

TORTS EXAMINATION
PROFESSOR GILLES
MAY 1996

1. This examination consists of two parts. Each part is worth half of your grade. The Part One consists of 30 multiple choice examination questions. The Part Two consists of one long essay question.

2. Do not take the examination apart. Return it in its entirety at the end of the examination.

3. Make sure that you put your examination number in the space provided below on the Scranton card.

4. Good luck.

EXAMINATION NUMBER:

May, 1996

PART TWO - ESSAY QUESTION
INSTRUCT

1. Part Two consists of one long essay question. Part Two counts for one half of your grade.
2. Write your answer ONLY in the space provided. If you write elsewhere it FULL BE IGNORED.
3. Organize and think through your answer before you begin to write.

ESSAY QUESTIONS

In June 1988, Paul Vance, a 27 year old male, purchased a brand new Jeep Wrangler manufactured by defendant American Motors Co. (AMC). It had a soft, cloth top but had a roll bar to protect the driver in case the vehicle overturned.

Vance's decision to purchase a Jeep was influenced in part by Jeep's extensive television campaign. The advertisements pictured Jeeps in exotic locations - driving up mountains, through jungles and across deserts. Vance's favorite advertisement featured a Jeep racing down a steep hillside, driven by a good looking man with an attractive female passenger. The slogan featured in all the advertisements was JEEPS: THEY CAN TAKE YOU ANYWHERE." In small print on the bottom of the screen all the advertisements stated: "This advertisement featured expert drivers driving under controlled conditions. Do not drive like this."

On the first weekend after he purchased the Jeep, Vance took off for the state park located in the mountains near his home. After several hours of driving up and down the hills in four wheel drive, and drinking half a bottle of Scotch whiskey, Vance decides to descend a very steep hill. The Jeep overturns and rolls front-to-back roll down the hill. The roll bar (which was designed for

a side roll over only and not a front-to back roll over) detaches half way down the hill causing Vance to be struck repeatedly on the head and severely injured.

Vance crawls from the wreckage (a miracle in itself since 98% of those involved in any Jeep roll over are killed instantaneously). A volunteer rescue crew arrives to transport Vance to hospital via helicopter. Unfortunately one of the rescue crew negligently ties Vance into the stretcher. As the helicopter tries to winch him up, the knot slips undone and Vance plummets to his death.

Vance's mother retains your law firm to sue for the wrongful death of her son. The rescue workers are immune from suit under a Good Samaritan Statute, so the complaint filed by your law firm seeks recovery from AMC alone on a theory of strict liability for a defectively designed product. The senior partner asks you to write a memorandum discussing the plaintiff's ability to recover from AMC on this theory.

Your research shows that in product liability cases the State of Capital (where the case is pending), generally follows the position taken by the Restatement (Second) of Torts, Sec. 402A. In design defect cases, the State of Capital has adopted the position set out by the California court in *Barker v. Lull Engineering*. However the State of Capital has not adopted either comparative or contributory negligence as a defense in product liability cases. Your research further shows that Capital's Supreme Court has recently announced its product liability cases. Your research further shows that Capital's Supreme Court has recently announced that it is adopting a foreseeability (also known as scope of the risk) theory as the test for proximate cause, and rejecting as "outdated and mechanical" the direct causation approach.

Discovery in the case has revealed the following information. The main market for soft top four wheel Jeeps is young people (27-37 years of age). It is used mainly as a recreational vehicle. Statistics kept by the federal government show that Jeeps are involved in accidents slightly more often than other vehicles. In 70% of Jeep accidents the vehicle does not roll over, but in the remaining 30% of Jeep accidents, 28% roll over on the side, and 2% roll front-to-back.

It is impossible to design a four wheel drive recreational vehicle which does not overturn. However, the vehicle could be manufactured with a roll bar which would hold under the extreme pressure of a front-to-back roll. In fact AMC had tested such a roll bar. Their tests showed that such a roll bar makes the Jeep more expensive (adding approximately \$300 to the current manufacturing cost of \$6,000). More troubling however is that if it to be effective in a front-to-back roll, the roll bar must be attached low down on each side of the Jeep. The AMC studies reveal that a roll bar attached this low will protect the driver from serious injury in front-to-back rolls in 50% of the cases. However, the study also shows that the low attachment point makes the roll bar less efficient in side roll overs - in fact the protection offered in such crashes decreases drastically: with the current roll bar drivers are only seriously injured in 10% of all side roll overs, with the proposed low attachment roll bar five times as many serious injuries would occur. The studies conclude that it is impossible to design a roll bar to prevent against front-to-back rolls, without decreasing its effectiveness in side rolls. However, your expert Dr. Dan is willing to testify that a new metal fibre irontron (invented in 1995 by NASA) would permit

the creation of a roll bar which was strong enough to protect against front-to-back rolls, without limiting its effectiveness in side rolls.

In your please assess the strengths and weaknesses of the plaintiff's products liability DESIGN defect claim against AMC under the law of the State of Capital. Do not address any other types of defect (i.e. warning or manufactured) and do not address any other theories (i.e. contract or negligence). Do not discuss other possible defendants. Your memorandum should include a discussion of possible defenses.