

Gerla
Torts II
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Question I

Herman Simon was sitting on death row, awaiting execution for the murder of his wife, a crime he did not commit. Execution was now only forty eight hours away. Simon's only hope was new evidence that would exonerate him and point to the identity of the real killer. Len Barden, a producer for the "investigative" television show, Special Bulletin received information from an extremely reliable informant that documents that would clear Simon and name the actual killer were hidden in a shack on land now owned by one Angus McDuff.

Barden and a film crew from Special Bulletin went to see McDuff at his home to get permission to search the shack. McDuff, at first, refused permission for Barden and his crew to search the shack. However, when Barden said that McDuff would get lots of air time as a "hero" on Special Bulletin McDuff began to change his mind. McDuff began to imagine being invited for guest appearances on the Phil Donahue Show the Oprah Winfrey Show and other similar television programs. He began to believe that he could parlay his fifteen minutes of fame into huge and financially remunerative speaking engagements. McDuff relented, and gave permission for Barden and his crew to go on his land and visit the shack.

McDuff, however, warned Barden and his crew that getting to the shack might be dangerous. McDuff cautioned Barden and the crew that the only access to the shack was by a long series of rickety steps. McDuff admitted that he could have fixed the steps with almost no trouble and expense and should have fixed them, but that he simply neglected to get them repaired. Barden asked whether they could be fixed before the crew went to the shack. Phone calls, made by both Barden and McDuff revealed that the earliest anyone could get to repair the steps was in two days--too late for poor Herman Simon. Barden and his crew decided to go to the shack in spite of the rickety steps.

Barden and his crew successfully negotiated the ascent on the steps and reached the shack. There, they found the evidence for which they were searching. On the way down however, a step gave way and Barden suffered a broken leg. (Fortunately, the evidence reached the proper authorities in time, and Simon was spared and eventually freed while

the real killer was convicted and punished).

Barden is now suing McDuff for negligence in failing to maintain the steps to the shack properly. Discuss McDuff's possible liability to Barden for the tort of negligence, including, of course, any defenses that McDuff might reasonably raise.

N.B. You are to assume that jurisdiction has adopted the pure form of comparative negligence, but the courts have not decided the impact of the adoption of the defense on any other defenses.

Question II

Roller sticks are battery-powered electric toys. They are something of a cross between in-line roller skates and a pogo stick. They have proven enormously popular, particularly among children. Hundreds of thousands of roller sticks have been sold in the United States.

Unfortunately, roller sticks have their problems. When roller sticks are operated at a high velocity or are used to jump more than three feet off the ground, they become extremely difficult to control, particularly for children. In the three years since roller sticks have been introduced, two children have been killed, ten seriously injured, and fifty slightly injured in roller stick accidents caused by excessive velocities or jumps. Devices called "dampers" exist that limit both the velocity of roller sticks and the height of their jumps. These devices virtually eliminate accidents caused by excessive speed or jumping. All models of roller sticks sold in Europe are required by European authorities to have dampers on them.

Dampers have not proven to be popular on roller sticks sold in the United States. First, they increase the price of roller sticks from an average price of \$150 to an average price of \$200. Second, American children do not care for roller sticks with dampers because **they** claim that the dampers take much of the fun out of the sticks by limiting their speed and jumping ability. Roller **sticks** with dampers are so unpopular in **the** United States that the manufacturers who made them could only sell them to liquidators for **pennies** on the dollars it cost to manufacture them.

Twelve year old Jamie York was the proud owner of a new roller stick. The roller stick Jamie owned was manufactured by the Star Toy Corporation ("Star"). Jamie's roller stick, like all roller sticks manufactured by Star, did not contain a damper. It did, however, contain clear and adequate warnings about the dangers of excessive speeds and jumps with roller sticks, both on the sticks themselves and in the owner's manual. These warnings had no impact on Jamie because he was so eager to try his new roller stick that he read neither the owner's manual nor the warnings on the stick. In fact, Jamie was completely ignorant of the dangers of excessive speed and jumps with roller sticks.

Jamie began riding and soon he was travelling at a high velocity and making high jumps. Jamie, however, lost control and was thrown from the roller stick. Jamie suffered a lower back injury that has left him paralyzed from the waist down. Jamie is now suing Star on a tort theory of products liability. Discuss Star's possible liability to Jamie on a tort theory of products liability, including, of course, any defenses that Star may reasonably raise to Jamie's claim.

N.B. #1 You are to assume that the jurisdiction has adopted the pure form of comparative negligence, but has not definitively ruled on the effect of comparative negligence on any other defenses or on the applicability of the doctrine to other tort causes of action.

N.B. #2 You are also to assume that at the time the roller stick which injured Jamie York was manufactured, Star knew or should have known about the deaths and injuries to children described above.

END OF EXAMINATION
