

EXAM 6 – CANADA, SPRING 2014

3. (2.25 points)

Regarding the landmark case of Resurfice Corp. v. Hanke:

a. (0.5 point)

Describe the facts of the case.

b. (0.75 point)

Describe the outcome of the initial trial and the reasons for the decision.

c. (0.5 point)

Describe the decision of the Supreme Court and its reasoning regarding causation.

d. (0.5 point)

Briefly describe the two requirements for the application of the “material contribution” test in determining causation.

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SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 3	
TOTAL POINT VALUE: 2.25	LEARNING OBJECTIVE: A3
SAMPLE ANSWERS	
Part a: 0.5 point(s)	
Hanke badly burned sued manufacturer of ice-surfacing machine for negligence in making the gasoline and water tanks so similar leading to his mistake	
Part b: 0.75 point(s)	
The trial judge found that Hanke did not prove negligence of manufacturer as Hanke's error not manufacturer design error's. Notably due to Hanke's own admission and application of but for rule test. The appeal judge found that trial judge errs in its foreseeability and causality analyses	
Part c: 0.5 point(s)	
Supreme Court conclude that manufacturer is not liable for Hanke's injury and assessment of comparative blameworthiness is not necessary since Hanke's error not a design error and the but for rule test is the basic test and contribution rule test not justified and necessary in this case	
Part d: 0.5 point(s)	
<ul style="list-style-type: none"> - Plaintiff cannot prove negligence of defendant using the but for rule test because of factors outside of plaintiff's control - The defendant may have exposed claimant to unreasonable risk with his conduct/negligence and the plaintiff suffered a loss 	
EXAMINER'S REPORT	
Part a	
Most candidates were able to fully describe the facts of the case.	
Part b	
Most candidates were able to provide the verdict of the initial trial but many were unable to provide the drivers of the decision (i.e., foreseeability and unable to establish that the injury was due to the negligence of the manufacturer)	
Part c	
Most candidates were able to provide the verdict of the Supreme Court but many were unable to provide the reasoning of the decision (i.e., Court of Appeal erred in failing to recognize that the basic test for causation remains the "but for" test and that it erred in applying the material contribution test when it was unnecessary)	
Part d	
Many candidates were confused about the role of the "but for" test for the application of the "material contribution" test in determining causation.	