liability based on the application of six factors: (1) is there a high likelihood of injury? (2) is the harm likely to be grave? (3) is reasonable care insufficient to eliminate the risk? (4) Is the activity uncommon? (5) Inappropriate to the area? (6) Does it provide minimal benefit to the community? Based on these criteria, I think Ls would have a tough time establishing strict liability, since the major consequence of releasing CS_2 seems to be mostly irritation rather than

catastrophic injury. (On the other hand, if indeed the horses are dying as a result of exposure, then that suggests there might be hazards to human health which would make the gravity of risk significantly greater.) Moreover, while rayon is not as vital to a society as, say, gasoline, it's an important commodity.

A second theory to support strict liability is if the defendant's activity constitutes a nuisance. Ls must establish that they have a reasonable expectation to be free from the intrusion of CS_2 fumes. The Anystate statute quoted in the fact pattern seems to suggest that Ls will have difficulty establishing a nuisance after CFI has operated their plant for at least a year, which they have. This is consistent with a common law doctrine that a person who "comes to the nuisance" is in a poor position to complain. On the other hand, it also seems that emissions have been increased above the level that were in effect earlier. Moreover, Ls could argue that the higher levels of emissions reflect a "negligent or improper" operation of the plant, denying the protection of the statute.

As far as the threat of injunction, the court could order that the plant's emissions be limited to levels that would not constitute a nuisance, but public policy considerations might also counsel in favor of a damages-only remedy.

CHECKLIST

- ☐ Overview
- ☐ Breach of Duty
- ☐ *Negligence* theory
- ☐ defined as failure to use reasonable care
- ☐ Learned Hand test
- ☐ Custom of the industry?
- ☐ Compliance w/ ind. stdrd could be found inadequate
- ☐ Negligence per se
- ☐ jurisdictional variations
- ☐
- ☐ No res ipsa b/c no missing evidence
- ☐ Rulebook problems?
- ☐
- ☐
- ☐ Strict Liability
- ☐ Abnormally Dangerous Activity
- ☐ Restatement criteria
- ☐ No high magnitude of harm
- ☐ social value is moderate☐
- ☐ Nuisance
- ☐ What are Ls' Reasonable expectations
- ☐ Statute seems to offer help
- ☐ But why were emissions increased?
- ☐ Injunction is a possibility, particularly if prohibiting excess
- ☐

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