

CHECKLIST

QUESTION 1

- Overview**
- Claim v. **Immediate Seller**?
- Used / **Auction**-- no access to mfr.
- Claim v. **John Deere**
- Design** defect
- Design of the "**wet**" **clutch**
- Design provides "**false**" **neutral**
- Control** should make neutral obvious
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- Test** for design defect?
- Consumer** expectations test
- Minority** view, but some use it
- Combined** with risk/utility test?
- Ordinary** consumer's **reas.** expectations?
- McP was an **experienced** user
- McP likely **didn't expect** death
- Foreseeable misuse** test
- In this case, clearly **foreseeable**
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- Risk/utility** test
- Controversy over **imputed knowledge**
- "**Strict liability**" standard vs. negligence
- Wd. **reas. designer** use another design?
- How \$ would gear selector **change** cost?
- How many **saved lives** from redesign?
- Admissibility of **post-sale** repairs:
- Some jx. permit** (for product liability)
- Other jx. say PL = **neg. exclusion**
- Admissibility of **expert** testimony
- Application of **Daubert/Kumho** factors
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- Warning** defect
- Duty: (1) provide **notice of risk**
- (2) how to **avoid** it
- General Risk** vs. **specific** risk of "false neutral"
- Post-sale** warnings are required
- Standard is **reasonable care**
- Question: **were** efforts reasonable?
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- Causation** question
- Prox. Cause = **But-for + legal cause**
- Would diff. warning **change behavior**?
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- Contributory** fault
- Negligence typically **only reduces** recovery
- Maybe **3d party negligence** would reduce
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- Statute of **repose**?
- "**Useful safe life**" employed to limit time period
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QUESTION 2

- Overview**
- Was Prozac **defective**?
- No **manufacturing** defect
- Design** defect claim
- Risks outweigh** benefits?
- Special case of **prescription** drugs
- Some jx. use only a **negligence** test
- Some would impose **strict liability**
- Q: will today's knowledge be **imputed**?
- FDA's** warning today is much stronger
- FDA evidence is **not post-accident**
- But will "**state of the art**" apply?
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- Warning** Issue
- Learned Intermediary** doctrine
- Rationale:** physician better suited to decide
- But some **exceptions** to the rule
- No **direct advertising** to the public here
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- Admissibility of **expert testimony**
- Daubert/Kumho** standard
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- Proximate Cause** Requirement
- But-for cause + legal cause
- Doctor **might have** behaved differently
- But he seems to say **not**
- Would "**substantial factor**" be available?
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- Contributory** negligence issue
- 3d Party (Dr.) neg.: no additional diagnosis?
- Class action**?
- Not favored**
- Lilly not a likely candidate for **bankruptcy**
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