SOCIAL SECURITY NO.

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAMINATION.

SANTA CLARA UNIVERSITY
SCHOOL OF LAW

FINAL EXAMINATION

Torts May 7, 1996
Professor Leslie Griffin Spring, 1996
2 Questions 3 Hours

THE REVISED EXAMINATION RULES ISSUED IN JULY, 1994 APPLY TO THIS EXAMINATION.

INSTRUCTIONS

The examination consists of two essay questions, both of which you must answer. You should devote two hours to question one, and one hour to question two. QUESTION I IS WORTH 2/3 OF THE GRADE AND QUESTION II IS WORTH 1/3.

If you believe you need to know more information in order to resolve an issue raised by the facts given, tell me what you need to know and how it would affect your legal analysis. But do not add facts to create new issues. Be sure to address all issues raised by the facts even if you think a single issue is dispositive of the case.

Read carefully. Think before you write. Accurate reading of the question is essential. Good organization, clear statement and avoidance of irrelevancies and filler all count in your favor.

The examination is closed book. You may not consult any materials or another person.

If you write your exam, use one side of a page only, and skip lines. If you type, double space, and leave wide margins.

Don't forget that the last two minutes can be the most important part of the game. This last exam is as important as the first, even if you are exhausted. Good luck, and have a good summer.
QUESTION I (two hours)

Prudence had heart trouble that prevented her heart from beating regularly. She went to see Physician, who recommended that she get a pacemaker to keep her heartbeat regular.

So in January 1987 Prudence had surgery to have a pacemaker implanted in her heart in order to solve the beating problem. The pacemaker comes in a box that gives directions about how to implant it properly in the human heart. Surgeon opened the box that held the pacemaker.

In December 1992, Prudence put in a long day at the office. Then she went home. Once at home, she threw herself down on the bed because she thought that she was losing consciousness. She thought she was having a stroke. Her husband drove her to the hospital, where the doctors diagnosed a "complete heart block" because a wire in her pacemaker failed. Prudence underwent emergency surgery to implant a temporary pacemaker and then two days later another surgery to implant a new permanent pacemaker.

Prudence has developed an enlarged heart and other medical problems. Due to the surgeries, she has a lot of pain, scarring of the chest, physical handicap, and mental suffering. She worries about the future expenses to be incurred in restoring her health. She is usually anxious and nervous because she is afraid that the pacemaker now in her heart might shut down.

The pacemaker was manufactured by Healthco. A pacemaker is made of three pieces -- the implantable pulse generator (IPG), the ventricular lead, and the atrial J-lead. The ventricular lead is a wire connected to the IPG; this wire delivers the electrical impulse from the IPG to the heart. Leadco makes the ventricular lead and sells it to Healthco.

Physician attributed the pacemaker failure to a defect in the ventricular lead, the wire carrying electrical impulses from the IPG to the patient's heart tissues. Physician has received letters from Healthco and has seen their ads in medical journals. Both ads and letters state that pacemakers are "excellent" products that have "excellent results" in patient use, that they have been "safe for years" and are "safe for everybody."

Prudence's Attorney has found five other people who had problems with their pacemakers in 1990 and who wrote letters to Healthco with details of their life-threatening experiences. In all five cases, the ventricular leads had shorted out. Healthco has sold one million pacemakers.
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Attorney is sympathetic to plaintiffs and wants to help Prudence recover her hospital and medical expenses of $225,000, her lost wages of $100,000, loss of future income estimated at $200,000, pain and suffering damages of $800,000, and punitive damages of $15 million. Fortunately Prudence has good medical insurance so she has not had to pay any of her medical bills. Attorney has filed a workers' comp claim with Prudence's employer.

Attorney has also discovered a complicated federal statute that requires the FDA to approve new medical products. However, the pacemaker fell under an exception to the statute and so Healthco was required to notify the FDA of this product but not ask for FDA approval.

Now in April 1996 Healthco has started to use plastic tubing in addition to ventricular leads as part of the pacemaker. A March 1996 study suggests that the brand new plastic tubing is safer. Healthco, a multi-billion dollar company, thinks it will make good profits from selling pacemakers with plastic tubing as well as ventricular leads.

A Healthco executive who was complaining about the lawsuit told her friends in frustration: "This lawsuit is ridiculous. Pacemaker leads are complex medical devices that must perform for years in one of the most hostile environments known-inside the human body. This part flexes every time the heart beats -- about 100,000 times a day. Leads wear out, crack, become dislodged from the heart wall, and are sometimes implanted incorrectly. Everyone knows that."

1. What tort causes of action should Attorney consider?

2. How would proposed tort reforms affect Prudence's lawsuit?
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QUESTION II (one hour)

John King and Jane King are owners of the King Excavating Inc. [King Corp.]. In 1991, John transferred 47% of the stock to Jane so that Jane owned 51% of the stock of King Corp.--majority ownership. Jane became president of King Corp. and John took a new job with Non-King Corp., another corporation.

Jane's majority ownership of King Corp. meant that King Corp. was eligible to receive special state contracts--for women only--from the Disadvantaged Business Program [DBP].

Citizen filed a complaint about the practice of "front corporations" (corporations where the husband transfers stock to the wife) being allowed to receive the special contracts. Business Journal ran an article questioning the legitimacy of the state program and listed King Corp. as a business that qualified for the DBP.

In 1993 John ran for state senator. John describes Jane as his "closest advisor" and a picture of them adorned John's campaign literature.

Newspaper ran an article that described Jane's brilliant success at King Corp. and the brilliance of her decision-making as president.

John's opponent in the senate race, Tom Prince wrote a letter to the editor that was published in Newspaper. It said: "Jane may be a very nice person and well known in the community. It is also well known that her husband John transferred ownership of a business inherited from his father to his wife so they could qualify for the DBP. A little investigative journalism would have discovered this charade. The intent of the DBP law was not to throw government dollars at established businesses who technically alter family names at the top of the company letterhead. We would rightfully be angry with people who misrepresented their income to get food stamps, thus taking food from those who are hungry. We should be equally upset with those who circumvent businesses from companies that are truly disadvantaged. I really become irritated to think that one of our state senators would do such a thing to get more business for himself and take away potential jobs from the more deserving."

John is a lot smarter than Jane and gave her daily advice about how to run Xing Corp. John won the election with a lot of help from Jane.

Now Jane is angry and wants to sue. What tort lawsuits should she consider? What result in the lawsuits?

END OF EXAMINATION