

TORTS II FINAL EXAMINATION
PROFESSOR GILLES
MAY, 2007

PART ONE - MULTIPLE CHOICE

(Recommended time: 1 hour)

PART TWO - ESSAY QUESTION

(Recommended time: 1 hour 20 minutes)

INSTRUCTIONS:

1. *Part consists of a fact pattern followed by one essay question.*
2. *There is no page limit.*
3. *It should take you 1 hour to answer this question. I have given you an extra 20 minutes so you can read the question with care and ORGANIZE your answer before you write.*

FACT PATTERN:

Homer decided to take a camping trip with his family. Because Homer had never camped outdoors, he contacted Outdoor Adventures, Inc. (“OAI”), a company that guides groups on camping trips. On an OAI camping trip, an OAI guide leads the campers on a guided hike and then assists the campers in setting up an overnight campsite. OAI requires campers to rent all necessary camping equipment from OAI. OAI distributes all of the rented camping supplies in its original packaging and does not remove any warnings provided by the manufacturer.

An OAI representative informed Homer that he and his family could join an outdoor camping trip in July 2006. For his trip, Homer was required to rent sleeping bags, lanterns, cooking equipment and other items.

On the first day of his camping trip, Homer and the OAI guides began to set up the campsite. The sleeping bag Homer had rented was manufactured by Camp-R-Us. Homer looked at the package containing his sleeping bag and noticed a picture of a family sitting on sleeping bags while roasting marshmallows around a campfire. This idyllic scene made Homer excited that he had decided to take his family camping. When Homer unrolled his sleeping bag, he noticed a tag hanging from the zipper. The tag read, “CAUTION: CONTAINS FLAMABLE MATERIALS. DO NOT USE NEAR AN OPEN FLAME.”

That night, Homer and his family enjoyed telling ghost stories and roasting marshmallows around the camp fire. When it got late, the OAI guide smothered the campfire so that it was just a burning pile of glowing embers. Homer climbed into his sleeping bag near the fire pit. Because he was warm, Homer left the sleeping bag unzipped.

In the middle of the night, a burning ember sparked and flew out of the fire pit. It landed on the exposed lining of Homer’s sleeping bag. Unfortunately, the sleeping bag instantly caught on fire. As a result, Homer was severely injured.

After the injury, Homer learned that the exterior shell of his sleeping bag had been treated with a flame retardant chemical. The inside lining and stuffing of the sleeping bag, however, was made of 100% cotton and was not treated with the flame retardant chemical. Homer discovered that the inside lining and stuffing of his sleeping bag could have been treated with the same flame retardant chemical that was used on the outside of the sleeping bag.

Homer also learned of a recent study completed by the Consumer Product Safety Commission that examined the flammability of natural and man-made fibers. The study, conducted by experts in the field, concluded that untreated cotton fabric ignites with only a small spark. Further, the study reported that a sample of untreated cotton with similar density and size to that contained in Homer's sleeping bag, will be consumed within 4 to 5 seconds of ignition. By contrast, the same cotton fabric treated with flame retardant does not ignite as easily and takes over 5 minutes to be consumed after ignition. To treat the lining of the sleeping bag with flame retardant chemicals would have increased the retail price of the sleeping bag from \$60 to \$75.

Camp-R-U's, the manufacturer of the sleeping bag, was aware of the Consumer Product Safety Commission study at the time it manufactured Homer's sleeping bag. Camp-R-U's, however, decided not to treat the inside lining of its sleeping bags with flame retardant chemicals because the chemicals made the lining of the bags very stiff and uncomfortable. Moreover, treated cotton fibers retain odors more than untreated cotton fibers and are less durable, making a treated sleeping bag harder to clean. Finally, Camp-R-U's was aware of some individuals who developed skin rashes from fabrics coated with the chemical flame retardant.

For the five years prior to the study, Camp-R-U's had manufactured its sleeping bags in a manner consistent with the way Homer's bag was made (*i.e.*, the external shell was treated with the flame retardant chemical and the internal lining was not treated with flame retardant chemical). During this five-year time period, Camp-R-U's was aware of 10 deaths and 20 serious burns that had occurred from use of the sleeping bag. Camp-R-U's estimated that its sleeping bags were used over 100,000 times every year. With all of this information, Camp-R-U's decided that instead of treating the inside of the bag with chemical flame retardant, it would continue to only treat the outside of the sleeping bag and would provide a warning to consumers about use of the bag near open flames.

Question

Homer files a products liability action against Camp-R-U's AND Outdoor Adventures Inc. alleging the sleeping bag contained a design defect because the lining was not treated with chemical flame retardant. Discuss the strengths and weaknesses of Homer's products liability action.

NOTE:

- DO NOT discuss any other potential defects (*i.e.*, manufacturing or information defects) or any other claims.
- DO NOT discuss any affirmative defenses.
- ASSUME that, in design defect cases, the jurisdiction follows the approach taken by the California Court in Soule. Be sure to discuss ALL possible options offered in Soule.

THE END

Enjoy your summer!!!!