

MINI-EXAM SAMPLE ANSWER

Tom and Nancy would have potential claims against Mike; against Walgreens; and against the manufacturer of the CO₂ cartridge.

Claim against Mike

Mike would be liable to Tom and Nancy if he was negligent in placing the cannister in a place in the car where it was subject to such high heat. Negligence is the failure to use reasonable care—the care that a reasonably prudent person would use in the same or similar circumstances. The facts do not state whether or not there was some kind of warning that came with the cannister; if instructions accompanying the canister warned the user not to expose to high heat, then Mike would likely be found negligent by a jury in disregarding them. Since the burden of taking such a precaution is slight compared with the risk of serious injury, a jury would probably find Mike negligent. Perhaps some statutory or administrative regulation governs the use of canisters like the one that exploded. If there were a violation of a statute designed to prevent injuries of this type, then Mike might be found negligent as a matter of law unless he could show some kind of excuse for violation, which doesn't emerge here.

Claims against Walgreens

Walgreens is responsible for any negligent acts that Mike commits during the course and scope of his employment. Although he was working at Walgreens at the time the accident occurred, and although it occurred at Walgreens, it is unlikely that Walgreens could be held liable, since it wasn't part of Mike's employment to leave such things in his car. Still, further investigation should be carried out in the event that Mike doesn't have adequate insurance to cover the injuries.

Manufacturer of the Canister

The manufacturer of the cannister could be held liable if they negligently manufactured the cannister or failed to provide an adequate warning of the potential for injury. Perhaps a can of this type was defectively manufactured; we don't know whether it is normal for such things to explode even when heated in the back of a hot car. We might use the doctrine of *res ipsa loquitur*, which creates an inference of negligence under circumstances where an accident is of a type that normally doesn't occur in the absence of negligence, the defendant has exclusive control over the instrumentality causing the injury, and other causes have been sufficiently excluded as explanations. In this case it's unclear whether the explosion of the canister suggests a defect or negligence in the production of the canister, or on the other hand may be normal for a product of this type.

Similarly, we should inquire further about the nature of any warning provided with the canister. If there was adequate warning and Mike simply didn't heed it, then Mike would be primarily responsible. On the other hand, if the warning wasn't adequate to protect people like Tom and Nancy (perhaps using the Learned Hand analysis suggested above) then the manufacturer could be found negligent. Another relevant factor would be the custom of the industry in providing warnings or in the design of the product. If the canister met the usual standards for the industry, that

would help establish that the manufacturer had used reasonable care. On the other hand, it is possible that the danger posed by this product is so great that the entire industry has been lax in failing to prevent injuries such as Tom and Nancy suffered.

As a final, remote possibility, the manufacture of the canister might be considered an abnormally dangerous activity. Under the Restatement (2d), § 520, an abnormally dangerous activity is one that fits a variety of criteria, including whether the activity poses a high risk of injury that can't be avoided through the use of reasonable care, etc.¹

¹If this were a real-world exam, or even a second-semester exam, the problem would be analyzed according to the unique rules applied to *product liability*. For purposes of an exam at the beginning of the first semester, I have written this answer as though I had no knowledge of the product liability rules.

CHECKLIST

- Overview
- Claim v. Mike
- Concept of Reasonable Care
- Reasonable care defined
- Learned Hand formula
- Was there a warning Mike ignored?
- Statutory regulation?

- Walgreens
- Vicarious liability
- Was it part of course & scope of employment?
- Probably not

- Mfr of canister
- owed duty to use reasonable care in construction
- perhaps some defect in the canister
- res ipsa loquitur
- elements of res ipsa
- adequacy of warning
- custom of the industry
- strict liability
- Restatement criteria

EXAM NUMBER _____