

Answer

MASSACHUSETTS SCHOOL OF LAW
PRODUCTS LIABILITY
FINAL EXAMINATION – SPRING SEMESTER 2007

Question #1

Frank Fratello (“Frank”) traveled 90 miles every day on his way to work, and his daily ritual had begun to take a financial toll. Tired of dolling out hundreds of dollars on gasoline every week, he decided to do something about his financial plight, and concluded that it was time to trade in his gas guzzling SUV. Frank had heard about this new, hybrid technology, but knew nothing about it, so he decided to investigate. He read everything he could on the Internet about these fuel stingy vehicles, reviewed the on-line owner’s manuals for many models, then decided to start shopping. After speaking with seemingly every car dealership in the Merrimack Valley, Frank opted to purchase a brand new *Fuel Miser 1000*, manufactured by CarCo, Inc., (“CarCo”) and marketed locally by Valley Motors, Inc., (“Valley”).

Frankly, Frank was overwhelmed from all the information he’d collected and all the sales talk he’d heard in the past week, but felt assured that the hybrid technology developed by CarCo was “state of the art,” as Sully, the salesperson at Valley had put it. After all, Sully studied mechanical design at WPI, before dropping out to pursue his true calling: Auto Sales! He must have mentioned this fact to Frank at least “a thousand times!” Sully explained that the Fuel Miser 1000 was powered part of the time by a small, gasoline engine and part of the time by an electric motor. This accounted for its relatively low consumption of gasoline.

Because the gasoline engine was so small, however, it vibrated more while running than a standard automobile engine. Eventually, these vibrations caused the copper fuel line between the engine and the gasoline tank to crack because of metal fatigue. Gasoline leaked from the cracked fuel line onto Frank’s garage floor. Fumes from the gasoline on the floor came into contact with a pilot light in an appliance and caught fire. The fire destroyed Frank’s car, damaged his garage, and caused him to break his hip while fleeing from the burning dwelling.

The CarCo engineers that designed Frank’s car, despite checking and rechecking their calculations, and despite conducting hundreds of hours of field experiments with the Fuel Miser 1000, did not anticipate the metal fatigue that lead to the fire in question. The problem, if known, was easily correctable with existing technology by simply using a plastic fuel line rather than a copper one.

CarCo purchased the fuel line from TubeCo, Inc., (“TubeCo”), a manufacture of a wide variety of general-purpose tubing made from a variety of materials including plastic as well as copper.

Instructions: Review all relevant information contained within the following question, and prepare an internal memorandum of law, analyzing the facts in relation to the applicable law. Provide a well-reasoned analysis concerning *all* potential causes of action and defenses. Consider the respective positions of all parties. **DO NOT EXCLUDE ANY!** Have a great summer!

**PRODUCTS LIABILITY – SPRING 2006
FINAL EXAMINATION**

Memorandum

To: Associate

From: Partner

RE: Gavin Zito v. Daimler Chrysler Corporation

FACTS

You are an associate at the Law Offices of Robert D. Armano. Attorney Armano has recently conducted an intake regarding an injury sustained by 6year old Gavin Zito. Specifically, on January 13, 2004, Gavin, who is an autistic child, was in the front, passenger seat of his mother's leased, 2003 Jeep Grand Cherokee (the "Jeep"). Mom purchased the Jeep because her best friend, Suzann, told her that they're great in the snow, and even better for transporting children. The car dealer, Monte Hall, confirmed Suzann's praises.

At the time of the incident, the vehicle was in a parked position and was idling while on their driveway. While Gavin's mother, Nancy was in the process of strapping his six-month-old sister, Callie, in her car seat (located in the rear of the vehicle), Gavin was attempting to insert a CD into the vehicle's in-dash CD player. Nancy related that he was apparently kneeling on the center console, and had his "left arm up." At the same time, he held the CD in his right hand.

While attempting to insert the CD, Gavin somehow triggered the sunroof switch, (Nancy isn't exactly sure how), and managed to lodge the middle finger of his left, dominant hand into the sunroof's gear mechanism. Nancy reported that "Gavin was screaming hysterically and uncontrollably at that point," and she began to panic. She noted that her attempts to dislodge the finger were fruitless, and she began to feel physically ill. She then contacted the fire department, via her cell phone, and attempted to console the child, while she waited for assistance. She related that "those ten minutes were the longest of my life." Eventually, after pulling on the finger, Gavin tore it free while firefighters worked in vain to remove it; the tip of the finger still being lodged in the gear.

After being liberated from the sunroof gear, Gavin was rushed to Children's Hospital where pediatric orthopedists concluded that the fingertip was too mangled to reattach. Gavin was thereafter treated and released to the custody of his mother. Since the incident, Nancy lamented that Gavin's treatment for autism has suffered setback after setback, despite the fact that he had been progressing well prior to the incident.

Following the intake, Attorney Armano enlisted the assistance of a mechanical engineer to inspect the vehicle's sunroof. A copy of the full report is attached hereto. **Your task is to review all relevant information, and prepare an internal memorandum of law, analyzing the facts of this very interesting case in relation to the applicable law. Attorney Armano has asked you to provide an analysis concerning *all* potential causes of action that might apply to a products liability claim of this type: DO NOT EXCLUDE ANY!** Have a great summer!