

# Warnings

# Housekeeping

## Office Hours

Rescheduled for 1:00pm - 2:00pm today

## LAUSD Strike

## Professionalism

Be on time.

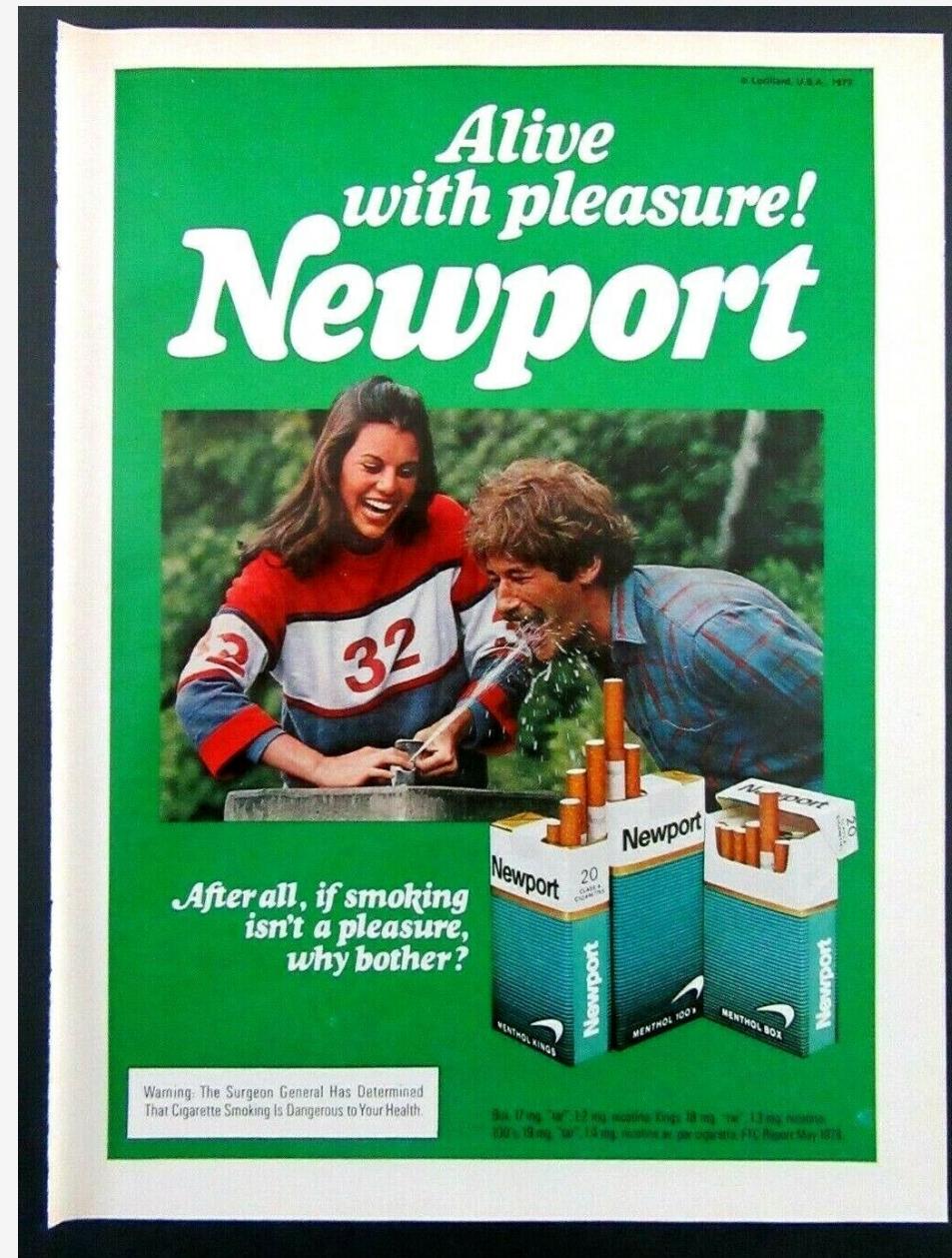
Be prepared.

Email me if your absence can be excused.

**Course Syllabus:** I reserve the right to reduce grades by one-third of a letter grade for poor class participation due to repeated instances of unpreparedness, lack of attention in class, refusal to participate in good faith, and absences. Any decision to reduce a grade for poor class participation is at my discretion and is non-negotiable.

**Student Handbook:** A student may be withdrawn, and/or excluded from an examination, and given a failing grade in any course in which the student has not maintained a satisfactory attendance record.

# “Reasonable Alternative Design” Challenges



# Warnings

# Products Liability Claims

1. ??????????????

2. ??????????????

3. ??????????????

# Products Liability Claims

1. Manufacturing Defects

2. Design Defects

3. Failure to Warn

# Elements of a Claim

## Negligence

- Duty
- Breach
- Causation
- Harm

## Strict Liability

- Defendant was engaged in the kind of activity where strict liability applies
- Causation
- Harm

## Products Liability

- Defect
- Causation
- Harm

# What are our concerns with warnings and warning labels?

- Size and noticeability
- Broad vs. narrow specificity
- Too exhaustive to read
- Warnings are ignored because it is just about liability not about warning
- Warnings are too complicated to understand
- Who is responsible for liability, third-party vendors
- Industry laws and regulations

# Hood v. Ryobi American Corp.

# Leading standard from Pittman v. Upjohn Co.

“A reasonable warning not only conveys a fair indication of the dangers involved, but also warns with the degree of intensity required by the nature of the risk. [ ] Among the criteria for determining the adequacy of a warning are:

1. the warning must adequately indicate the scope of the danger;
2. the warning must reasonably communicate the extent or seriousness of the harm that could result from misuse of the [product];
3. the physical aspects of the warning must be adequate to alert a reasonably prudent person to the danger;
4. a simple directive warning may be inadequate when it fails to indicate the consequences that might result from failure to follow it and, . . .
5. the means to convey the warning must be adequate”

# Majority Rules

“Heeding Presumption”

Warnings can't overcome design defects

# Centocor v. Hamilton

# Products Liability Exercise

You are a junior associate at a plaintiff-side firm. A partner at the firm has brought you in to work on an interesting new case. The potential plaintiff, a nine-year-old boy named Augustus Gloop, choked on a hot dog during lunch in his elementary school cafeteria. The child survived — thanks to a gym teacher's training in first aid and CPR — but suffered serious injuries. His family is now interested in suing Oscar Meyer Weiner, the company that produced this hot dog.

The partner at your firm doesn't typically litigate products liability cases, so she wants you to catch her up to speed. She'd like you to sketch out arguments supporting a failure to warn claim, a design defect claim, and a manufacturing defect claim. For each claim, provide an example of a piece of evidence that would help our client win. And let her know which claims have the best chance of success. On the failure to warn claim, you should know that Oscar Meyer Weiner will seek protection from the “learned intermediary” doctrine as the company does inform elementary schools that hot dogs are a choking hazard.