TORTS II FINAL EXAMINATION PROFESSOR GILLES MAY, 2006

PART TWO - ESSAY QUESTION

INSTRUCTIONS:

- 1. Part Two consists of one long essay question.
- 2. The page limit is 8 pages (a "page" is one side, writing on every line). Anything you write in excess of 8 pages will be ignored. Do not write in the margin.
- 3. ORGANIZE before you write.

QUESTION

Question: Based on the facts set out below, Otto files a products liability action against Lawn Co. alleging the FastLawn contained a <u>design defect</u>. Discuss the strengths and weaknesses of Otto's design defect products liability suit and the defense listed below.

Your answer should:

- Assume that the jurisdiction, the State of Capital, follows the majority approach on all issues of products liability, except that Capital only permits the defense of assumption of the risk in products liability actions.
- Discuss all the elements of Otto's design defect products liability suit including those socalled defenses which are in fact arguments that go to whether plaintiff has stated a prima facie case.
- <u>NOT</u> discuss any other theories of liability including negligence, warranty or misrepresentation.
- <u>NOT</u> discuss any other potential defects, (*i.e.*, manufacturing or warning defects). You should, of course, use all the facts in the problem in discussing the design defect claim.

FACT PATTERN

Groundskeeper Willie works as the groundskeeper at the St. Andrews New Course Golf and Country Club in Springfield, in the State of Capital. His duties include keeping the 15 acres of grass on the course in top shape. Over a year ago (April 2005), he decided to purchase a riding lawnmower to enable him to cut the course more quickly.

Willie looked on the internet at advertisements for riding lawnmowers. Willie wanted a powerful riding lawnmower that would reduce the time it took to cut the course, but he also wanted a lawnmower that was light and therefore would be cheap to operate: "You wanna

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believe the price of gas these days." Willie also had several very specific needs. First, the course, which was modeled on the historic old course in St. Andrews, Scotland, had a very hilly terrain and Willie wanted to purchase a lawnmower that could cut the grass on the hillsides. Willie also needed a mower that could turn easily and smoothly because a signature piece of the Club's course was the phrase "Good luck, laddie" cut into the grass on the first hole. Willie wanted to ensure that the lawnmower could easily cut round the letters, so he no longer needed to trim the edge by hand. Finally, Willie wanted a mower that allowed him to get in and out with ease because he frequently had to jump out to move golf balls and even clubs left on the course by players.

Willie found an advertisement on the webpage for Lawn Co., a company known for its high-quality commercial lawn equipment. This particular advertisement was for a riding lawnmower called the 'FastLawn." It contained a video clip depicting the FastLawn cutting grass on a rolling hilly landscape. The advertisement stated that the FastLawn, (which has been manufactured and produced by Lawn Co. since 1988) was specifically designed for "those with professional grounds-keeping needs including golf courses, amusement parks and large country estates." It also stated that the FastLawn was very easy to operate and had exceptional maneuverability. The advertisement also stated that, while the FastLawn contained a powerful 16 horsepower engine, it was one of the lightest lawnmowers on the market and could cut 10 acres on only one gallon of gas.

Willie decided to purchase the FastLawn at a price of \$1,000 from a local gardening outlet, Walparts, which sells to the general public. For several weeks, Willie happily cut the Club's course using the FastLawn. He was delighted with its power and easy maneuverability. However, one day Willie was busy pruning some trees and he asked one of the golf caddies, a twenty-year-old named Otto, to use the FastLawn to mow the course. When Otto started the mower, he saw the following large red warning label on the steering wheel of the FastLawn (which has been affixed by the manufacturer Lawn Co.):

WARNING!!

DANGER: NEVER MOW ON A SLOPE OF GREATER THAN 15 DEGREES. MOWING A SLOPE OF GREATER THAN 15 DEGREES CAN RESULT IN SERIOUS INJURY AND DEATH.

Otto decided to start mowing the hill near the first hole. Unknown to Otto, parts of the hill contained a 17 degree slope. Instead of driving up and down the slope (as Willie, with his years of grounds-keeping experience, had always done) Otto drove the mower sideways along the hill. Suddenly, half way along, the slope reached 17 degrees and the lawnmower tipped. Otto was thrown to the ground and the lawnmower rolled over on top of him, breaking three of his ribs and piercing his lung. Most people would have made a rapid recovery, but Otto's long history of smoking made him unusually susceptible to lung infections. These infections led to a 6 month stay in hospital and still prevent him from returning to work (he has suffered extensive economic losses: about \$80,000 in lost pay and \$160,000 in hospital bills).

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Otto has consulted you about filing a design defect claim. Your first step is to talk to Professor Libok, a renowned expert in riding lawnmower accidents. Professor Libok reports that:

- It is technologically impossible to design a riding lawnmower that will not tip on a slope of greater than 15 degrees.
- Federal regulations require that all riding lawnmowers be designed so they will not tip on a slope of 15 degrees or less (a standard the FastLawn meets it tips on a slope of greater than 15 degrees).
- A national study conducted by the Safety Commission in 2004 estimated that there are approximately 50,000 riding lawnmower accidents per year. The top cause of accidents, 30,000 per year, is rollover on slopes. While some rollovers cause no or only minor injuries, the study reported that there are 10,000 serious injuries and 100 deaths per year resulting from rollovers. The report also concluded that another cause of accidents in all makes of riding lawnmowers occurs when the mowers hit rocks or other debris which pierce the gas tank and cause the mower to burst into flames. However, although the report found 5,000 such accidents occurred per year, only two such accidents resulted in serious injuries (and there were no deaths) because the riders easily jumped off escaping the flames.
- Just last year, in January 2005, Kutters, Inc., a competitor of Lawn Co., began selling the "KareKutter," the first ever riding lawnmower equipped with a rollover cage to prevent injury to drivers from lawnmower rollovers. The KareKutter's rollover cage fits around the driver's seat, completely surrounding the driver who climbs in and out through a small locking door. The rollover cage completely eliminates any risk that the driver will be thrown from the lawnmower and it stops the lawnmower from rolling completely over in the event it tips. In order to support the rollover cage, the KareKutter has larger wheels limiting its ability to make precision turns. Moreover, the rollover cage adds to the weight of the KareKutter (it can only cut 5 acres per gallon of gas). While Professor Libok does not know how much it would cost to incorporate the cage onto other riding lawnmowers, he does report that "it should be pretty easy to do." The KareKutter retails at \$1,500.

Answer the question set out at the beginning of this fact pattern.

THE END