

Product Liability Exam, Spring 2014, Checklist

- Overview
- Sale of a Defective Product
- Defective in Design
- Consumer Expectations test
- Ruth wasn't an ordinary consumer
- No meaningful expectations

- Risk utility test
- clearly fails the R/U test
- When did they know it was dangerous?
- Some sold before
- Some sold afterward
- Doesn't appear hindsight would change analysis

- Does jurisdiction allow choice?
- Warning claim doesn't seem to apply
- No effective way to warn people like Ruth
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- Proximate cause
- But-for + legal cause
- But for will be difficult
- What else causes NHL?
- Will Dr. T testify Ruth got NHL from PCBs?

- Legal cause
- Disposers as superseding cause?
- If foreseeable, unlikely to supersede
- Statute of Repose defense
- Never any "safe use" of the product

- Damages
- Compensatory: wage loss / medical expense
- Pain & suffering
- Punitive damages?
- How much was sold after knowledge was clear?
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Question 2

- Overview
- Liability based upon proof of defect
- Claim based upon design defect
- Consumer expectation test?
- Certainly not an obvious defect
- Hard to say if he had any expectations

- Risk utility test
- Risk seems slight, heavy utility costs
- No particular benefit from hindsight
- No Warning claim involved
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- Proximate cause
- But-for cause + legal cause
- But-for cause is iffy
- Are test results admissible?
- Legal cause a major problem
- Dussault as a superseding cause
- Foreseeability would be a big issue

- Comparative fault
- Different rules for joint and several liability
- Would Dussault be considered "at fault"?
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