



- IV. This question is worth 40 points. Limit your answer to four pages in the bluebook. Do not squeeze your writing to the point that it becomes unreadable. I will only grade what is legible. Write only on one side of each page. You may write on the top line, but do not write in the top margin. You may write in the side margin. I will not read any writing on the fifth page. No typing.

Otto Karr purchased a Tortina, an economy car, from Will Burns Motors on February 2, 1972. The Tortina is the second cheapest car sold in the U.S.A. Lucy Brakes' car ran into the rear end of the Tortina on June 5, 1972. Brakes, an alcoholic, has five young children, is unemployed, and lives alone in a run-down apartment. On impact, the Tortina's gas tank ruptured and exploded. Karr, who was driving, was severely burned. Flaming gas from the tank was thrown on Buss Catcher who was standing on the sidewalk waiting for a cab. Catcher was also severely burned. Catcher is a partner in the Catcher, Holder and Charger accounting firm. Catcher was hospitalized for three months. Without Catcher's services, Holder and Charger were unable to audit the RWA Corporation's books. Holder and Charger therefore lost \$100,000. This loss due to Catcher's unavailability can be established beyond doubt.

Examination reveals that the Tortina's gas tank was located in the trunk at the rear of the car. Until the moment of impact, the tank was in "new" condition. You have found that the tank was covered only with a thin plastic floor mat. The Red, White and Blue Corporation (manufacturers of the Tortina) state that it would cost \$100 per car to make the gas tank completely safe in this type of crash. Red, White and Blue also state that the extra \$100 would make the Tortina the fifth cheapest car and this would force the Red, White and Blue Corporation out of business. Lucy Brakes was traveling at ten miles per hour when her car hit the Tortina. At the time of impact, Otto Karr was stopped for a red light. Assume that there are no federal or state laws dealing with the construction of gas tanks.

The operator's manual contains the following printed statement:

Red, White and Blue Corporation agrees to replace defective parts for six months after the sale, if the part is sent to the factory, transportation charges prepaid, and if examination discloses to the Corporation's satisfaction that the part is defective.

This remedy is in place of all other promises or warranties, express or implied, and all other obligations or liabilities on its part.

The damaged persons have brought suits against the Red, White and Blue Corporation. Discuss the problems involved in these suits. Assume causation in fact for all damages. Do not discuss express warranty, deceit, fraud, misrepresentation, an action based purely on contract, or joinder problems. Do not discuss suits against Will Burns Motors or Lucy Brakes.

2. Approximately 30 points. Ted Tackle went to his doctor complaining of a severe case of athlete's foot. His doctor prescribed Nusoul. With the prescription, Ted purchased a bottle of Nusoul at the local pharmacy. Nusoul is manufactured by the Goodfowyou Drug Company. Nusoul is in pill form and has been found to be extremely effective in treating athlete's foot. The directions said: "Adults - Take two pills three times a day." At another point they said: "These pills are the finest available." The doctor had told Ted to take the pills and everything would be fine.

Ted followed the printed directions and took Nusoul for three weeks. He then noticed that his hair was falling out in clumps. A week later he had lost all of the hair on his head.

(Continued on the next page)

EXAM NO. # 146

TORTS III A - Part II - Page 10

2. (Continued)

During the tests of Nusoul, Goodfowyou found that in 1-2% of the patients there were side effects of increased dandruff and slight temporary loss of hair.

Ted works as an announcer for T.V. station WEELAW. Since Ted's scalp is too tender for a wig, and a replacement for Ted has not been found, he has continued to present the news. WEELAW has lost viewers and advertisers. Wade P. Green owns WEELAW.

Discuss Tackle's and Green's separate suits against the Goodfowyou Drug Company. Assume that the cause in fact of Ted's loss of hair was the drug Nusoul. Each suit is based on express warranty and strict liability. Do not discuss negligence or implied warranty.