AMERICAN LAW PROGRAM
The Catholic University of America, Columbus School of Law
Jagiellonian University, Faculty of Law and Administration
21st year, 2021-2022

ENTRANCE EXAM 1 – RULES

Dear American Law Program Candidate!

We are very happy with your willingness to join in the American Law Program. Also, we are impatiently looking forward to your participation!

At the same time, in order to let the American Law Program staff 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. The usual rules have been adjusted to the online format of the exam.

During the exam **you are supposed** to:

1. have a reliable computer with a stable Wi-Fi connection, and a working camera;

2. stay connected to a Zoom meeting during which the exam takes place;

3. stay in front of your computer in a chosen working place in a daylight or equally effective artificial light, with a computer camera permanently switched on;

4. download the .pdf materials with exam questions and .doc answer files

5. within the time frame for a particular question send the filled-in answer files, saved as .doc or .docx to wojciech.banczyk@uj.edu.pl;

6. mark your answers with your PESEL only (in the title of the file as well as in the header of each page).

During the exam **you are not allowed** to:

7. consult anyone nor any materials, except for the texts that we distribute and an online/paper dictionary; you can use your e-mail application to send the answer files only;

8. use any other electronic device except from the computer used for the exam aims;

9. leave the working place you were using at the beginning of the exam without permission.

Remember that:

10. **any breach** or attempt to breach the rules as in 7-9, as well as **any disconnection or lack of camera operation** during the exam, leads to the termination of the exam, and a failing grade for a candidate, unless immediately reconnected and excused from legitimate reasons. Whenever such termination takes place from different reasons than breach or attempt to breach the rules as in 7-9 at candidate's fault, the candidate may retake the exam at a later occasion.

Also, participating in the exam confirms that the candidate agrees that his **personal data** will be collected and stored for the recruiting aims for the period of one year after the exam. The candidate's

image will be seen by the participants of the exam Zoom meeting, but will not be stored, and the meeting will not be anyway recorded.

The exam contains of two parts and **altogether lasts 95 minutes**, and is taken according to rules as above.

The **first part**, is an **essay** part. Your task is to write an essay on the assigned topic, which is based on the text attached (.pdf) 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. You may take notes on the computer, or on a separate sheet of paper. Your essay should not exceed two pages of the attached answer file (.doc). You have **50 minutes** to complete this part. After this time you must turn in your essay in the form of an answer file. 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 attached text (.pdf) carefully. You may take notes on the computer, or on a separate sheet of paper. After **30 minutes** you receive the questions and answer file (.doc). You are supposed to answer five questions in form of a short notice (1-2 sentences long, about 10-20 words), for which you have **another 15 minutes**. After this time you must turn in your answers in the form of an answer file. This part is graded for 0-20 points (4 points per question).

The **results** should be available by July 15th, 2021. The results will be sent to you via e-mail and published on our website: http://www.okspo.wpia.uj.edu.pl/spa as well as on our Facebook: http://www.facebook.com/szkolaprawaamerykanskiego

Good luck!

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ENTRANCE EXAM 1 – ESSAY QUESTION

The Tampabay news article: *Driver gets 24 years prison for Bayshore crash that killed mother, daughter* refers to the sentence for a young man who killed two persons in a traffic accident:

TAMPA — A judge sentenced Cameron Herrin to 24 years in state prison Thursday night, almost three years after the young man sped along Bayshore Boulevard and crashed into a mother and daughter, killing both.

Hillsborough Circuit Judge Christopher Nash's decision came at the end of a long day of testimony, which saw Herrin's family members and friends take the witness stand to talk about his character, before a parade of family members of the two victims voiced their heartbreak and rage at the damage done to their lives. "It's impossible to have greater harm than occurred in this case," the judge said.

Herrin, 21, appeared wide-eyed as the judge announced his fate. Afterward, as a sheriff's deputy placed him in handcuffs, members of his family began to weep. […]

Herrin last year pleaded guilty to two counts of vehicular homicide in the deaths of Jessica Reisinger-Raubenolt and her 1-year-old daughter, Lillia. […]

Herrin, then 18, headed out that morning — May 23, 2018 — with a friend, John Barrineau, to exercise at a local gym. Herrin's older brother, Tristan, rode in the Mustang's (a gift she and her husband had given her son when he graduated two days earlier from Tampa Catholic High School) passenger seat. Barrineau, then 17, drove separately in a gold Nissan.

The cars stopped for a traffic light at Gandy Boulevard, then sped north on Bayshore. Other drivers and bystanders would later tell police the pair appeared to be racing. […]

Reisinger-Raubenolt, 24, who was visiting Tampa from Ohio, was walking back from Ballast Point Park that morning along the iconic boulevard to a relative's home. In a stroller, she pushed Lillia. At the intersection of Knights Avenue, she moved to cross the roadway. The cars approached.

The Nissan swerved to avoid the young mother as she stepped out, one witness said. The Mustang moved to avoid the Nissan and struck the woman and her child.

In court, Assistant State Attorney Aaron Hubbard presented data from the Mustang's navigation system, which recorded multiple speeding incidents in the days before the crash. It recorded one speed of 162 mph on May 18 along Interstate 75. On May 22, the car reached 84 mph along Bayshore. On the 23rd, the car topped 100 mph moments before the crash. […]

The tragedy captivated Tampa in a way that local crimes seldom do. It happened on a stretch of road regarded as symbolic of the city itself.

Do you confirm that the harm caused by the driver to the victims and their family, as well as the society is so great? Do you agree with the severity of the penalty for the driver, given the attitude of the driver to the traffic rules, but also his young age, lacking criminal career, and the fact that death took place in a nonintentional traffic accident, but due to at least reckless driving? If not, what penalty would you find more suitable, either in the American, or Polish, reality?

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ENTRANCE EXAM 1 – READING PART – TEXT

Read the text of the New Jersey Supreme Court judgment in: *Henningsen v. Bloomfield Motors, Inc., and Chrysler Corporation*, 161 A.2d 69 (1960), in which the Court elaborated in favor of implied warranty of the seller and the producer of a car regarding its defects, regardless of the disclaimer in a standarised form. When reading you may take notes. After 30 minutes you will receive short open questions to this text.

Plaintiff Clause H. Henningsen purchased a Plymouth automobile, manufactured by defendant Chrysler Corporation, from defendant Bloomfield Motors, Inc. His wife, plaintiff Helen Henningsen, was injured while driving it and instituted suit against both defendants to recover damages on account of her injuries. Her husband joined in the action seeking compensation for his consequential losses. The complaint was predicated upon breach of express and implied warranties. […]

The facts are not complicated, but a general outline of them is necessary to an understanding of the case. On May 7, 1955 Mr. and Mrs. Henningsen visited the place of business of Bloomfield Motors, Inc., an authorized De Soto and Plymouth dealer, to look at a Plymouth. They wanted to buy a car and were considering a Ford or a Chevrolet as well as a Plymouth. They were shown a Plymouth which appealed to them and the purchase followed. […]

The purchase order was a printed form of one page. On the front it contained blanks to be filled in with a description of the automobile to be sold, the various accessories to be included, and the details of the financing. The particular car selected was described as a 1955 Plymouth, Plaza '6', Club Sedan. The type used in the printed parts of the form became smaller in size, different in style, and less readable toward the bottom where the line for the purchaser's signature was placed. The smallest type on the page appears in the two paragraphs, one of two and one-quarter lines and the second of one and one-half lines, on which great stress is laid by the defense in the case. These two paragraphs are the least legible and the most difficult to read in the instrument, but they are most important in the evaluation of the rights of the contesting parties. They do not attract attention and there is nothing about the format which would draw the reader's eye to them. In fact, a studied and concentrated effort would have to be made to read them. De-emphasis seems the motive rather than emphasis. More particularly, most of the printing in the body of the order appears to be 12 point block type, and easy to read. In the short paragraphs under discussion, however, the type appears to be six point script and the print is solid, that is, the lines are very close together.

The two paragraphs are: 'The front and back of this Order comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I hereby certify that no credit has been extended to me for the purchase of this motor vehicle except as appears in writing on the face of this agreement.' […] 'I have read the matter printed on the back hereof and agree to it as a part of this order the same as if it were printed above my signature. I certify that I am 21 years of age, or older, and hereby acknowledge receipt of a copy of this order.'

On the right side of the form, immediately below these clauses and immediately above the signature line, and in 12 point block type, the following appears: 'CASH OR CERTIFIED CHECK ONLY ON DELIVERY.'

On the left side, just opposite and in the same style type as the two quoted clauses, but in eight point size, this statement is set out: ‘This agreement shall not become binding upon the Dealer until approved by an officer of the company.’

The two latter statements are in the interest of the dealer and obviously an effort is made to draw attention to them.

The testimony of Claus Henningsen justifies the conclusion that he did not read the two fine print paragraphs referring to the back of the purchase contract. And it is uncontradicted that no one made any reference to them, or called them to his attention. With respect to the matter appearing on the back, it is likewise uncontradicted that he did not read it and that no one called it to his attention.

The reverse side of the contract contains 8 ½ inches of fine print. It is not as small, however, as the two critical paragraphs described above. The page is headed ‘Conditions' and contains ten separate paragraphs consisting of 65 lines in all. The paragraphs do not have headnotes or margin notes denoting their particular subject, as in the case of the ‘Owner Service Certificate’ to be referred to later. In the seventh paragraph, about two-thirds of the way down the page, the warranty, which is the focal point of the case, is set forth. It is as follows:

‘7. It is expressly agreed that there are no warranties, express or implied, Made by either the dealer or the manufacturer on the motor vehicle, chassis, of parts furnished hereunder except as follows.

“The manufacturer warrants each new motor vehicle (including original equipment placed thereon by the manufacturer except tires), chassis or parts manufactured by it to be free from defects in material or workmanship under normal use and service. Its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle To the original purchaser or before such vehicle has been driven 4,000 miles, whichever event shall first occur, be returned to it with transportation charges prepaid and which its examination shall disclose to its satisfaction to have been thus defective; This warranty being expressly in lieu of all other warranties expressed or implied, and all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles. * * *.”

[…] It had no servicing and no mishaps of any kind before the event of May 19. That day, Mrs. Henningsen drove to Asbury Park. On the way down and in returning the car performed in normal fashion until the accident occurred. She was proceeding north on Route 36 in Highlands, New Jersey, at 20—22 miles per hour. The highway was paved and smooth, and contained two lanes for northbound travel. She was riding in the right-hand lane. Suddenly she heard a loud noise ‘from the bottom, by the hood.’ It ‘felt as if something cracked.’ The steering wheel spun in her hands; the car veered sharply to the right and crashed into a highway sign and a brick wall. No other vehicle was in any way involved. A bus operator driving in the left-hand lane testified that he observed plaintiffs' car approaching in normal fashion in the opposite direction; ‘all of a sudden (it) veered at 90 degrees * * * and right into this wall.’ As a result of the impact, the front of the car was so badly damaged that it was impossible to determine if any of the parts of the steering wheel mechanism or workmanship or assembly were defective or improper prior to the accident. The condition was such that the collision insurance carrier, after inspection, declared the vehicle a total loss. It had 468 miles on the speedometer at the time.

The insurance carrier's inspector and appraiser of damaged cars, with 11 years of experience, advanced the opinion, based on the history and his examination, that something definitely went ‘wrong from the steering wheel down to the front wheels' and that the untoward happening must have been due to mechanical defect or failure; ‘something down there had to drop off or break loose to cause the car’ to act in the manner described. […]

I. The Claim of Implied Warranty against the Manufacturer.

In the ordinary case of sale of goods by description an implied warranty of merchantability is an integral part of the transaction. R.S. 46:30—20, N.J.S.A. If the buyer, expressly or by implication, makes known to the seller the particular purpose for which the article is required and it appears that he has relied on the seller's skill or judgment, an implied warranty arises of reasonable fitness for that purpose. R.S. 46:30—21(1), N.J.S.A. The former type of warranty simply means that the thing sold is reasonably fit for the general purpose for which it is manufactured and sold. […]

'It is perfectly clear, then, that even if the sale be under a trade name there is implied an obligation on the part of the seller that the article delivered will be of the same quality, material, workmanship, and availability for use as articles generally sold under such name. It would be wholly unreasonable to hold that, if one were to purchase, for example, an automobile under the trade name of 'Ford' or 'Buick' or 'Cadillac' or the like, no implied warranty of merchantable quality could be asserted by the purchaser even though the particular car delivered was in such bad condition, so gravely defective in materials and construction, that it could not be operated at all and was wholly useless for the ordinary purpose which an automobile is designed to serve.'

Of course such sales, whether oral of written, may be accompanied by an express warranty. Under the broad terms of the Uniform Sale of Goods Law any affirmation of fact relating to the goods is an express warranty if the natural tendency of the statement is to induce the buyer to make the purchase. R.S. 46:30—18, N.J.S.A. […]

The uniform act codified, extended and liberalized the common law of sales. The motivation in part was to ameliorate the harsh doctrine of Caveat emptor, and in some measure to impose a reciprocal obligation on the seller to beware. The transcendent value of the legislation, particularly with respect to implied warranties, rests in the fact that obligations on the part of the seller were imposed by operation of law, and did not depend for their existence upon express agreement of the parties. And of tremendous significance in a rapidly expanding commercial society was the recognition of the right to recover damages on account of personal injuries arising from a breach of warranty. […]

With these considerations in mind, we come to a study of the express warranty on the reverse side of the purchase order signed by Claus Henningsen. At the outset we take notice that it was made only by the manufacturer and that by its terms it runs directly to Claus Henningsen. *374 On the facts detailed above, it was to be extended to him by the dealer as the agent of Chrysler Corporation. The consideration for this warranty is the purchase of the manufacturer's product from the dealer by the ultimate buyer. Studebaker Corp. v. Nail, 82 Ga.App. 779, 62 S.E.2d 198 (Ct.App.1950). […]

The terms of the warranty are a sad commentary upon the automobile manufacturers' marketing practices. Warranties developed in the law in the interest of and to protect the ordinary consumer who cannot be expected to have the knowledge or capacity or even the opportunity to make adequate inspection of mechanical instrumentalities, like automobiles, and to decide for himself whether they are reasonably fit for the designed purpose. Greenland Develop. Corp. v. Allied Heat. Prod. Co., 184 Va. 588, 35 S.E.2d 801, 164 A.L.R. 1312 (Sup.Ct.App.1945). But the ingenuity of the Automobile Manufacturers Association, by means of its standardized form, has metamorphosed the warranty into a device to limit the maker's liability. To call it an 'equivocal' agreement, as the Minnesota Supreme Court did, is the least that can be said in criticism of it. Federal Motor Truck Sales Corporation v. Shanus, 190 Minn. 5, 250 N.W. 713, 714 (Sup.Ct.1933).

The manufacturer agrees to replace defective parts for 90 days after the sale or until the car has been driven 4,000 miles, whichever is first to occur, If the part is sent to the factory, transportation charges prepaid, and if examination discloses to its satisfaction that the part is defective. It is difficult to imagine a greater burden on the consumer, or less satisfactory remedy. Aside from imposing on the buyer the trouble of removing and shipping the part, the maker has sought to retain the uncontrolled discretion to decide the issue of defectiveness. Some courts have removed much of the force of that

reservation by declaring that the purchaser is not bound by the manufacturer's decision. Mills v. Maxwell Motor Sales Corporation, 105 Neb. 465, […]

One court met that type of problem by holding that where the purchaser does not know the precise cause of inoperability, calling a car a 'vibrator' would be sufficient to state a claim for relief. It said that such a car is not an uncommon one in the industry. The general cause of the vibration is not known. Some part or parts have been either defectively manufactured or improperly assembled in the construction and manufacture of the automobile. In the operation of the car, these parts give rise to vibrations. The difficulty lies in locating the precise spot and cause. Allen v. Brown, 181 Kan. 301, 310 P.2d 923 (Sup.Ct.1957). […]

Chrysler points out that an implied warranty of merchantability is an incident of a contract of sale. It concedes, of course, the making of the original sale to Bloomfield Motors, Inc., but maintains that this transaction marked the terminal point of its contractual connection with the car. Then Chrysler urges that since it was not a party to the sale by the dealer to Henningsen, there is no privity of contract between it and the plaintiffs, and the absence of this privity eliminates any such implied warranty. […]

In Patargias v. Coca-Cola Bottling Co. of Chicago, 332 Ill.App. 117, 74 N.E.2d 162 (App.Ct.1947), involving the sale of a bottle of coca-cola by a dealer, the court said: 'We are impelled to hold that, where an article of food or drink is sold in a sealed container for human consumption, public policy demands that an implied warranty be imposed upon the manufacturer thereof that such article is wholesome and fit for use, that said warranty Runs with the sale of the article for the benefit of the consumer thereof * * *.' 74 N.E.2d at page 169. […]

And in Worley v. Procter & Gamble Mfg. Co., supra, it was said that: 'In the case of food products sold in original packages, and other articles dangerous to life (here a box of soap powder), if defective, the manufacturer, who alone is in a position to inspect and control their preparation, should be held as a warrantor, whether he purveys his products by his own hand, or through a network of independent distributing agencies. In either case, the essence of the situation is the same—the placing of goods in the channels of trade, representations directed to the ultimate consumer, and damaging reliance by the latter on those representations. Such representations, being inducements to the buyers making the purchase, should be regarded as warranties imposed by law, independent of the vendors' contractual intentions. The liability thus imposed springs from representations directed to the ultimate consumer, and not from the breach of any contractual undertaking on the part of the vendor. This is in accord with the original theory of the action * * *.' 253 S.W.2d at page 537. […]

We see no rational doctrinal basis for differentiating between a fly in a bottle of beverage and a defective automobile. The unwholesome beverage may bring illness to one person, the defective car, with its great potentiality for harm to the driver, occupants, and others, demands even less adherence to the narrow barrier of privity. 2 Harper & James, supra, 1572. In Mannsz v. Macwhyte Co., supra, Chief Judge Biggs, speaking for the Third Circuit Court of Appeals, said: 'We think it is clear that whether the approach to the problem be by way of warranty or under the doctrine of negligence, the requirement of privity between the injured party and the manufacturer of the article which has injured him has been obliterated from the Pennsylvania law. The abolition of the doctrine occurred first in the food cases, next in the beverage decisions and now it has been extended to those cases in which the article manufactured, not dangerous or even beneficial if properly made, injured a person because it was manufactured improperly.' 155 F.2d 449—450.

Under modern conditions the ordinary layman, on responding to the importuning of colorful advertising, has neither the opportunity nor the capacity to inspect or to determine the fitness of an automobile for use; he must rely on the manufacturer who has control of its construction, and to some degree on the dealer who, to the limited extent called for by the manufacturer's instructions, inspects and services it before delivery. In such a marketing milieu his remedies and those of persons who

properly claim through him should not depend ‘upon the intricacies of the law of sales. The obligation of the manufacturer should not be based alone on privity of contract. It should rest, as was once said, upon ‘the demands of social justice.“ Mazetti v. Armour & Co., 75 Wash. 622, 135 P. 633, 635, 48 L.R.A.,N.S., 213 (Sup.Ct.1913). […]

Accordingly, we hold that under modern marketing conditions, when a manufacturer puts a new automobile in the stream of trade and promotes its purchase by the public, an implied warranty that it is reasonably suitable for use as such accompanies it into the hands of the ultimate purchaser. Absence of agency between the manufacturer and the dealer who makes the ultimate sale is immaterial.

II. The Effect of the Disclaimer and Limitation of Liability Clauses on the Implied Warranty of Merchantability.

Judicial notice may be taken of the fact that automobile manufacturers, including Chrysler Corporation, undertake large scale advertising programs over television, radio, in newspapers, magazines and all media of communication in order to persuade the public to buy their products. As has been observed above, a number of jurisdictions, conscious of modern marketing practices, have declared that when a manufacturer engages in advertising in order to bring his goods and their quality to the attention of the public and thus to create consumer demand, the representations made constitute an express warranty running directly to a buyer who purchases in reliance thereon. The fact that the sale is consummated with an independent dealer does not obviate that warranty. Mannsz v. Macwhyte Co., supra […]

In view of the cases in various jurisdictions suggesting the conclusion which we have now reached with respect to the implied warranty of merchantability, it becomes apparent that manufacturers who enter into promotional activities to stimulate consumer buying may incur warranty obligations of either or both the express or implied character. These developments in the law inevitably suggest the inference that the form of express warranty made part of the Henningsen purchase contract was devised for general use in the automobile industry as a possible means of avoiding the consequences of the growing judicial acceptance of the thesis that the described express or implied warranties run directly to the consumer.

[…] ‘In recent times the marketing process has been getting more highly organized than ever before. Business units have been expanding on a scale never before known. The standardized contract with its broad disclaimer clauses is drawn by legal advisers of sellers widely organized in trade associations. It is encountered on every hand. Extreme inequality of bargaining between buyer and seller in this respect is now often conspicuous. Many buyers no longer have any real choice in the matter. They must often accept what they can get though accompanied by broad disclaimers. The terms of these disclaimers deprive them of all substantial protection with regard to the quality of the goods. In effect, this is by force of contract between very unequal parties. It throws the risk of defective articles on the most dependent party. He has the least individual power to avoid the presence of defects. He also has the least individual ability to bear their disastrous consequences.’

The warranty before us is a standardized form designed for mass use. It is imposed upon the automobile consumer. He takes it or leaves it, and he must take it to buy an automobile. No bargaining is engaged in with respect to it. In fact, the dealer through whom it comes to the buyer is without authority to alter it; his function is ministerial—simply to deliver it. […]

The gross inequality of bargaining position occupied by the consumer in the automobile industry is thus apparent. There is no competition among the car makers in the area of the express warranty. Where can the buyer go to negotiate for better protection? Such control and limitation of his remedies are inimical to the public welfare and, at the very least, call for great care by the courts to avoid injustice through application of strict common-law principles of freedom of contract. Because there is no competition among the motor vehicle manufacturers with respect to the scope of protection

guaranteed to the buyer, there is no incentive on their part to stimulate good will in that field of public relations. Thus, there is lacking a factor existing in more competitive fields, one which tends to guarantee the safe construction of the article sold. Since all competitors operate in the same way, the urge to be careful is not so pressing.

The task of the judiciary is to administer the spirit as well as the letter of the law. On issues such as the present one, part of that burden is to protect the ordinary man against the loss of important rights through what, in effect, is the unilateral act of the manufacturer. The status of the automobile industry is unique. Manufacturers are few in number and strong in bargaining position. In the matter of warranties on the sale of their products, the Automotive Manufacturers Association has enabled them to present a united front. From the standpoint of the purchaser, there can be no arms length negotiating on the subject. Because his capacity for bargaining is so grossly unequal, the inexorable conclusion which follows is that he is not permitted to bargain at all. He must take or leave the automobile on the warranty terms dictated by the maker. He cannot turn to a competitor for better security.

Public policy is a term not easily defined. Its significance varies as the habits and needs of a people may vary. It is not static and the field of application is an ever increasing one. […] Courts keep in mind the principle that the best interests of society demand that persons should not be unnecessarily restricted in their freedom to contract. But they do not hesitate to declare void as against public policy contractual provisions which clearly tend to the injury of the public in some way. Hodnick v. Fidelity Trust Co., 96 Ind.App. 342, 183 N.E. 488 (App.Ct.1932).

[…] The warranty does not depend upon the affirmative intention of the parties. It is a child of the law; it annexes itself to the contract because of the very nature of the transaction. Minneapolis Steel & Machinery Co. v. Casey Land Agency, 51 N.D. 832, 201 N.W. 172 (Sup.Ct.1924). […] The disclaimer of the implied warranty and exclusion of all obligations except those specifically assumed by the express warranty signify a studied effort to frustrate that protection. […] But quite obviously the Legislature contemplated lawful stipulations (which are determined by the circumstances of a particular case) arrived at freely by parties of relatively equal bargaining strength. The lawmakers did not authorize the automobile manufacturer to use its grossly disproportionate bargaining power to relieve itself from liability and to impose on the ordinary buyer, who in effect has no real freedom of choice, the grave danger of injury to himself and others that attends the sale of such a dangerous instrumentality as a defectively made automobile. In the framework of this case, illuminated as it is by the facts and the many decisions noted, we are of the opinion that Chrysler's attempted disclaimer of an implied warranty of merchantability and of the obligations arising therefrom is so inimical to the public good as to compel an adjudication of its invalidity. […]

The verdict in favor of the plaintiffs and against Chrysler Corporation establishes that the jury found that the disclaimer was not fairly obtained.

III. The Dealer's Implied Warranty

The principles that have been expounded as to the obligation of the manufacturer apply with equal force to the separate express warranty of the dealer. […] The bargaining position of the dealer is inextricably bound by practice to that of the maker and the purchaser must take or leave the automobile, accompanied and encumbered as it is by the uniform warranty.

Moreover, it must be remembered that the actual contract was between Bloomfield Motors, Inc., and Claus Henningsen, and that the description of the car sold was included in the purchase order. Therefore, R.S. 46:30—21(2), N.J.S.A., annexed an implied warranty of merchantability to the agreement. […]

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ENTRANCE EXAM – ESSAY QUESTION – ANSWER FILE

Based on the read texts of the New Jersey Supreme Court judgment in: *Henningsen v. Bloomfield Motors, Inc., and Chrysler Corporation*, 161 A.2d 69 (1960), including your notes as well as your understanding to the texts, answer the questions briefly (each answer should be 1-2 sentences long, about 10-20 words). You have 15 minutes to complete this part of the exam.

1. **Was the contract of car purchase printed in the same font size? What was suggested by the font size throughout the text?**

   …

2. **When the buyer claims defect, does such buyer have to prove the origin of the defect? Why/why not?**

   …

3. **Was this case a unique one to held manufacturer liable for the defect of the product sold by the seller to the buyer? How would you justify the Court's reasoning in favor of such liability?**

   …

4. **How did the Court describe the relation between the freedom of contract and protection of the buyers in the non-competing reality (usage of standard terms)?**

   …

5. **How would you describe the role of other judiciary cited in the judgment?**

   …