

FINAL EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

While you are waiting for the exam to begin, be sure that you have written your EXAM NUMBER on each bluebook, that you have read these instructions, and that you are otherwise ready to begin.

This exam will last 2 HOURS. Before turning in your answer, REREAD each question to be sure you haven't missed anything.

DOUBLE-SPACE your answers in the blue-book.

Use SEPARATE BLUEBOOKS for EACH QUESTION. Label each bluebook according to each question, and if necessary, book number, *e.g.*, "Question 1, Book 1"; "Question 1, Book 2"; "Question 2" etc.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, "Andropov (A) would sue Brezhnev (B). B may be liable to A because"

Plan on spending at least 10 minutes at the end PROOFREADING your answers. You may not write ANOTHER WORD after time is called.

Each question has been assigned a point total, and the exam as a whole has a point total of 100. Spend the amount of time on each question reflecting its relative worth.

You may KEEP your copy of the exam questions if you wish.

REMEMBER THE HONOR CODE: DO NOT DO THINGS THAT TEND TO IDENTIFY YOURSELF.

DOUBLE SPACE!

GOOD LUCK!

DOUBLE SPACE!

Question 1 (80 points)

Paul Prince worked for Trailmobile, a trailer manufacturer. He was injured while operating a press brake machine (press) that had been manufactured by Cincinnati Incorporated (Cincy). The press was manufactured by Cincy in 1969 and shipped to Trailmobile, in January 1971.

The press is used to form pieces to related larger parts, by bending or punching metal. It is multifunctional, capable of forming pieces to parts for a wide variety of industries and uses, including the formation of pieces to parts for radiators, light fixtures, elevator panels, partitions, etc. Different tooling and dies are used, depending on the use to which the press is put. Cincy did not sell or distribute tooling or dies to Trailmobile.

At the time the press left Cincy's control, it was equipped with alternative methods of operation, one set of dual palm buttons and two foot switches. Dual palm buttons are used to operate the press when forming relatively small pieces, and foot switches are used to operate the press when forming larger pieces that have to be held while the press is functioning. A trailer manufacturer such as Trailmobile may have a need for both uses.

Prince began working for Trailmobile in April of 1977, as a helper in the fabrication department. As a helper, he assisted an operator of press brake machines, making and punching out pieces to parts for semi-trailer vehicles. The only training that Prince received for the operation of the machines consisted of someone running a few parts through the operating machines and showing Prince how the operation was performed. The particular machine was then turned over to Prince to finish the job.

Prince had used the press on three or four prior occasions before the accident; on those occasions he used the machine along with another operator. At the time of the accident, the function he was performing was one which was done by a single operator.

Prince was standing in front of the press, and punching a quarter inch sheet of aluminum measuring approximately twelve inches long by six inches wide. Because the holes were not aligned when he used the press for this operation, Prince determined it was necessary to make an adjustment. He attempted to do this by putting his right arm between the upper and lower dies of the press. When he did this, he also apparently depressed the foot switch on the press, and the press became activated, severely injuring his arm between the wrist and elbow. After the accident, a maintenance supervisor determined that all controls were operating properly on the press.

Prince's arm was surgically treated, and the arm was not amputated. Six years later,

however, the same arm was traumatically amputated in an unrelated motorcycle accident.

In your interview with Prince, he acknowledged that he knew that it was dangerous to put his hands or his arms between the upper and lower dies on the press. He also knew before the accident that he could be seriously injured if he put any part of his body between the dies and depressed the foot switch. He also knew that the press was on, as opposed to being turned off, at the time. He states, however, that he did not know that he could have gone around the back of the press to make an adjustment, and to turn the press off.

In your research on this case you have located an expert witness, Donald Pull. Pull is a non-degreed, mechanical engineer with one year of training. Pull is Chairman of Lightguards Ltd., which is a British company with its place of business in Hertfordshire, England. Pull's company developed a safety sensing device called Lightguard. No attempt was ever made to market Lightguard in the United States. Pull would testify that Lightguard has been effective in reducing industrial accidents by shutting off machines like the one involved in this case when it detects human proximity to the cutting surfaces.

You represent Prince. How would you advise him as to his prospects for success? In your analysis, ignore any contributory fault or other affirmative defenses.

Question 2 (20 points)

A proposal for product liability reform has been forward to your office for review and comment. The key provision of the reform is to adopt a pure negligence standard for design defects. Please comment on the policy advantages and disadvantages of such a proposal.