

Monterey College of Law

Torts Final Examination

Spring 2023

Professor B. Soukup

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

QUESTION ONE

DAZER was a manufacturer and distributor of a popular whisky called "Firebomb." "Firebomb" known for its caramel color and distinctive bold flavor of cinnamon spice. "Firebomb" came in various sizes and had a distinct label on the front of the bottle of a red fire-breathing dragon-like creature.

In order to be able to sell the product at grocery stores and gas stations **DAZER** also sold a malt-based version of "Firebomb" which had a lower alcohol content. Malt beverages unlike distilled liquors such as whisky can be sold at over 170,000 stores across the nation that are allowed to sell beer and wine but not spirits.

Both bottles have a red cap, a yellow label with the word "Firebomb" and the logo of the creature. The malt beverage describes the contents:

"NATURAL WHISKY AND OTHER CINNAMON FLAVORS"

along with its slogan:

"TASTES LIKE HEAVEN, BURNS LIKE HELL"

In order to maintain the caramel color in the malt beverage **DAZER** added a Red Dye Color #40 that was not used in the distilled liquor that obtained the color naturally. While an alternative natural food coloring could have been used by **DAZER**, Red Dye#40 was \$2.00 cheaper per bottle than the natural food coloring and allowed for more uniform color. Firebomb sold for \$20.00 per standard bottle.

Paula bought a bottle of "Firebomb" at a local gas station. She took it to a party her friend was having that evening. She handed it to the host who placed the bottle on the home bar with the other liquor bottles available for the guests at the party.

PAT saw the "Firebomb" bottle and instantly recognized it from the packaging as one of his favorite distilled liquors. He poured himself a large glass of the beverage over ice and consumed it tasting the recognizable fiery cinnamon flavor.

Immediately after consuming the drink, **PAT** began to feel ill. He developed severe burning gastrointestinal distress and hives formed on his skin and he had difficulty breathing. **PAT** was rushed to the hospital where it was discovered in a blood test that he suffered from Red Dye Color #40 allergic reaction.

PAT SUES DAZER. PLEASE DISCUSS ALL POSSIBLE ISSUES THAT PAT CAN BRING AGAINST DAZER UNDER PRODUCTS LIABILITY ONLY.

QUESTION TWO

PERRY was a former member of the royal family of the Kingdom of Breetan. **PERRY** had previously held the auspicious title of "Prince Perry" until his departure from the royals, and since then he was delegated to simply: "Duke of Tussex". **PERRY** also departed the Kingdom of Breetan and decided to live in small coastal village in the United States as "common folk" alongside his wife **PEGAN**. **PEGAN** was a former Hollywood actress who had left the film industry to marry **PERRY**.

Recently, **PERRY** had discovered a small sticky-mini microphone outside of his home's window. The microphone had recorded a week's long set of conversations **PERRY** had with his wife **PEGAN** about intimate details of their family life.

One week later a tabloid newspaper named the **DAILY** in Breetan ran an article under the following headline:

"Duke of Tussex Decides Its Too Emotionally Damaging to Have a Third Child in The Light of The Destructive Treatment by The Royal Family."

The article goes on to say that a source close to the couple has revealed that **PEGAN** while pregnant with her third child decides to terminate the pregnancy and the article also publishes an actual recent medical record from a visit over six months ago with her doctor that reveals she received medication for an infection. In the record is noted in the record simply by the words "*third child.*"

PERRY reads the article and immediately recognizes it as part of the conversations he has that week with his wife **PEGAN** when he found the microphone. Both recognize the medical record as well that had been shredded and placed in the garbage outside their home.

The couple has in fact been contemplating a third child, that **PEGAN** discussed with her doctor. However, **PEGAN** had never actually been pregnant with a third child had not been contemplating terminating any pregnancy.

A U.S. based healthcare company specializing in pregnancy rights called **PLANNED PREGNANCY** reads the article in the **DAILY** and decides to add **PEGAN**'s photo on the.ir logo with the caption "*You have choices.*"

As a result of the article and the logo, both **PERRY** and **PEGAN** are stripped of their titles of Duke and Duchess of Tussex by the royal family.

1. **PERRY** bring a suit against the **DAILY** for **Defamation and Invasion of Privacy only**. Discuss.
2. **PEGAN** brings a suit against **PLANNED PREGNANCY** for **Invasion of Privacy only**. Discuss.

QUESTION THREE

PETER operates a chicken farm on land he owns in Fresno. **PETER's** chickens roam free over a large field because they remained healthier. **PETER** had a contract to sell chickens to "Fancy Grocery" all summer long. **PETER** got the contract with "Fancy Grocery" because his chickens were healthy. **PETER's** agreement with "Fancy Grocery" had to be renewed each year.

DAVID also had a chicken business. **DAVID** was envious of the contract that **PETER** had with "Fancy Grocery". **DAVID** wanted to sell his chickens to "Fancy Grocery" because they paid premium prices. **DAVID** bought some grain and laced it with a chemical that he thought would make chickens sick. **DAVID** drove to **PETER's** chicken farm one night. Although it was late, there was still plenty of light, and **DAVID** could see the chickens roaming around the field.

DAVID cut a hole in the fence around the field and began spreading the contaminated grain on the ground all over the field. **DAVID** also knew that **PETER** had a pet rooster and noticed that **PETER's** rooster was eating the grain as were the chickens.

The next morning, **DAVID** told the manager at "Fancy Grocery" that he had heard that **PETER** was a careless chicken farmer and that **PETER's** chickens had the chicken plague, a disease that makes the chickens taste bad when they are cooked. The chicken plague is very hard to eradicate from a farm. **DAVID** offered to sell his chickens to "Fancy Grocery". The manager did not want to take a chance that the chickens he was going to buy were going to taste bad, so he called **PETER** and told him that he was not going to take delivery of any more chickens.

PETER went out to the field immediately to check on his chickens. All of the chickens including his rooster were dead. **PETER** eventually gave up chicken farming because no one would buy his chickens anymore.

NOT INCLUDING DEFAMATION, DISCUSS ALL CLAIMS THAT PETER MIGHT HAVE AGAINST DAVID.

TORTS FINAL

EXAM

SPRING 2023

Professor B. Soukup

TORTS SP2023 QUESTION #1

ID# _____

PATv.DAZER

EXAMPRESENTATION (TOTAL POINTS AVAILABLE= 10)

	Poor		Excellent				
NEATNESS/ORGANIZATION	0	1	2	3	4	5	_____
LAWYER-LIKE	0	1	2	3	4	5	_____

DISCUSSION OF ISSUES (TOTAL POINTS AVAILABLE = 90)

I. STRICT PRODUCTS LIABILITY
(DEFECT IN DESIGN/INADEQUATE WARNINGS, DBCD,
CONSUMER EXPECTATION TEST & FEASIBLE ALTERNATIVES)

30 POINTS = FULL DISCUSSION _____
15 POINTS= PARTIAL DISCUSSION _____

II. DEFENSES TO STRICT PRODUCT LIABILITY
(AIR, CONTRIB/COMP.NETG)

10 POINTS= FULL DISCUSSION _____
5 POINTS= PARTIAL DISCUSSION _____

III. NEGLIGENCE in Products Liability
(DUTY, BREACH, CAUSATION, DAMAGES)

20 POINTS =FULL DISCUSSION _____
10 POINTS= PARTIAL DISCUSSION _____

IV. DEFENSES TO NEGLIGENCE
(C/N, COMP. NEG. AND AIR)

10 POINTS = FULL DISCUSSION _____
5 POINTS= PARTIAL DISCUSSION _____

V. WARRANTY (Express & Implied) (Including defenses)

15 POINTS = FULL DISCUSSION _____
7 POINTS= PARTIAL DISCUSSION _____

VI. MISREPRESENTATION

5 POINTS =FULL DISCUSSION _____
2 POINTS= PARTIAL DISCUSSION _____

TOTAL SCORE:..... _____

TORTS
FINAL EXAM
SPRING 2023

Professor B. Soukup

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In order to maintain the caramel color in the malt beverage **DAZER** added a Red Dye #40 that was not used in the distilled liquor that obtained the color naturally. While an alternative natural food coloring could have been used by **DAZER**, Red Dye #40 was \$2.00 cheaper per bottle than the natural food coloring and allowed for more uniform color. Firebomb sold for \$20.00 per bottle on average.

Paula bought a bottle of "Firebomb" at a local gas station. She took it to a party her friend was having that evening. She handed it to the host who placed the bottle on the home bar with the other liquor bottles available for the guests at the party.

PAT saw the "Firebomb" bottle and instantly recognized it from the packaging as one of his favorite distilled liquors. He poured himself a large glass of the beverage over ice and consumed it tasting the recognizable fiery cinnamon flavor.

Immediately after consuming the drink, **PAT** began to feel ill. He developed severe burning gastrointestinal distress and hives formed on his skin and he had difficulty breathing. **PAT** was rushed to the hospital where it was discovered in a blood test that he suffered from Red Dye Color #40 allergic reaction!

PAT SUES DAZER. PLEASE DISCUSS ALL POSSIBLE ISSUES THAT PAT CAN BRING AGAINST DAZER UNDER PRODUCTS LIABILITY ONLY.

[Commented [BS1]: Firebomb is a product that is sold by a manufacturer and distributor named DAZER and placed into the stream of commerce by selling it at convenience stores.

[Commented [BS2]: Firebomb may be liable for Misrepresentation of product by using the exact same label, packaging and logo on its bottles made of different ingredients.

[Commented [BS3]: Firebomb has a design defect in that it does not let the consumer notice that the different bottles do not contain actual whisky but malt beverage that is colored with a non-natural food coloring.

[Commented [BS4]: Firebomb makes an express warranty in that it states that the malt beverage is made with natural whisky. It also states as follows: "a fire that it will burn like hell."

[Commented [BSS]: Discuss Consumer Expectation Test and Feasible Alternatives as to the Red Dye #40 vs. natural coloring ingredients. Discuss labeling the product to distinguish it from the whisky only product.

[Commented [BSS]: DAZER wants to lower cost of product and uses a Red Dye #40 that is not used in the whisky only version. Discuss design defect.

[Commented [BS7]: Discuss causation. Is there a break in the causal link between actual purchase, host and then Pat as final person harmed? Is this akin to the Squib case?

[Commented [BS8]: Paula buying the product, handing it to a host and then Pat ultimately being harmed is to discuss for sale of a product.

[Commented [BS9]: Discuss Failure to Warn consumer that the malt version does not have natural only ingredients.

[Commented [BS10]: Pat is injured by Firebomb as he suffers an allergic reaction to the Red Dye #40.

QUESTION TWO-

TORTS SP2023

QUESTION #2 ..

ID# _____

PERRY v. THE DAILY NEWS
& PEYGAN v. PLANNED PREGNANCY

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PERRY v. THE DAILY NEWS

I. DEFAMATION (PUBLIC FIGURE t⁵T AMENDMENT,
PUBLIC OR PRIVATE CONCERN & DEFENSES)

30 POINTS=FULL DISCUSSION _____
15 POINTS=PARTIAL DISCUSSION _____

IT. INVASIONOFPRIVACY:
INTRUSION INTO SECLUSION

10 POINTS= FULL DISCUSSION _____
5 POINTS= PARTIAL DISCUSSION _____

III. INVASIONOFPRIVACY:
PUBLIC DISCLOSURE OF PRIVATE EMBARASSING FACTS & DEFENSES

10 POINTS=FULL DISCUSSION _____
5 POINTS= PARTIAL DISCUSSION _____

IV. INVASION OF PRIVACY:
FALSE LIGHT & DEFENSES

10 POINTS = FULL DISCUSSION _____
5 POINTS= PARTIAL DISCUSSION _____

PEYGANv.PLANNEDPREGNANCY

V. INVASION OF PRIVACY:
COMMERCIAL MISAPPROPRIATION OF NAME AND/OR LIKENESS & DEFENSES

15 POINTS= FULL DISCUSSION _____
10 POINTS= PARTIAL DISCUSSION _____

VI. INVASIONOFPRIVACY:
FALSE LIGHT & DIFENSES

15POINTS=FULL DISCUSSION _____
5 POINTS= PARTIAL DISCUSSION _____

TOTAL SCORE:.....

QUESTION TWO

PERRY was a former member of the royal family of the Kingdom of Breetan. PERRY had previously held the auspicious title of "Prince Perry" until his departure from the royals, and since then he was delegated to simply: "Duke of Tussex". PERRY also departed the Kingdom of Breetan and decided to live in small coastal village in the United States as "common folk" alongside his wife PEGAN. PEGAN was a former Hollywood actress who had left the film industry to marry PERRY.

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1. PERRY bring a suit against the DAILY for Defamation and Invasion of Privacy only. Discuss.
2. PEGAN brings a suit against PLANNED PREGNANCY for Invasion of Privacy only. Discuss.

Commented [8511]: Establishing whether Perry is a public figure and whether his retreat from the royal family would change his status. Is Perry still newsworthy. Establishing that his wife Peggan, is also a public figure in her own right as a former Hollywood celebrity.

Commented [8512]: The sticky microphone is an intrusion into seclusion. Discuss whether or not a physical invasion is needed. Is window of a private home sufficient?

Commented [8513]: Defendant is a media defendant in that it is a newspaper. Held to a Constitutional standard of fault and falsity.

Commented [8514]: Defamatory statement regarding Perry in that it discusses false statement of his wife terminating a third pregnancy and implying it was due to treatment by royal family. Published to third party (all buyers or readers of the article), of or concerning Perry. As it names him as Duke of Tussex. Damages are that Perry and Pegan lost their titles of Duke and Duchess of Tussex.

Commented [8515]: Publishing the medical record that states Megan has an infection could go to libel per se.

Commented [8516]: False light as it paints Pegan as long to her doctor to terminate her third child.

Commented [8517]: Public Disclosure of Private Facts. By publishing an actual medical record, the Daily published very private information.

Commented [8518]: Planned Pregnancy can be found liable for Commercial Misappropriation of Name and/or likeness for using Pegan's photo without consent and attributing that she had "a choice".

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PETER v. DAVID

EXAM PRESENTATION (TOTAL POINTS AVAILABLE= 10)

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DISCUSSION OF ISSUES (TOTAL POINTS AVAILABLE= 90)

ECONOMIC HARMS:

- I. INDUCEMENT OF BREACH OF CONTRACT & DEFENSES
 - 25 POINTS=FULL DISCUSSION _____
 - 12 POINTS=PARTIAL DISCUSSION _____
- II. INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE & DEFENSES
 - 25 POINTS=FULL DISCUSSION _____
 - 12 POINTS=PARTIAL DISCUSSION _____
- III. UNFAIR COMPETITION & DEFENSES
 - 25 POINTS=FULL DISCUSSION _____
 - 12 POINTS=PARTIAL DISCUSSION _____

INTENTIONAL TORTS:

- IV. TRESPASS TO LAND/DEFENSES
 - 5 POINTS= FULL DISCUSSION _____
 - 2 POINTS= PARTIAL DISCUSSION _____
- V. TRESPASS TO CHATTEL/DEFENSES
 - 5 POINTS= FULL DISCUSSION _____
 - 2 POINTS= PARTIAL DISCUSSION _____
- VI. CONVERSION/DEFENSES
 - 5 POINTS=FULL DISCUSSION _____
 - 2 POINTS= PARTIAL DISCUSSION _____

TOTAL SCORE:..... _____

QUESTION THREE

PETER operates a chicken farm on land he owns in Fresno. **PETER's** chickens roam free over a large field because they remained healthier. **PETER** had a contract to sell chickens to "Fancy Grocery" all summer long. **PETER** got the contract with "Fancy Grocery" because his chickens were healthy. **PETER's** agreement with "Fancy Grocery" had to be renewed each year.

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The next morning, **DAVID** told the manager at "Fancy Grocery" that he had heard that **PETER** was a careless chicken farmer and that **PETER's** chickens had the chicken plague, a disease that makes the chicken taste bad when they are cooked. The chicken plague is very hard to eradicate from a farm. **DAVID** offered to sell his chickens to "Fancy Grocery". The manager did not want to take a chance that the chickens he was going to buy were going to taste bad, so he called **PETER** and told him that he was not going to take delivery of any more chickens.

PETER went out to the field immediately to check on his chickens. All of his chickens were dead. **PETER** eventually gave up chicken farming because no one would buy his chickens anymore.

NOT INCLUDING DEFAMATION, DISCUSS ALL CLAIMS THAT PETER MIGHT HAVE AGAINST DAVID.

Commented [8519]: Interference with Contract by David knowing about Peter's contract for sale of chickens to Fancy Grocery and by intentionally poisoning Peter's chickens so that Peter cannot fulfill the contract.

Commented [8520]: Trespass to land by cutting hole in fence, going onto Peter's land and spreading contaminated grain.

Commented [8521]: While David attempted to poison Peter's chickens, he was not sure they were dead yet. In the meantime, he approached Fancy Grocery and made fraudulent representations about Peter's chickens that they had the chicken plague.

Commented [8522]: Trespass to chattel and Conversion. By poisoning the chickens, David is liable for Trespass to Chattel. The death of the chickens makes David liable for Conversion.

1)

Product Liability Theories of Establishment

rework rule | Products liability is liability imposed on a manufacturer or seller of a product in an unreasonably dangerous or defective condition to one injured by the product. Causes of action may be brought under the following theories:

Strict Products liability

Misrepresentation

Breach of warranty Express or Implied

Negligence

→ Battery

Strict Products Liability

yes ✓ Strict products liability occurs when defendant caused the product to be placed on the market; at the time defendant placed the product on the market it contained an unreasonably dangerous defect; plaintiff used the product in an intended and foreseeable manner; and defendant is engaged in the product of selling or supplying the product. *+ TT Suffered harm.*

In order for strict products liability to apply there needs to be a proper defendant, which in this case is Dazer, who is a manufacturer and distributor of firebomb. There needs to be a proper plaintiff, who may be any user or consumer or bystander who may be foreseeably injured by the product, in this case Pat is a proper plaintiff. The product should not be altered and facts indicate that the firebomb was not altered as it was placed on the home bar with other liquor bottles. There must be proper context which states that there is a product that is defective. Lastly the product must be used in a foreseeable manner, in this case, Pat drink the beverage, which was foreseeable. *(why?)*

Elaborate did P purchase FB?

Defect

✓ Manufacturing Defect

A manufacturing defect occurs when one product emerges different and more dangerous than the product made properly. Plaintiff must show that the product failed to perform as an ordinary user would expect.

Here, no facts indicate that the Firebomb emerged differently than the product made properly.

Thus, manufacturing defect will most likely not apply.

✓ Design Defect

A design defect occurs when the product emerges according to specifications and plaintiff's claim is that the specifications made it more dangerous and defective than necessary. Three tests to determine whether there is a design defect in consumer expectation, risk versus the benefit, or alternative feasibility test.

✓ Consumer Expectation

The consumer expectation test applies when the product fails to perform as an ordinary and reasonable user would expect.

Here, a reasonable and ordinary user would expect the product to create a drunken state. The user would expect no other negative effects aside from a possible hangover or depending on the amount that was consumed, a possible hospital visit. There are no facts to indicate that the product did not perform as a ordinary and reasonable consumer would expect, which would be able to drink the beverage without any problems, Pat's condition was an outlier. However, there are most likely those who enjoy the malt beverage and those who enjoy the whiskey. These are two separate drinks, despite the

similarity in flavor. Pat may argue that this product did not perform as an ordinary user would expect.

Thus, consumer expectation test may apply.

✓ Risk versus the Benefit

Risk of harm versus the benefit to society test occurs when the risk outweighs the benefit that the product currently provides to consumers.

Here, Dazer produces both firebomb as a whiskey and a malt beverage. Though there is a benefit to being able to sell the product to 170,000 stores, providing many with the chance to enjoy a distinct bold flavor of cinnamon spice, the risk of the two products being designed exactly the same may out-weight the benefit of a homogenous design. Pat may argue that the risk of confusing the two products, one being a whiskey and the other being a malt liquor which had a lower alcohol content could potentially lead to a great risk to those who easily conflate the two, and with the same red cap, yellow label, firebomb name and the logo, this may be an easy possibility.

Thus, the risk may outweigh the benefit.

✓ Feasible Alternative Design

Feasible alternative design occurs when the defect in design could have been made safer through a cost effective alternative that the manufacturer or distributor failed to take advantage of.

Here, in order to maintain the caramel color in the malt beverage Dazer added a Red Dye Color 40 to the whiskey, which had a natural caramel color. There was an alternative natural food coloring, however, in using the red dye, the malt beverage was \$2 cheaper. Dazer may argue that the feasible alternative design, or using the natural coloring, would

greatly impair their competitive edge. They are able to sell this malt beverage at over 170,000 stores in the nation and most of these stores receive multiple bottles. Dazer may argue that the product would then be \$22, which would not have the allure of the \$20 price, and would create a great hinderance in terms of price. However, Pat may argue that there are those that would be willing to buy firebomb with the natural dye in order to receive a more natural product. *good*

Thus, feasible alternative may be applied.

Informational Defect/ Failure to Warn

Failure to warn occurs when there is a defect in design and the seller fails to adequately warn the consumer.

good analysis Here, the two firebombs were made with the same red cap, the same yellow label, the word firebomb, and the same logo. However, there is a distinct difference between the alcohol content. Pat may argue that there should be an adequate distinction between the two bottles and a proper warning. The label for the malt beverage states "natural whisky and other cinnamon flavors." Facts do not indicate that there is any mention of the use of a red dye in the product. Even though Pat may be from a small minority, Dazer may still have a duty to disclose all ingredients that are in the product, giving those who may be allergic to the product proper warning. In stating natural whisky, the reasonable user would assume that this is a natural drink with cinnamon flavors. Natural implies a deviation from synthetic and thus no use of any chemicals. *yes* Furthermore, Dazer failed to warn of the product differences. Pat can further claim that the firebombs should have had proper warnings that differentiated the two drinks.

Causation

For strict products liability to apply, the cause must be actual and proximate.

✓ Actual

Actual causation is the "but for" cause or the sine qua non rule.

Here, but for Pat drinking this firebomb, which he believed to be his favorite drink, he would not have been rushed to the hospital with gastrointestinal distress and hives.

Thus, Firebomb is the but for cause.

✓ Proximate

Proximate is the legal or foreseeable cause.

Here, it is foreseeable that someone would buy this alcohol to bring to a party. Dazer may argue that this was a superseding cause and that placing the bottle with other bottles broke the causal chain. Dazer may also argue that Pat's allergy is a superseding cause, as he has an abnormal allergy. However, there is one causal connection between Dazer putting red dye into the drink and Pat foreseeably consuming what he believed to be his favorite drink.

Thus, firebomb is the proximate cause.

Damages

Here, there is severe burning and gastrointestinal distress and hives.

Thus there are damages.

✓ Defenses

✓ Contributory Negligence

Conduct that falls below the standard of a reasonable person thus combining with plaintiff's negligence

Not a defense in strict products liability, and no facts indicate that Pat failed to take note of a warning that a reasonable person would have, nor did he misuse the product.

✓ Assumption of Risk

May be either primary or secondary. Primary occurs when there is an express assumption of possible dangers. Secondary occurs when negligence has occurred but plaintiff has taken consideration and proceeds anyways.

Here, Dazer may argue that Pat assumed the risk by drinking the product by pouring a large glass of firebomb, consuming more than suggested. However, due to the dearth of warnings creating an adequate distinction between the two products, Pat only proceeded to drink his favorite drink, and many people consume more than one drink. No facts indicate the size of this large drink or give rise to a suspiciously heavy pour.

Thus, assumption of risk would most likely not apply.

✓ Comparative

Comparative is an apportionment depending on fault. There is pure which despite the level of negligence on a plaintiff's party there is always some recovery. In a partial jurisdiction, there is a threshold of 49/50% and once that is reached, there is no recovery on the part of plaintiff.

Here, there are no facts to indicate that Pat was negligent.

Thus, there may be an awarding of damages based on strict products liability.

✓ Misrepresentation

✓ Misrepresentation occurs when there is a misrepresentation of material fact. Plaintiff relied on representation in using the product. Representation made by defendant or fairly chargeable against him. The representation was intended to reach a class of people of which plaintiff was apart of. Defendant is a commercial supplier of chattels.

Here, Pat may argue that Dazer misrepresented the product as a natural whiskey without any other ingredients aside from cinnamon flavors. There are no facts to indicate that Pat relied on this assertion, nor are there any to indicate any that Pat is apart of a class of people who favored natural products.

Thus, misrepresentation would most likely not apply.

✓ Breach of Warranty

Good
A breach of warranty may be either express or implied. An express warranty occurs when there is stated in words or other tangible form. An implied warranty may be characterized as merchantability or fitness for a particular purpose.

✓ Express

An express warranty is stated in words or other tangible form, such as a picture. Occurs when the assertion of fact becomes the basis of the bargain. An express warranty is breached when the product fails to conform to the promise that was made about it.

Here, though there was an assertion that the drink "tastes like Heaven, burns like Hell," and Pat did enjoy the taste, and he did develop a severe burning, this does not mean that the burning should develop gastro distress or hives. The assertion is not to create such distress.

*express → natural whiskey? - no mention of artificial colors.
Red Dye #40*

Thus, an express warranty most likely does not apply.

✓ Implied

Merchantability

An unwritten and unspoken guarantee that the product is fit for the ordinary purpose for which it was intended.

Here, Pat may argue that the product is not fit for the ordinary purpose as it caused a great deal of distress. Dazer may counter by stating that the product is only intended to provide for a lively and drunkenly feeling and that is what it is intended to do.

The product is fit for the purpose of which it is intended.

✓ Fitness for a particular purpose

Seller recommends a product after being told of the particular needs.

Here, there are no facts to indicate that there is a fitness for a particular purpose.

Negligence

Negligence requires a showing of duty, breach, causation, damages.

good | Negligence is conduct that falls below the standard of care that a reasonable prudent person would have followed in the same or similar circumstances. Everyone in the chain of distribution has a duty to exercise reasonable care, and reasonable care must be shown toward anyone likely to be injured by the product.

Duty

Manufacturers have a duty to use reasonable care when manufacturing and designing a product and there is a duty to provide adequate warnings; wholesalers have no duty to inspect but retailers must when they know the product is defective. In the seminal

High std. of duty 25 mfr. of food stuffs that

people injest

Palsgraff case Justice Cardozo states that there is a duty to those who are within the zone of danger. Justice Andrews in the minority opinion states that there is duty to the world!

Here, Dazer has a duty to adequately and properly manufacture and design the products that they produced. Dazer could have properly manufactured and designed the products by creating a distinct design that separated the product or simply change the color of the caps, indicating that the two products are different. There is a duty to those who may be foreseeably injured, and that includes Pat. There is a duty to place the ingredient list on the back of the bottle. Liquor bottles are usually used for fun, people bring them to parties, gatherings, picnics, etc. Pat is within the zone of danger, as he is someone who may drink the firebomb.

Thus, there is a duty owed to Pat.

Breach

A breach occurs when the conduct does not conform to the necessary standard of care.

Here, a reasonable prudent manufacturer would provide adequate warnings, and aside from the warnings, a reasonable prudent manufacturer might simply change the bottle cap, or use a different colored label. The reasonable prudent person standard was breached. ~~However, there might be a showing through res ipsa, which occurs when there is no fault by plaintiff, the item is in exclusive control of the defendant, and the accident is one that does not typically occur without negligence. Dazer may argue that they did not have exclusive control of the firebomb as it was now at the party. However, facts do not indicate who opened it, and there was no alteration. Pat did not contribute to the harm and this type of incident does not usually occur with proper warnings. There may be a showing of breach through Res Ipsa. There may also be a breach through learned hand,~~ which occurs when the probability of harm times the severity of loss is greater than the

res ipsa = NIA
We know Δ as FB

yes ✓

burden. Placing a proper ingredients list does not act as a huge burden to Dazer, and if the a proper warning was provided the harm would have been avoided.

✓ Causation

Actual

✓ See supra

Proximate

✓ See supra

Damages

✓ See supra

✓ Defenses

Contributory

Conduct that falls below a standard of care and combines with plaintiffs

✓ See Supra

Assumption

✓ See Supra

Comparative

✓ See Supra

Conclusion

Pat may be able to bring cause of action through strict products liability and negligence.

-Battery? "Substantial Certainty" Someone
allergic to Red dye #40 may drink.

(93) Excellent work

TORTS SP2023 QUESTION #1

ID#

PAT v. DAZER

<u>EXAM PRESENTATION (TOTAL POINTS AVAILABLE = 10)</u>							
	Poor		Excellent				
NEATNESS/ORGANIZATION	0	1	2	3	4	5	<u>5</u>
LAWYER-LIKE	0	1	2	3	4	5	<u>5</u>

DISCUSSION OF ISSUES (TOTAL POINTS AVAILABLE = 90)

**I. STRICT PRODUCTS LIABILITY
(DEFECT IN DESIGN/INADEQUATE WARNINGS, DBCD,
CONSUMER EXPECTATION TEST & FEASIBLE ALTERNATIVES)**

30 POINTS = FULL DISCUSSION 30
15 POINTS = PARTIAL DISCUSSION _____

**II. NEGLIGENCE in Products Liability
(DUTY, BREACH, CAUSATION, DAMAGES)**

20 POINTS = FULL DISCUSSION *high std.* 19
10 POINTS = PARTIAL DISCUSSION _____

**III. DEFENSES TO DEFENSES TO STRICT PRODUCT
LIABILITY AND NEGLIGENCE
(A/R, CONTRIB/COMP. NETG)**

10 POINTS = FULL DISCUSSION 9
5 POINTS = PARTIAL DISCUSSION _____

IV. WARRANTY (Express & Implied) (~~Including defenses~~)

15 POINTS = FULL DISCUSSION 15
7 POINTS = PARTIAL DISCUSSION _____

V. MISREPRESENTATION

10 POINTS = FULL DISCUSSION 10
7 POINTS = PARTIAL DISCUSSION _____

VI. BATTERY

5 POINTS = FULL DISCUSSION _____
2 POINTS = PARTIAL DISCUSSION ~~_____~~

TOTAL SCORE:..... 93

2)

Perry v Daily

Perry may likely sue the daily for defamation and the invasion of privacy.

Publication of defamatory material (or false by its nature) without consent or privilege to a third party who recognizes the statement as defamatory and as pertaining to plaintiff causing damages and if the plaintiff is a public official/figure, they must show fault and falsity under constitutional standards.

✓ Defamatory Statement

One that subjects the plaintiff to ridicule, contempt, hatred or lowers their esteem in the community.

Here, Perry may argue that this statement stating that it is too emotionally damaging to have a third child in light of the destructive treatment subjects him to a sense of prejudice from the rest of the royal family, being that his title was stripped. The statement is incendiary as it states that there is emotional damages. *good*

✓ Of or Concerning P

One person must recognize this as pertaining to plaintiff.

Here, the Daily, a tabloid newspaper in Breetan ran this paper, which stated the Duke of Tussex by name.

Thus, the statement concerns the Duke.

✓ Published

The statement must be published to one other party with intent or negligently. There is a single publication rule. *✓ yes*

Here, though it was published once, this is in the newspaper, and was intentionally ran by the Daily.

Damages

Damages may be either general, which is a loss of friends/family/ etc, pecuniary which disrupts business, or punitive which occurs through malice. Determining if the defamatory statement was slander or libel will determine the damages.

Here, this is a libelous statement made in the newspaper in long, permanent form. Perry lost his title of Duke of Tussex and this may lead to both general damages as well as pecuniary damages due to the loss of the title.

✓ Slander/Libel Per Se

Slander per se does not require a showing of punitive damages and general damages are assumed based on the nature of the statements. They are business reputation, loathsome disease, unchastity in women, or crimes involving moral turpitude.

Here, Perry may argue that abortion is a grave crime, though this would most likely not work as it has been accepted in the US

Thus, slander/libel per se does not apply.

Libel per quod

Libel per quod occurs when the libel is not on its face and extrinsic evidence must be used to establish defamation.

Here, the Duke is mentioned by name.

Thus, libel per quod does not apply.

Common Law Defenses

Truth as well as consent are absolute defenses. Absolute defenses are also: judicial proceedings, executive statements, or legislative proceedings, compelled broadcasting, or marital privilege. Qualified privileges include reporting on public proceedings, fair comment, public interest, private interest. Loss of privilege occurs when the scope is exceeded, there is malice involved, and there is a disregard for the truth of the defamatory statement.

Here, Daily may argue that there is both a public interest, being that Perry is apart of the Royal family. However, Perry may retort by stating that he departed Breetan and decided to live in a small coastal village to avoid the public eye. Nevertheless, Daily may argue that there is still an interest in the ongongs of former royalty. Daily may also argue that there is a private interest and that they, as a tabloid, require the up-to-date gossip on celebrities in order to make a living. Perry may state the Daily lost their privilege by exceeding the scope, going well beyond their scope by rummaging through the trash to find a torn up medical record, and may even claim that they acted with malice in printing a newspaper story claiming termination due to reading the the words "third child" and nothing more, there is a reckless disregard.

Thus, Daily most likely exceeded the scope and lost their qualified common law defenses.

Constitutional Defenses

Constitutional defenses requires determining if the individual is a public or private figure.

If Public and a media defendant, there needs to be a showing of malice (or reckless disregard) as determined under NYT v Sullivan. If Private versus a media defendant, there

needs to be a showing of negligence or fault. If private versus media and a public concern must show fault and falsity. If a private concern, there only needs to be a showing of fault.

Here, Daily may argue that Perry is a public figure and therefore Perry would have to show malice on daily's part, which is a reckless disregard for the truth. Daily searched through the trash and only saw a piece of torn paper that said third child, with nothing more they then took this and ran a headline which indicated emotional distress and destructive treatment by the royal family without ascertaining the truth on those statements and decided to state that Pegan was attempting to terminate her pregnancy. Pegan was not contemplating any pregnancy. There seems to be a reckless disregard for the truth. However, Perry moved from the Kingdom into a small coastal town away from the royal family and ingratiating himself with the "common folk." The royal family is a public concern, and Perry may try to claim he is a private person, however even if that may be the case, the statement may be considered false, as Pegan had no intention of having a third child and there is fault or negligence by Daily in running this story, as they only had information based on this medical record to indicate that this may be a possibility.

great /

✓ Invasion of Privacy

One who intrudes physical or otherwise into the solitude or seclusion of an individual or his private affairs or concerns may be subject to invasion of privacy if the intrusion would be highly offensive to a reasonable person.

✓ Intrusion upon seclusion

A physical or non-physical intrusion into plaintiffs private space in a highly offensive manner resulting in damages without consent or privilege.

Here, Daily seems to have placed a sticky-mini microphone outside of Perry's home window. The microphone had recorded a week's long set of conversation that he had had with his wife about intimate details of their family life. This is a physical intrusion, as the person who placed the microphone would have had to trespass upon the private space of Perry to place the microphone, but this is also a non-physical intrusion invading the intimacy of the family home and discovering private details. This is also a highly offensive manner as many would feel safe to speak freely in their home, which is a beacon of privacy. *yes*

Thus, there was an intrusion upon seclusion.

✓ Public Disclosure of Embarrassing private fact

A public disclosure (to more than one person) of a private fact concerning plaintiff the disclosure of which would be highly offensive to a reasonable person in plaintiff's situation resulting in damages without consent or privilege.

Here, Perry may argue that there were two private facts disclosed about his family, the first being destructive treatment by the royal family, indicating that there is a tumultuous relationship between the two. The second being that the Perry and Pegan are trying to have a baby and were not able to emotionally have one and wanted to terminate their child. This is a private fact that many take a long time to determine if they would like to proceed this way. Many would find this highly offensive as having a baby or terminating one is a life-changing experience.

Thus, there was a public disclosure of embarrassing private facts.

✓ False Light

An embarrassing statement concerning plaintiff that is false and done with fault (must show malice if a media defendant) published without consent or privilege resulting in damages.

Here, there was a false statement that stated that Perry and Pegan wanted to terminate their child, which was done with malice being that there was a reckless disregard for the truth. This statement concerns Perry and Pegan, and damages resulted, as their titles were stripped.

Thus, there was false light.

NIA ~~Misappropriation of Plaintiffs Identity~~

An unauthorized use of plaintiffs identity for the use of personal gain.

Here, the Daily ran the paper with the Duke's name, using his title and name to sell a magazine for the use of personal gain, which would be the selling and supplying of these papers. The Daily would most likely make quite a bit of money with the contents of the article headline. This use of plaintiff's identity caused damages to Perry by resulting in stripped titles.

Thus, there was a misappropriation of plaintiff's identity.

✓ Common Law Defenses

See Supra

✓ Constitutional Defenses

See Supra

Conclusion

Perry will most likely prevail against the Daily in regards to defamation and invasion of privacy through misappropriation of plaintiffs identity, false light, public disclosure of private fact, and intrusion upon seclusion.

Pegan v Planned Pregnancy

Invasion of Privacy

One who intrudes physical or otherwise into the solitude or seclusion of an individual or his private affairs or concerns may be subject to invasion of privacy if the intrusion would be highly offensive to a reasonable person.

Intrusion upon seclusion

See Supra

Here, there are no facts that indicate that Planned Pregnancy intruded upon the private space of Pegan.

Public Disclosure of Embarrassing private fact

See Supra

Here, Pegan may argue that the use of her face for planned pregnancy that specializes in pregnancy rights suggests that Pegan has some sort of issue with pregnancy and thus would need the help of this specialty doctor. Pegan did in fact speak with her own doctor about this possibility. This disclosure of troubles with procreation may be highly offensive to a reasonable person as these facts are not widely disseminated to the general public often.

Thus, Pegan may bring a claim of public disclosure of embarrassing private facts.

✓ False Light

See Supra

Here, like Pegan may state again that this was an embarrassing statement that is not true, by using her face, and a picture is worth a thousand words, Planned pregnancy may be insinuating a great political stance that Pegan would not want to publicly disclose and as stated above, by using her face as a pregnancy rights poster, this may act as an embarrassing statement that she has had trouble conceiving or that the termination of her child is in fact true. "You have choices" underneath her photo also ascribes that this statement came from Pegan which it did not. ✓ yes

Thus, Pegan may bring a claim for false light.

✓ Misappropriation of Plaintiffs Identity

See Supra rule ✓

good
Here, Planned pregnancy used Pegan's face as the logo which stated you have choices. This is a US based healthcare company which most likely wants to amass some sort of profit. In using a celebrity face as an endorsement, this acts as a way to incentive many people, who now see Pegan in the news often, to use the products of this particular company, thus bringing in profits. This resulted in the stripping of Pegan's title.

Common Law Defenses

See Supra

Here, consent and truth both do not apply. There is no absolute privilege, and Planned Pregnancy may argue that there qualified public interest, since the Daily recently ran this ad talking about Pegan's termination. However, Planned will most likely be found to have exceeded the scope by not ascertaining whether the statement was true to then use

Pegan's face, and by relying on a statement made by a tabloid magazine. There might also be a showing of malice as there was a reckless disregard for the truth of the statement again relying on a tabloid.

Constitutional Defenses

See Supra

Here, Pegan was a public figure, but then left film to marry Perry, and even though they have tried to remain as private figures. Pegan will most likely be considered public, which requires a showing of malice as determined under *NYT v Sullivan*. Here, Planned Parenthood recklessly disregarded the truth by using Pegan's face, ascribing a statement to her, and disregarding the reliability of a tabloid magazine. If determined to be a private figure, their family may be considered to be a public concern which would require fault and falsity. There is fault by negligently relying on the tabloid as the basis of truth and there is falsity in ascribing the statement to Pegan.

Conclusion

Pegan may bring suit against planned pregnancy for a public disclosure of private facts, misappropriation of p's identity, and false light.

(95) Excellent Essay !!

PERRY v. THE DAILY NEWS
& PEYGAN v. PLANNED PREGNANCY

EXAM PRESENTATION (TOTAL POINTS AVAILABLE = 10)

	Poor		Excellent		
NEATNESS/ORGANIZATION	0	1	2	3	4 <u>5</u> _____ <u>5</u>
LAWYER-LIKE	0	1	2	3	4 <u>5</u> _____ <u>5</u>

DISCUSSION OF ISSUES (TOTAL POINTS AVAILABLE = 90)

PERRY v. THE DAILY NEWS

I. DEFAMATION (PUBLIC FIGURE 1ST AMENDMENT, PUBLIC OR PRIVATE CONCERN & DEFENSES)

30 POINTS=FULL DISCUSSION
15 POINTS=PARTIAL DISCUSSION

_____ 30

II. INVASION OF PRIVACY: INTRUSION INTO SECLUSION

10 POINTS = FULL DISCUSSION
5 POINTS = PARTIAL DISCUSSION

_____ 9

III. INVASION OF PRIVACY: PUBLIC DISCLOSURE OF PRIVATE EMBARRASSING FACTS & DEFENSES

10 POINTS = FULL DISCUSSION
5 POINTS = PARTIAL DISCUSSION

_____ 9

IV. INVASION OF PRIVACY: FALSE LIGHT & DEFENSES

10 POINTS = FULL DISCUSSION
5 POINTS = PARTIAL DISCUSSION

_____ 9

PEYGAN v. PLANNED PREGNANCY

V. INVASION OF PRIVACY: COMMERCIAL MISAPPROPRIATION OF NAME AND/OR LIKENESS & DEFENSES

15 POINTS = FULL DISCUSSION
10 POINTS = PARTIAL DISCUSSION

_____ 14

VI. INVASION OF PRIVACY: FALSE LIGHT & DEFENSES

15 POINTS = FULL DISCUSSION
7 POINTS = PARTIAL DISCUSSION

_____ 14

TOTAL SCORE:.....

_____ 95

3)

Peter v. David

✓ **Inducement of Breach of Contract/Interference with Contract**

Defendant, a third-party, interferes with a valid and existing contract in which they know the Plaintiff is a party of. The interference is done with the intent and malice to disrupt Plaintiff's contractual rights and with the intent to cause harm to Plaintiff or make a profit from the interference.

In this present case, David, a third-party, is fully aware that Peter has a valid an existing contract with Fancy Grocery for the selling of healthy chickens. David, envious of the contract that Peter has with Fancy Grocery, takes it upon himself to interfere with Peter's contractual relationship with Fancy Grocery. Due to this envy, David, with the intent to damage Peter's chicken operation with Fancy Grocery, poisons all of Peter's chickens, fully aware that if Peter could not provide healthy chickens to Fancy Grocery, then that contractual relationship would come to an end, and then David would be able to swoop in and take over the contract as the sole provider of healthy chickens to Fancy Grocery. David interfered with this contract with the intention to knock Peter out of the chicken distribution business and take over the contract that paid premium prices for the chickens. The poisoning of the chickens, which rendered them to be unhealthy, caused for a direct breach of contract because Peter could not provide Fancy Grocery with healthy chickens and caused an substantial interference with the contract by causing for Peter's contractual obligations all the more difficult to fulfill to Fancy Grocery. David's intentions were to make a profit in the long run and hurt Peter due to envy.

✓ **Interference with Prospective Business Advantage**

Defendant, a third-party, interferes with Plaintiff's prospective business advantage causing for a disruption of an economic relationship. Plaintiff was expecting to benefit financially or form economic relationships for future business ventures.

David disrupted Peter's prospective business advantage by causing for the purpose of the contractual dealings, healthy chickens, to become frustrated and unavailable to produce to Fancy Grocery. Due to this interference, a recurring contract between Fancy Grocery and Peter was not renewed. The contract renewed every year and David's interference with the dealings between Fancy Grocery and Peter disrupted an economic relationship that was Peter's livelihood. Additionally, as a result of David's interference, all of Peter's chickens died and Peter gave up chicken farming entirely. Chicken farming was how Peter made money and now the option to continue to raise chickens and sell them for premium prices, was unavailable. David's interference had a much larger, adverse affect on Peter. Not only was one economic venture interrupted, but all prospective business advantages involving chickens was ended.

yes!

✓ **Unfair Competition**

Defendant engages in unfair, unlawful, fraudulent, or deceitful business practice or conduct which results in harm to Plaintiff. Methods of unfair competition include fraudulent representations of goods or services, theft of trade secrets, trade libel, use of confidential information to solicit customers, fraudulent advertisements, and breaching of non-covenants.

nice

It is safe to argue that David's conduct of poisoning all of Peter's chickens in order to take over a lucrative contract was unfair competition in every form. David sabotaged Peter's entire chicken distribution for the sole purpose of selling his chickens to Fancy Grocery. The illegal and unfair method of directly competing with Peter caused substantial harm to any future dealings which Peter hoped to engage in. David interfered with Peter's business in order to benefit his. The profitable contract with Fancy Grocery could have been

obtained through legal means, valid means, and fair means. If David would have just raised healthier, plumper chickens, then he would not have needed to engage in unlawful behavior to benefit his business by destroying the business of a competitor. */good*

✓ Defenses to Economic Harms

The defense of justification may only be applied towards actions against interference with contract or interference with prospective business advantage. It must be established that Defendant engaged in their interfering conduct with the intention to protect a legitimate interest and that their interference was reasonable, meaning more benefit resulted than harm.

This defense of justification is likely to fail as it would be difficult for David to establish that his interference with Peter's contractual dealings with Fancy Grocery and all future business ventures involving chicken sales, was valid and justifiable.

✓ Trespass to Land

The entry onto the land of another which is not consented to nor privileged.

Peter has a claim against David for trespass when David damaged Peter's fence, bypassed the fence, and entered onto Peter's fields late at night.

✓ Trespass to Chattels

The intentional act of interfering with another person's use or enjoyment of their property, in which interference with the property results in harm.

David trespassed to Peter's chattel in multiple ways. The first being when David cut a hole through Peter's fence, which is intended to keep all livestock in. The next being when David poisoned all of Peter's chickens and rooster by feeding them contaminated grain. The feeding of the contaminated grain to the chickens resulted in all of the chickens

dying, as a result of the poison. Peter was now not only harmed in that his fence was cut, but also that all his chickens and pet rooster were killed by David's interference with his personal property.

Conversion

The intentional act of asserting dominion and control over another's property by causing substantial interference with the use and enjoyment of the property, causing harm to the Plaintiff.

David's actions of killing all of Peter's chickens was a substantial interference with his property. The poisoning and killing of Peter's chickens was more than a simple interference, the complete destruction of the property was an assertion of power over it.

→ Defenses to Int'l Torts?

END OF EXAM

Excellent. (94)

PETER v. DAVID

<u>EXAM PRESENTATION (TOTAL POINTS AVAILABLE = 10)</u>						
	Poor		Excellent			
NEATNESS/ORGANIZATION	0	1	2	3	4	5
LAWYER-LIKE	0	1	2	3	4	5
						<u>5</u>
						<u>5</u>

DISCUSSION OF ISSUES (TOTAL POINTS AVAILABLE = 90)

ECONOMIC HARMS:

I. INDUCEMENT OF BREACH OF CONTRACT & DEFENSES

25 POINTS=FULL DISCUSSION

25

12 POINTS=PARTIAL DISCUSSION

II. INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE & DEFENSES

25 POINTS=FULL DISCUSSION

25

12 POINTS=PARTIAL DISCUSSION

III. UNFAIR COMPETITION & DEFENSES

25 POINTS=FULL DISCUSSION

25

12 POINTS=PARTIAL DISCUSSION

INTENTIONAL TORTS:

IV. TRESPASS TO LAND/DEFENSES

5 POINTS = FULL DISCUSSION

2 POINTS = PARTIAL DISCUSSION

3

V. TRESPASS TO CHATTEL/DEFENSES

5 POINTS = FULL DISCUSSION

2 POINTS = PARTIAL DISCUSSION

3

VI. CONVERSION/DEFENSES

5 POINTS = FULL DISCUSSION

2 POINTS = PARTIAL DISCUSSION

3

CO
P
S
N
A

Defenses

TOTAL SCORE:.....

94