

## **Final Examination**

### **Products Liability**

**Professor Lawrence Jones**

**Spring 2006**

1. You have **three (3) hours** to complete this exam.
2. This is a **closed** book exam. Students may not use any outside materials or confer with each other during the exam.
3. This exam consists of **three (3)** essay questions. You must respond to two of them, though you may write on all three. **Your grade will be based on your best two essays.**
4. Write your response in the blue books provided. Write on every other page to permit instructor comments. Please write clearly.
5. Write your exam number on your exam envelope. Put your student exam # at the top of this page, each page of questions, and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
6. At the conclusion of the exam, return all test materials, including blue books, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

## **GOOD LUCK!**

## **The Facts for Questions I and II**

Delta Drugs designed and manufactures Algo brand pills that greatly reduce the bothersome symptoms of particular allergies. Delta intended to instruct users both on the package and with a single page insert that Algo users should not drive a vehicle after taking an Algo pill because Algo induces sleepiness. But the machine that was designed to insert the page ran out of paper. The machine's operator, Opera, did not notice this immediately. Delta Drugs sold packages of Algo to retailers such as Super Store.

Alex purchased a package of Algo pills from Super Store. No prescription was needed; he purchased it over the counter. The instruction on the outside of the package was covered by a sticker promoting Super Store's Going Out of Business low sale price. There was no paper insert in side the package.

The next morning, Alex took his first Algo pill just before driving to work in his new Lexis sedan. He noticed that he was sleepy, as usual. He was used to driving while sleepy and had never before fallen asleep at the wheel. However, if he had realized that there was a new cause of sleepiness working in his system, it is a close question whether he would have taken the bus (inconvenient) or taxi (expensive). He insists he would not have driven, though the defendants have ample evidence of instances of his driving late at night while knowing he was very sleepy.

Alex fell asleep. His Lexis crossed over the center line and crashed in to the front end of a Ford sedan driven in the opposite direction by Fred. A small new Mini driven by Mina crashed in to the rear of the Ford. All three drivers were seriously injured and their vehicles were badly damaged. Fred's Ford was damaged so badly at each end that it will cost more to repair than to replace.

Mina insists that the brakes of her new Mini suddenly and inexplicably failed. The parts of the small Mini that were necessary for its brakes to function properly were completely crushed. None of the experts that Mina employed are willing to testify that the brakes were defective because of the destruction of the critical parts. Similarly, the experts employed by Mini Corporation could not prove they were free of manufacturing defects for the same reason. No challenge was made to the design of the brakes.

## **I.**

Fred sued Mina, Mini Corporation, Delta Drugs and Super Store for damages. Each defendant moved for a summary judgment of no liability. If Fred does survive any defendant's motion for summary judgment, that defendant will move for a directed verdict at the close of all the evidence presented by any remaining parties. Discuss whether the trial court should grant any of these motions.

## **II.**

Alex filed an action for damages against Delta Drugs and Super Store.

Alex, Delta Drugs and Super Store's liability insurance company have employed you to serve as a mediator in helping Alex, Delta Drugs and Super Store reach a settlement in the shadow of the [governing] law. The parties have agreed that the reasonable value of the medical services that Alex has received in the past and will need in the future is one million dollars. His medical insurer will pay for all of it. If these are added to his other economic damages, his economic damages will total two millions dollars. The parties also agree that full compensation for the pain and suffering that Alex has and will continue to suffer would be in the range of six million dollars, give or take two million dollars. Alex assured everyone that he will not attempt to collect more than one million dollars from Super Store, because that is the maximum of its liability insurance coverage

to any one person according to its liability insurance contract with Insurco; Super Store is bankrupt.

In advance of the first meeting, prepare to guide that meeting to the appropriate settlement figure if, as the parties have agreed, the claims by Alex must indeed be based on the governing law as if the claims were tried in a court of law.

You may assume that the governing law is either (1) the law of California today, or (2) the traditional approach to several doctrines of tort law. The traditional approach adheres to the rules in the Second Restatement of Torts Sec. 402A and all of its comments as to strict liability in tort and its rule - the traditional one - as to the role of contributory negligence and assumption of risk. Also recall the traditional rules that were in place in most states as Sec. 402 A began to be adopted as to joint and several liability, the collateral source rule and the economic loss rule.

Discuss your approach to the method for calculating an appropriate settlement figure in light of either assumption about the governing law.

### **III**

Dun Playgrounds, Incorporated (Dun) designs, manufactures and markets playground systems to schools and municipalities. Rather than selling individual pieces of equipment such as slides, monkey bars, etc., they install the entire playground. This includes providing the layout for the playground, including the walkways, benches, and the protective padding on which the playground equipment is placed.

A public school district contracted with Dun to install its best playground system on the grounds of two of its kindergarten-through-third-grade (K-3) schools. Several years later, Pete, a big third year old, suffered a broken neck.

The facts are that Kim, a little kindergarten girl, had climbed up seven rungs of the eight-rung ladder attached to a slide. Pete was at the top of the ladder. Kim waited patiently for Pete to complete his slide down. But he refused to slide down. Watch this! Pete said, as he tried to stand on one leg. Wow! said Kim admiringly. Are you going to jump from way up there?

Pete was disappointed that little Kim was not impressed by his bravery in standing on one leg at the edge of the top of the ladder. Of course not. I've already done that. It's soft as a pillow down there\*. That's dumb. Watch this! It was the first time Pete attempted to do a somersault jump the way he had seen his older brother do at the Town Park swimming pool.

The jump did not go as planned. Pete landed on his head on the bottom rung and broke his neck. The prognosis is that Pete will be permanently paralyzed.

**What are Pete's chances of prevailing? Discuss in light of the best arguments each side can make. If you recall any relevant California Law be sure to apply it.**

\* Not quite. The padding was made of pulverized rubber material. It was noticeably spongy and **six** inches thick. But it was more firm than most pillows. It seems there had been a settlement of a prior accident to a five-year-old boy who was pushed from the seventh rung and landed head first on the three-inch padding, Dun settled the case by paying a large amount of money in to a trust for the victim who had suffered severe brain damage. In addition, even though Dun's representative told the Parent Teacher Association (PTA) that playground safety regulations require only **three** inches of such padding. Dun Playgrounds agreed to increase the padding from the standard three to six inches as part of the settlement. This was as the PTA demanded after hearing from the expert witness for the plaintiff in that earlier case. The expert persuaded the twenty voters at the meeting that the extra three inches would have prevented the tragedy to the young five year old. His parents were active members of the PTA.

**END OF EXAM**