Civil Procedure II

Elon University School of Law

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Prof. Fink

# Final Examination

## Instructions:

This is a closed-book examination. You may not use any material other than what is provided to you by the proctor.

You will have three (3) hours to complete this exam. This exam consists of four (4) questions. You must answer each question. Be sure to read each question carefully.

If your answer depends on any assumption(s) beyond what is stated in the question, be sure to identify, and explain the relevance of, your assumption(s).

Your answers will be graded based on (1) your identification of the relevant issues, (2) your identification and explanation of the applicable rules, and (3) your analysis of how those rules apply to the stated facts. *There is no limit on the length of your answers*. As a rough guideline, you should be able to answer each of the questions within about 2-3 typed pages.

You must also write out the Honor Pledge in the space below, and sign with your Exam ID number. Do not write your name anywhere on the exam or in your answers.

### Honor Pledge

“On my honor, I will uphold the values of Elon University School of Law: honesty, integrity, responsibility, and respect.”

Exam ID:

Sally Schlimazel, a resident of Massachusetts, was injured when she cut her foot on a chair at the home of a friend she was visiting in Florida. The chair was designed by Mebelmacher Designs, Inc., a North Carolina corporation. Schlimazel sued Mebelmacher in the U.S. District Court for the Middle District of North Carolina,[[1]](#footnote-1) asserting defective product claims based on negligence and strict liability. *See* Complaint.

Under the applicable state law,[[2]](#footnote-2) the elements of Schlimazel’s claims are as follows:

* *Negligence*: (1) the existence of a duty recognized by law requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff; (2) a breach of that duty; and (3) injury sustained as a proximate cause of the breach.
* *Strict Liability—Defective Product*: (1) the defendant’s relationship to the product in question; (2) the defective condition of the product; and (3) the existence of a causal connection between the product’s condition and plaintiff’s injuries.

### Question 1

If Mebelmacher moves to dismiss the Complaint for failure to state a claim under Rule 12(b)(6), how should the court rule?

# \* \* \*

Rather than filing a Rule 12(b)(6) motion, Mebelmacher answers the Complaint. Following discovery, Mebelmacher moves for summary judgment, seeking dismissal of both claims based on the statute of repose. [[3]](#footnote-3)

In support of its motion, Mebelmacher argues that Schlimazel’s claims are governed by North Carolina law, under which the applicable statute of repose provides as follows:

No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.

In opposition to the motion, Schlimazel contends that her claims are governed by Florida law, under which the applicable statute of repose provides as follows:

Actions for products liability must be begun within 12 years after the date of purchase of the completed product by its original purchaser regardless of the date the defect in the product was or should have been discovered.

For purposes of the Motion for Summary Judgment, the parties stipulate to the following facts:

1. Schlimazel’s friends purchased the chair in July 2006.
2. Schlimazel’s injury occurred on June 13, 2014.
3. Schlimazel filed her Complaint on January 30, 2015 and served a copy on Mebelmacher the same day.

### Question 2

Assume that North Carolina follows the choice of law rules in the Restatement (2d) of Conflicts of Law. Should the court grant summary judgment in favor of the defendant based on the statute of repose?

# \* \* \*

In its Motion for Summary Judgment, Mebelmacher also argues that the Complaint should be dismissed because, on the evidentiary record developed through discovery, Schlimazel cannot establish Mebelmacher ’s liability.[[4]](#footnote-4) The record includes the following evidence:

#### Summary of Sally Schlimazel Deposition Testimony:

Schlimazel testified in her deposition that she cut her bare foot on the “outside bottom edge of the chair where the base meets the sides,” resulting in severe lacerations. She later examined the chair and determined that the edge was “razor sharp, sharp enough that if you were to rub your finger across the bottom outside edge of the chair, you would shave skin off your finger.” The chrome was flush with the plywood but the edge was sharp all the way around the 360 degrees of the base.

After Schlimazel returned home to Massachusetts, she had the foot examined by a doctor, who found that Schlimazel had a severed tendon. Following the doctor’s advice, Schlimazel underwent surgery, followed by six months of physical therapy.

#### Summary of Freddie Frankel Affidavit

Schlimazel submitted a sworn affidavit from Freddie Frankel, the friend she was visiting in Florida when she cut her foot. Frankel stated in the affidavit that he bought the chair at a Miami furniture store in July 2006. He’d never noticed the sharp edge on the chair, and as far as he knew, nobody had ever been injured by it before.

#### Summary of Milo Mebelmacher Deposition Testimony:

Milo Mebelmacher, founder and president of Mebelmacher Designs, testified in his deposition that he designed the Swivel Tub Chair in 1967. Mebelmacher licensed the design to Hahn, Inc., which is the exclusive licensed manufacturer of the chairs.

The chair consists of a “tub” seat attached to a plywood base in a manner that permits the “tub” to tilt and swivel. A chrome veneer, about one-sixteenth of an inch thick, is affixed to the outside of the base. The diameter of the base is about two inches less than the diameter of the tub, and the bottom of the tub is about three inches off the floor. (See Mebelmacher Deposition, Exhibit A)



The chair was designed for residential use. Mebelmacher assumes that people commonly walk barefoot in their homes. Nonetheless, he never anticipated that someone might put their foot in the area between the tub seat and the top of the base. He was familiar with the use of clear plastic pieces known as “edge guards.” These are used to protect the bottom edge of the metal on chrome-trimmed furniture. The Swivel Tub Chair was not designed with an edge guard because it did not seem necessary. Although it was technically feasible, it would have been alien to the visual concept of the chair to have placed a wood trim, molding, or cloth welt around the edge of the chrome veneer. If the chair were manufactured with the chrome veneer extending beyond the plywood, it would create a surface that would cut bare skin. This would be a dangerous condition. The Swivel Tub Chair was specifically designed so that the plywood and chrome would be flush. This was not noted on the design drawing because it is so obvious. The drawings do not include all details: “I don’t put in all the screws, I don’t put in the dowels, I don’t put in the mechanisms.... I don’t specify things that are not my problems. These are done by the engineers in the plant.”

A designer’s role is to make a conceptual sketch, to provide a full-sized detail and working sketch, and to supervise the making of a model. The purpose of the supervision is to assure that the finished product looks right. The designer’s responsibilities are “aesthetic and not engineering.” The manufacturer’s inspectors occasionally “let something go through that isn’t exactly right.” In all factories some quality problems get through. Other than the present action, Mebelmacher has not received a single complaint of injury involving any of its furniture designs.

#### Summary of Julius Hahn Deposition Testimony

Julius Hahn, founder and president of Hahn, Inc., testified that his company manufactures the Swivel Tub Chair at its High Point, North Carolina factory. Hahn distributes the chairs to various retailers around the country, including the Miami store where Mr. Frankel bought the chair allegedly responsible for Schlimazel’s injury.

Mebelmacher generally furnishes Hahn with a pencil sketch of the furniture design, as well as a working sketch giving the actual dimensions of the piece and specifying the exterior material to be used. The Swivel Tub Chair was designed so that the chrome veneer edge would be flush with the plywood and the edges of the veneer would be sanded down. Chrome veneer is sharp because it is thin. However, the chair was not designed to have sharp edges. Hahn considers a sharp edge to be a manufacturing defect, not a design defect. Nothing prevented the placement of a protective welt along the bottom of the Swivel Tub Chair. Plastic edge guards have been added to similar chairs in the last few years.

### Question 3

Should the court grant summary judgment in favor of Mebelmacher on either of Schlimazel’s claims?

# \* \* \*

Regardless of your answer to Question 3, assume that the case proceeds to trial. The jury returns a verdict in favor of the plaintiff on both the negligence and strict liability claims. At the request of defense counsel, the jury renders a special verdict, making these findings of fact:

1. The sharp edge on the chrome veneer caused the plaintiff’s injury.
2. The sharp edge was the result of a defective design.
3. The sharp edge on the chrome veneer did not result from a manufacturing defect.

The jury awarded Schlimazel $100,000 in damages. This victory proved hollow when Mebelmacher declared bankruptcy and Schlimazel was unable to collect on her judgment. Deciding to try again, Schlimazel filed a new lawsuit against Hahn, Inc., the chair’s manufacturer, again asserting negligence and strict liability claims, but this time alleging that the dangerous condition of the chair was the result of a manufacturing defect.

### Question 4

1. If Schlimazel moves to dismiss the suit based on claim preclusion, how should the court rule?
2. Assuming the suit is not dismissed, can Hahn rely on issue preclusion to establish that the chair’s sharp edge was the result of a design defect and not a manufacturing defect?

1. You should assume that the court has personal jurisdiction over the defendant, and subject-matter jurisdiction over all claims based on diversity of citizenship. [↑](#footnote-ref-1)
2. Assume that the elements of these claims are identical under North Carolina and Florida law. [↑](#footnote-ref-2)
3. A statute of repose is similar to a statute of limitations, except that the time limit for commencing an action is based on an event other than the date of injury. For defective product claims, the statute of repose often runs from the date of purchase. [↑](#footnote-ref-3)
4. The elements of the negligence and strict liability claims are stated above. Again, assume that these elements are identical under both NC and FL law, and do not engage in a choice of law analysis for this question. [↑](#footnote-ref-4)