

**PART II – ESSAY****50% of Exam – Approximately 1 ½ Hours**

Ettore De Café (“De Café”) emigrated as a law-abiding citizen from Italy to the United States in 1985, at the age of 25. Since that time, De Café has been on a mission to bring the joys of espresso and high-quality coffee drinks to American consumers. To fulfill his mission, De Café started his espresso machine company, Café Inc., and thereafter worked with a product designer to create a high-quality and affordable espresso machine that would produce espresso that rivaled the espresso produced in the best coffee shops in Italy. The first set of plans that the designer produced were drawn up in accordance with industry standards and the projected cost per unit was \$1,000. Given the highly-competitive, home-espresso industry, De Café worked with the designer to eliminate special unnecessary features, such as digital controls (saving \$100) and to reduce the thickness of the copper tubing used throughout the machine (saving \$25), thereby reducing the cost of the Café Inc. espresso machine to \$875, which was \$25 lower than the lowest price ever offered for such a home espresso machine. The Café Inc. owner’s manual included detailed operating instructions. The owner’s manual also included a recommendation to regularly de-scale the machine’s interior (i.e., flush the machine with white vinegar to remove mineral deposits that accumulate over time) and to use filtered water to reduce mineral build-up. Although not stated in the manual, the reason for these recommendations was that, because of the reduced thickness of the copper tubing, De Café and the product designer concluded that the copper tubing was more likely to rupture and cause serious injury if there was an obstruction in the line. The machine included the following warning printed prominently on the side of the machine:

**WARNING: Please read the owner’s manual. Failure to properly maintain the machine could affect the machine’s performance.**

Caffeinated Carl (“Carl”) bought one of Café Inc.’s machines, which was manufactured in accordance with manufacturer’s specifications, and regularly used it at home for six months. Carl never read the owner’s manual and did not maintain the machine in accordance with the recommended maintenance schedule. Carl also did not use filtered water and instead used regular tap water when brewing espresso. Unfortunately, due to Carl’s failure to descale the machine and failure to use filtered water, mineral deposits quickly accumulated. One morning, Carl was making a latte when the flow of steam and scalding hot water in the espresso machine became totally blocked, causing the pressure to rapidly rise. Because Café Inc.’s machine used thin copper tubing, the tubing soon ruptured, causing an explosion of wet coffee grounds and steam, badly burning Carl.

Carl spent the next 3 months in the hospital recovering from his burns. During that time, Carl’s wife, Petunia, went on a series of radio talk shows, raising consumer protection awareness and complaining about De Café and his faulty espresso machines. Initially, Petunia simply claimed that De Café had built an espresso machine that was not safe. In response to these attacks, De Café launched his own public relations campaign and appeared on the same radio talk shows in response, claiming that he had produced a product that was safe if used as recommended and further claiming that Petunia was simply a “money grubber who was fabricating lies about him so that she could recover millions from a jury.” De Café went further and wrote on his blog that Petunia “didn’t actually care about Carl, as

evidenced by her 'special' relationship with the male nurse caring for Carl in the hospital." De Café's basis for his comments regarding Petunia's alleged goal of inappropriate monetary gain consisted of a public records check he conducted, which revealed that, over the past five years, Petunia had filed, and prevailed, in two previous personal injury lawsuits: one against a driver who had rear ended her car, and the other against a former landlord who had not maintained safe common areas, which had resulted in serious injury to Petunia. De Café's statement regarding the special relationship was based on an oral report he had received from a private investigator he had hired to follow Petunia. The investigator stated that he had seen Petunia giving the male nurse a hug outside the hospital in which Carl was receiving treatment. Petunia had in fact developed a platonic friendship with Carl's nurse and had given him a hug, although the friendship was solely based on their shared concern for burn victims, especially Carl.

Petunia was livid when she learned of these allegations. In response, Petunia emailed the thirty members of her Consumer Protection Citizens Group, stating: "De Café is an evil man. He knowingly produced a dangerous machine. Now, he has gone on the offensive and is trying to discredit me and hurt my family. The reality is that he fled Italy to escape prosecution for crimes he perpetrated there as well." Petunia's basis for these statements was her interaction with De Café over the prior three months, her discussion with the espresso machine designer regarding the designer's discussions with De Café about the dangers of using thinner copper tubing, and reference to a 1959 criminal prosecution of "Ettore De Café" in Italy, Petunia found while googling De Café's name.

Analyze the tort claims and defenses that may be raised by the parties.

**\*\* END OF PART II – END OF EXAM\*\***