

Please put your name here: \_\_\_\_\_ and return this sheet.

## PRODUCT LIABILITY TORTS QUIZ

Prof. Bell

**NOTE:** Choose the one best answer to each question, applying the Restatement of Torts (2d) and relevant case law. As on the MBE, you have 1.8 minutes/answer.

### Question 1

Pham purchased a cup of coffee at a Buy-n-Go convenience store and carried it to his vehicle. While attempting to transfer the coffee to a travel mug, he spilled it on his legs and suffered third-degree burns. He brought suit against Buy-n-Go alleging that the coffee was a defective product because it was dangerously hot. Buy-n-Go established that the coffee had been served at 179° F, and that the industry standard for retail coffee ranges from 175° F to 185° F.

- (a) Pham should win because his burns demonstrate the coffee was too hot.
- (b) Pham should win because Buy-n-Go could have served the coffee at a temperature that does not cause burns.
- (c) Buy-n-Go should win because there was no reasonable alternative to serving the coffee at around 180° F.
- (d) Buy-n-Go should win because Pham did not spill the coffee in a foreseeable manner.

### Question 2

Suppose under the same facts as in Question 1 that Pham also alleged that the coffee was defective because Buy-n-Go failed to warn that the coffee might cause severe burns if spilled. Instead, Buy-n-Go did nothing more than post a sign reading, "Caution! Contents hot!" on store's coffee machine.

- (a) Pham should win because a better warning would have reduced the foreseeable risk of the sort of harm he suffered.
- (b) Pham should win because Buy-n-Go's sign was a defective product.
- (c) Buy-n-Go should win because Pham's careless behavior shows that he would not have heeded even a more detailed warning.
- (d) Buy-n-Go should win because everybody knows that hot coffee can burn.

## PROXIMATE CAUSATION TORTS QUIZ--ANSWER KEY

1. This problem comes from *McMahon v. Bunn-O-Matic Corp.*, 150 F.3d 651 (7th Cir. 1998), reproduced at a portion of your text that I did not assign. The facts should also remind you of the hot coffee case of *Liebeck v. McDonald's Corp.*, discussed in the assigned readings. *McMahon* affirmed summary judgment for the defendants, whereas the *Liebeck* litigation resulted in a settlement in favor of the burned plaintiff. Why the difference? Although other factors doubtless played a result, it probably proved most damning to McDonald's defense that they served their coffee 20° F hotter than their competitors. Here in contrast, as in *McMahon*, the coffee was at the industry standard.
  - (a) is wrong because harm alone cannot suffice to show that a product is defective. Some products are dangerous by design, after all.
  - (b) is wrong because the coffee might have to be hot in order to fulfill its intended function.
  - (c) is the best answer because coffee has to be reasonably hot, at least to judge from the industry standard, in order to satisfy consumer demand.
  - (d) is wrong because a convenience store should surely foresee acts of the sort Pham engaged in.
  
2.
  - (a) is wrong because it is not at all clear that a more detailed or bolder warning would have made any difference to Pham's behavior. Every reasonable person knows that fresh coffee is (or should be) hot.
  - (b) is wrong because it mixes the defective product cause of action up with the defective warning cause of action.
  - (c) is wrong because we do not know Pham was careless nor, more importantly, that he habitually ignored warnings.
  - (d) is right because, as the court in *McMahon* put it, the law "does not require vendors to give warnings in the detail plaintiffs contemplate. It expects consumers to educate themselves about the hazards of daily life—of matches, knives, and kitchen ranges, of bones in fish, and of hot beverages—by general reading and experience, knowledge they can acquire before they enter a mini mart to buy coffee for a journey." (Note that you should *not* have rejected this answer simply because it eschews fancy lawyer talk; the truth sometimes comes in a plain, brown wrapper.)