AMERICAN LAW PROGRAM
The Catholic University of America, Columbus School of Law
Jagiellonian University, Faculty of Law and Administration
17th year, 2016-2017

ENTRANCE EXAM 3 – ESSAY PART

Dear American Law Program Candidate!

In order to let the American Law Program stuff assess your English language skills and abilities to actively participate and benefit from the regular courses, we kindly ask you to take our Entrance Exam. As the amount of students willing to join the program exceeds the amount of students who can be admitted, it serves also the selection of the best candidates in an objective manner.

To make the assessment and competition both fair and reasonable, we kindly ask you to obey the following rules:

During the exam **you are not allowed** to:
- consult anyone nor any materials, except for the texts that we distribute;
- look at other candidate's work;
- leave the room without permission;
- possess turned on cell phones or similar devices.

During the exam **you are supposed** to:
- write in a readable way, so that we are able to read your answers and grade them;
- mark your papers with your PESEL only.

The exam contains of two parts and altogether lasts 75 minutes.

The **first part**, is an **essay** part. Your task is to write an essay on the separate sheet of paper, on the assigned topic, which is based on the text attached in order to inspire you. You are supposed to show us that you can discuss a general legal topic in an interesting manner and proper English. Your essay must not exceed one sheet of the given paper. You have **45 minutes** to complete this part. After this time you must turn in your essay. This part is graded for 0-30 points.

The **second part**, which you are supposed to take later, is a **reading** part. You should read the text provided carefully. You may take notes on the separate sheet of paper. After **20 minutes** you must turn in the texts, but you may still keep the notes. Then you receive the questions and answers sheet. You are supposed to mark T for True and F for False on the given questions, for which you have **another 10 minutes**. This part is graded for 0-20 points.

The **results** should be available till October 3, 2016. The results will be sent to you via e-mail and published on our website: http://www.law.uj.edu.pl/okspo/pl/alp.

Good luck!

Essay Question

There was a court prohibition issued on the press publication of the governmental documentation (later called Pentagon Papers, which described e.g. the scale of American bombing in Vietnam), upon a request based on justification in national interest and security. The U.S. Supreme Court in: *New York Times Co. v. United States* (1971), claimed that this way of avoiding the injury to the public interest (which is not denied by the Court) is excluded.

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, concurring.

In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Vietnam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.

To find that the President has "inherent power" to halt the publication of news by resort to the courts would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make "secure." No one can read the history of the adoption of the First Amendment without being convinced beyond any doubt that it was injunctions like those sought here that Madison and his collaborators intended to outlaw in this Nation for all time.

The word "security" is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment.

MR. JUSTICE BRENNAN, concurring.

The entire thrust of the Government's claim throughout these cases has been that publication of the material sought to be enjoined "could," or "might," or "may" prejudice the national interest in various ways. But the First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result. Our cases, it is true, have indicated that there is a single, extremely narrow class of cases in which the First Amendment's ban on prior judicial restraint may be overridden. Our cases have thus far indicated that such cases may arise only when the Nation "is at war," […]

Even if the present world situation were assumed to be tantamount to a time of war, or if the power of presently available armaments would justify even in peacetime the suppression of information that would set in motion a nuclear holocaust, in neither of these actions has the Government presented or even alleged that publication of items from or based upon the material at issue would cause the happening of an event of that nature.

Do you agree that prior restraint (censorship) of press should always be prohibited, based on the freedom of speech principle? When, if at all, would you find a possible exception from this rule? Should the premises of the limitation on freedom be always read so strictly, as the Court did?

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ENTRANCE EXAM 3 – READING PART (TEXT)

Read the text, which is the California Supreme Court judgment in: *Escola v. Coca Cola Bottling Co.* (1944), which established a broad scope of the manufacturer's liability for the defects of the item produced. You should understand the main issues and reasoning. You may also take notes. After 20 minutes you will have to turn in the text and answer the questions with a use of your notes as well as your memory and understanding only.

"OPINION OF THE COURT by GIBSON, C.J.

Plaintiff, a waitress in a restaurant, was injured when a bottle of Coca Cola broke in her hand. She alleged that defendant company, which had bottled and delivered the alleged defective bottle to her employer, was negligent in selling "bottles containing said beverage which on account of excessive pressure of gas or by reason of some defect in the bottle was dangerous ... and likely to explode." This appeal is from a judgment upon a jury verdict in favor of plaintiff.

The top portion of the bottle, with the cap, remained in plaintiff's hand, and the lower portion fell to the floor but did not break. The broken bottle was not produced at the trial, the pieces having been thrown away by an employee of the restaurant shortly after the accident.

Plaintiff then rested her case, having announced to the court that being unable to show any specific acts of negligence she relied completely on the doctrine of res ipsa loquitur.

Defendant contends that the doctrine of res ipsa loquitur does not apply in this case, and that the evidence is insufficient to support the judgment.

Many jurisdictions have applied the doctrine in cases involving exploding bottles of carbonated beverages.

Res ipsa loquitur does not apply unless (1) defendant had exclusive control of the thing causing the injury and (2) the accident is of such a nature that it ordinarily would not occur in the absence of negligence by the defendant.

Many authorities state that the happening of the accident does not speak for itself where it took place some time after defendant had relinquished control of the instrumentality causing the injury. Under the more logical view, however, the doctrine may be applied upon the theory that defendant had control at the time of the alleged negligent act, although not at the time of the accident, provided plaintiff first proves that the condition of the instrumentality had not been changed after it left the defendant's possession.

In the present case no instructions were requested or given on this phase of the case, although general instructions upon res ipsa loquitur were given.

Upon an examination of the record, the evidence appears sufficient to support a reasonable inference that the bottle here involved was not damaged by any extraneous force after delivery to the restaurant by defendant. It follows, therefore, that the bottle was in some manner defective at the time defendant

relinquished control, because sound and properly prepared bottles of carbonated liquids do not ordinarily explode when carefully handled.

The next question, then, is whether plaintiff may rely upon the doctrine of res ipsa loquitur to supply an inference that defendant's negligence was responsible for the defective condition of the bottle at the time it was delivered to the restaurant. Under the general rules pertaining to the doctrine, as set forth above, it must appear that bottles of carbonated liquid are not ordinarily defective without negligence by the bottling company. In 1 Shearman and Redfield on Negligence (rev. ed. 1941), page 153, it is stated that: "The doctrine ... requires evidence which shows at least the probability that a particular accident could not have occurred without legal wrong by the defendant."

An explosion such as took place here might have been caused by an excessive internal pressure in a sound bottle, by a defect in the glass of a bottle containing a safe pressure, or by a combination of these two possible causes. The question is whether under the evidence there was a probability that defendant was negligent in any of these respects. If so, the doctrine of res ipsa loquitur applies.

The bottle was admittedly charged with gas under pressure, and the charging of the bottle was within the exclusive control of defendant. As it is a matter of common knowledge that an overcharge would not ordinarily result without negligence, it follows under the doctrine of res ipsa loquitur that if the bottle was in fact excessively charged an inference of defendant's negligence would arise.

If the explosion resulted from a defective bottle containing a safe pressure, the defendant would be liable if it negligently failed to discover such flaw. If the defect were visible, an inference of negligence would arise from the failure of defendant to discover it. Where defects are discoverable, it may be assumed that they will not ordinarily escape detection if a reasonable inspection is made, and if such a defect is overlooked an inference arises that a proper inspection was not made. A difficult problem is presented where the defect is unknown and consequently might have been one not discoverable by a reasonable, practicable inspection. In the Honea case we refused to take judicial notice of the technical practices and information available to the bottling industry for finding defects which cannot be seen. In the present case, however, we are supplied with evidence of the standard methods used for testing bottles.

A chemical engineer for the Owens-Illinois Glass Company and its Pacific Coast subsidiary, maker of Coca Cola bottles, explained how glass is manufactured and the methods used in testing and inspecting bottles. He testified that his company is the largest manufacturer of glass containers in the United States, and that it uses the standard methods for testing bottles recommended by the glass containers association. A pressure test is made by taking a sample from each mold every three hours--approximately one out of every 600 bottles--and subjecting the sample to an internal pressure of 450 pounds per square inch, which is sustained for one minute. (The normal pressure in Coca Cola bottles is less than 50 pounds per square inch.) The sample bottles are also subjected to the standard thermal shock test. The witness stated that these tests are "pretty near" infallible.

It thus appears that there is available to the industry a commonly-used method of testing bottles for defects not apparent to the eye, which is almost infallible. Since Coca Cola bottles are subjected to these tests by the manufacturer, it is not likely that they contain defects when delivered to the bottler which are not discoverable by visual inspection. Both new and used bottles are filled and distributed by defendant. The used bottles are not again subjected to the tests referred to above, and it may be inferred that defects not discoverable by visual inspection do not develop in bottles after they are manufactured. Obviously, if such defects do occur in used bottles there is a duty upon the bottler to make appropriate tests before they are refilled, and if such tests are not commercially practicable the bottles should not be re-used. This would seem to be particularly true where a charged liquid is placed

in the bottle. It follows that a defect which would make the bottle unsound could be discovered by reasonable and practicable tests.

Although it is not clear in this case whether the explosion was caused by an excessive charge or a defect in the glass, there is a sufficient showing that neither cause would ordinarily have been present if due care had been used. Further, defendant had exclusive control over both the charging and inspection of the bottles. Accordingly, all the requirements necessary to entitle plaintiff to rely on the doctrine of res ipsa loquitur to supply an inference of negligence are present.

It is true that defendant presented evidence tending to show that it exercised considerable precaution by carefully regulating and checking the pressure in the bottles and by making visual inspections for defects in the glass at several stages during the bottling process. It is well settled, however, that when a defendant produces evidence to rebut the inference of negligence which arises upon application of the doctrine of res ipsa loquitur, it is ordinarily a question of fact for the jury to determine whether the inference has been dispelled.

The judgment is affirmed.

TRAYNOR, J.

I concur in the judgment, but I believe the manufacturer's negligence should no longer be singled out as the basis of a plaintiff's right to recover in cases like the present one. In my opinion it should now be recognized that a manufacturer incurs an absolute liability when an article that he has placed on the market, knowing that it is to be used without inspection, proves to have a defect that causes injury to human beings. McPherson v. Buick Motor Co., 217 N.Y. 382 [111 N.E. 1050, Ann.Cas. 1916C 440, L.R.A. 1916F 696], established the principle, recognized by this court, that irrespective of privity of contract, the manufacturer is responsible for an injury caused by such an article to any person who comes in lawful contact with it. (Sheward v. Virtue, 20 Cal.2d 410 [126 P.2d 345]; Kalash v. Los Angeles Ladder Co., 1 Cal.2d 229 [34 P.2d 481].) In these cases the source of the manufacturer's liability was his negligence in the manufacturing process or in the inspection of component parts supplied by others. Even if there is no negligence, however, public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market. It is evident that the manufacturer can anticipate some hazards and guard against the recurrence of others, as the public cannot. Those who suffer injury from defective products are unprepared to meet its consequences. The cost of an injury and the loss of time or health may be an overwhelming misfortune to the person injured, and a needless one, for the risk of injury can be insured by the manufacturer and distributed among the public as a cost of doing business. It is to the public interest to discourage the marketing of products having defects that are a menace to the public. If such products nevertheless find their way into the market it is to the public interest to place the responsibility for whatever injury they may cause upon the manufacturer, who, even if he is not negligent in the manufacture of the product, is responsible for its reaching the market. However intermittently such injuries may occur and however haphazardly they may strike, the risk of their occurrence is a constant risk and a general one. Against such a risk there should be general and constant protection and the manufacturer is best situated to afford such protection.

The injury from a defective product does not become a matter of indifference because the defect arises from causes other than the negligence of the manufacturer, such as negligence of a submanufacturer of a component part whose defects could not be revealed by inspection (see Sheward v. Virtue, 20 Cal.2d 410 [126 P.2d 345]; O'Rourke v. Day & Night Water Heater Co., Ltd., 31 Cal.App.2d 364 [88 P.2d 191]; Smith v. Peerless Glass Co., 259 N.Y. 292 [181 N.E. 576]), or unknown causes that even by the device of res ipsa loquitur cannot be classified as negligence of the manufacturer. The inference of

negligence may be dispelled by an affirmative showing of proper care. If the evidence against the fact inferred is "clear, positive, uncontradicted, and of such a nature that it cannot rationally be disbelieved, the court must instruct the jury that the nonexistence of the fact has been established as a matter of law." (Blank v. Coffin, 20 Cal.2d 457, 461 [126 P.2d 868].) An injured person, however, is not ordinarily in a position to refute such evidence or identify the cause of the defect, for he can hardly be familiar with the manufacturing process as the manufacturer himself is. In leaving it to the jury to decide whether the inference has been dispelled, regardless of the evidence against it, the negligence rule approaches the rule of strict liability. It is needlessly circuitous to make negligence the basis of recovery and impose what is in reality liability without negligence. If public policy demands that a manufacturer of goods be responsible for their quality regardless of negligence there is no reason not to fix that responsibility openly.

In the case of foodstuffs, the public policy of the state is formulated in a criminal statute. Section 26510 of the Health and Safety Code prohibits the manufacturing, preparing, compounding, packing, selling, offering for sale, or keeping for sale, or advertising within the state, of any adulterated food. Section 26470 declares that food is adulterated when "it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been rendered diseased, unwholesome or injurious to health." The statute imposes criminal liability not only if the food is adulterated, but if its container, which may be a bottle (§ 26451), has any deleterious substance (§ 26470 (6)), or renders the product injurious to health. (§ 26470 (4)). The criminal liability under the statute attaches without proof of fault, so that the manufacturer is under the duty of ascertaining whether an article manufactured by him is safe. (People v. Schwartz, 28 Cal.App.2d Supp. 775 [70 P.2d 1017].)

The statute may well be applicable to a bottle whose defects cause it to explode. In any event it is significant that the statute imposes criminal liability without fault, reflecting the public policy of protecting the public from dangerous products placed on the market, irrespective of negligence in their manufacture. While the Legislature imposes criminal liability only with regard to food products and their containers, there are many other sources of danger. It is to the public interest to prevent injury to the public from any defective goods by the imposition of civil liability generally.

This court and many others have extended protection according to such a standard to consumers of food products, taking the view that the right of a consumer injured by unwholesome food does not depend "upon the intricacies of the law of sales". Dangers to life and health inhere in other consumers' goods that are defective and there is no reason to differentiate them from the dangers of defective food products. (See Bohlen, Studies in Torts, Basis of Affirmative Obligations, American Cases Upon The Liability of Manufacturers and Vendors of Personal Property, 109, 135; Llewellyn, On Warranty of Quality and Society, 36 Col.L.Rev. 699, 704, note 14; Prosser, Torts, p. 692.)

The manufacturer's liability should, of course, be defined in terms of the safety of the product in normal and proper use, and should not extend to injuries that cannot be traced to the product as it reached the market.”

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ENTRANCE EXAM 3 – READING PART (QUESTIONS)

Based on the read text of the California Supreme Court judgment in: *Escola v. Coca Cola Bottling Co.* (1944) – in particular your notes as well as your memory and understanding to it, decide whether the statements below are True (T) or False (F). You have 10 minutes to complete this part of the exam.

PESEL:

		True	**False**
1.	The plaintiff suggested that the reason of the injury was a negligent inspection of the used bottle, which was defective and despite of it refilled by the manufacturer of the beverage.		
2.	The plaintiff offered the evidence from a protected broken bottle to the Court		
3.	The doctrine of res ipsa loquitur is invoked by the plaintiff as a substitute to showing specific acts of negligence and evidence thereto.		
4.	The doctrine of res ipsa loquitur applies if the defendant had any control of the thing causing the injury.		
5.	The doctrine of res ipsa loquitur does not apply unless the accident is of such a nature that it under no circumstances would occur in the absence of negligence by the defendant.		
6.	According to the cited legal doctrine, the plaintiff must invoke evidence which shows at least the probability that a particular accident could not have occurred without legal wrong by the defendant.		
7.	The Court held that the explosion could have resulted from two possible causes.		
8.	In the case it was established that the bottle was charged with gas under pressure by a professional company hired by the manufacturer of the beverage and the defendant is held negligent because of the improper choice of the submanufacturer.		
9.	The used bottles undergo more tests for defects not apparent to the eye than the new bottles.		

10.	All the requirements necessary to entitle plaintiff to rely on the doctrine of res ipsa loquitur were met in this case.		
11.	It is a matter of fact, decided by the jury, whether the inference (presumption) of negligence of a manufacturer, has been dispelled (rebutted) in a particular case.		
12.	The concurring opinion by J. Traynor means that the judge agreed with regard to the holding, but had another justification (explanation) thereto.		
13.	According to J. Traynor the liability of a manufacturer should no longer base on negligence principle.		
14.	According to the principle of privity of contract, the manufacturer is responsible for an injury caused by an article produced by him to any person who comes in lawful contact with it.		
15.	The reason for J. Traynor's opinion is who should anticipate hazards and guard against their recurrence as well as who should incur the costs of defects of the product beyond the manufacturer's fault.		
16.	J. Traynor sees no legal difference between negligence rule adopted with a support of res ipsa loquitur and strict liability rule.		
17.	The criminal statute liability invoked by J. Traynor takes place regardless of fault.		
18.	The liability for food stuff invoked by J. Traynor, which is statutory, may well be applicable to a bottle whose defects cause it to explode.		
19.	The manufacturer's liability should be defined in terms of the safety of the product in proper use.		
20.	The Court ruled accordingly with the judgment of the lower court.		