



# MOCK TRIAL EXERCISES

For grades 3–6

Featuring Winning Cases from  
the New Jersey State Bar Foundation's  
Law Fair 2013 Competition

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# Preface

Since 1992, the **New Jersey State Bar Foundation** has sponsored a unique, law-related education opportunity for elementary school students — the Law Fair Competition.

Students in grades three through six are invited to create original mock trial cases. The cases are judged on the basis of originality and educational value in teaching students about their legal rights and responsibilities. Winners are selected in each grade level. The trials are then conducted before student audiences at special Law Fair programs in the spring. The third- through sixth-grade audiences serve as juries.

Following are the winning students' cases from the Law Fair 2013 Competition. They may be used as a guide to prepare a submission to the Law Fair Competition or as a classroom exercise. Please note that some of the cases may contain "laws" created by the students for the purposes of this competition, which may not necessarily be actual laws. Since these mock trials were written by children, the content should not be considered technically accurate.

*These exercises were created by children and are intended for school use only. Any resemblances to characters, names, events and circumstances are intended only for the purpose of education, and all characters, names, events and circumstances described herein are fictitious.*

Because this booklet contains cases written by students from third through sixth grades, teachers should review the cases written by students in the upper grades before distribution in order to determine whether they are appropriate for younger children.

Law Fair has won national recognition for educational excellence from the American Bar Association and the American Society of Association Executives.

This project is made possible by funding from the IOLTA Fund of the Bar of New Jersey.

**If you would like to participate in the Law Fair Competition, please call 732-937-7519 or e-mail [sboro@njsbf.org](mailto:sboro@njsbf.org).**

*For information about other free, law-related education services available from the New Jersey State Bar Foundation, visit us online at [www.njsbf.org](http://www.njsbf.org).*

# The Case of the Broken Bricko Plane

## SCHOOL

Woodland  
Monroe Township  
Grade 3, First Place

## TEACHER

Bethanne Augsbach

## STUDENTS

Ruth Albanese, Nico Beninda, Jamie Byrnes,  
Alessia Gambale, Misha Koppisetti, Jeffrey Mann,  
Rushil Patel, Ava Prinzo, Theresa Richichi,  
Nicholas Santos, Riya Sharma, Jack Van Dusen,  
Brandon Weiss, Aidan Windrem

## FACTS

At approximately 11:30 a.m. on the morning of December 15, 2012, Jason Ou'Chee went to Toys R Fun to buy the must-have toy of the holiday season. His eight-year-old son, Jacob Ou'Chee, wanted the Bricko Airplane set as a holiday gift. Mr. Ou'Chee was very excited to finally find the airplane at the local Toys R Fun, even though the toy box was dented on the outside. After finding the toy with the help of the store assistant manager, Wend E. Werker, Mr. Ou'Chee inquired about the store return policy. He asked if Ms. Werker would note on the receipt that the box was dented and ripped. Wend E. Werker agreed to note the dented box on the receipt and informed Mr. Ou'Chee about the store return policies.

Jacob Ou'Chee opened his gift on December 24; he read all the directions carefully and began to assemble the plane with his father, Jason Ou'Chee, when they noticed some pieces missing from the Bricko Airplane set. In order to make the plane work, Mr. Ou'Chee used some Bricko pieces from an old plane set they had in the house. Jacob then used the wireless controller, which came with the toy, to fly the plane inside the house.

The controller malfunctioned; the plane flew out of control, and hit Jacob's younger brother, Gabe Ou'Chee, in the eye. Gabe was startled and fell into the family's fifty-four-inch flat screen television. When Gabe lost his balance, his head hit the screen of the television and he then passed out on the tiled floor. He suffered a severe concussion along with cuts and bruises as a result of the fall. He stayed in the hospital for two days and spent a whole month at home recovering from his injuries.

On February 1, after Gabe Ou'Chee returned home from the hospital and was feeling a lot better, Mr. Ou'Chee went to the toy store to return the plane set and to file a complaint. Toys R Fun refused to take back the set as it was opened. They have a store policy which states that they will not take back any opened boxes from the Bricko Group as they consider these toys to be electronics. In addition, the return was being made 48 days after the purchase date of December 15, 2012 and the policy allows returns up to 45 days after the sale date. Toys R Fun stands by the store policy of not taking back opened toy boxes.

Mr. Ou'Chee is suing Toys R Fun and the Bricko Group for all of Gabe's medical expenses, the cost of the television, and the Bricko Airplane set.

## ISSUE

Are Toys R Fun and the Bricko Group liable for Gabe Ou'Chee's medical bills and all related costs?

## **WITNESSES**

### ***For the Plaintiff***

Jason Ou'Chee

Ryan Returner

### ***For the Defense***

Brick O. Maker

Wend E. Werker

## **WITNESS STATEMENTS**

### ***Testimony of Jason Ou'Chee***

My name is Jason Ou'Chee. On December 15, 2012 at approximately 11:30 a.m., I purchased a Bricko Airplane set for my eight-year-old son, Jacob Ou'Chee. Even though the box was crushed in some places, damaged, and beaten up, I was assured by the assistant manager, Wend E. Werker, that if the toy was on the shelf, it was in working condition. Ms. Werker further stated that the store had a favorable return policy if anything was wrong with the plane. She stated the return policy was 90 days. I asked her to indicate on the receipt that the box was damaged, which she did. Ms. Werker is a teenager who seemed to be more interested in getting rid of me than inspecting the box and speaking to the store manager to provide me with correct information.

On the big day, Jacob opened his gift and immediately started reading and following the directions. I helped him because the directions were very complicated and way over the head of my son despite the box stating, "For Eight-Year-Olds and Up." My son and I started assembling the plane and soon realized that six of the hundreds of pieces were missing. It occurred to us that the kit must have been opened and returned from another customer. My son was awfully devastated because he had been waiting all year to receive this toy.

We had a similar Bricko plane we had previously built so we were able to use pieces from it to complete the new plane. We did not build the wireless controller as it came pre-made with the kit. We were very excited when the plane finally took flight!

Jacob was flying the plane in the house for approximately fifteen minutes when all of a sudden the wireless controller froze, causing the plane to hit my younger son, Gabe Ou'Chee, in the eye. Gabe was startled, injured, and as a result, he fell backwards into our fifty-four-inch flat screen TV. He hit his head and fell to the floor, knocking his forehead on our imported Italian tiles. We immediately brought him to the hospital and that's where we were told that he had a severe concussion and that he needed fifty stitches to close a large gash to his head. Gabe was in the hospital for two days and required a whole month to recover, and he still has occasional migraine headaches.

We are suing both the Bricko Group and Toys R Fun because they guaranteed that all their toys are of the highest quality and meet strict safety standards as advertised. The Bricko Group has the responsibility to inspect each toy to ensure that all parts are included. Bricko has a duty to guarantee that this airplane set is safe for all children. They should have a printed warning on the box and in the directions that this airplane kit requires the supervision of an adult as the kit is too complicated for an eight-year-old to build independently. Furthermore, there were no warnings that stated not to use pieces from another Bricko set. The Bricko Group guarantees that all their toys are safe and are of the highest quality; they did not live up to their promise and, as a result, my child was severely injured. The store should have inspected the toy before putting it on the shelf for sale and not misrepresented their return policy. Toys R Fun and the Bricko Group are liable for Gabe's injuries and should pay for his hospital bills, the cost of the television, the Bricko Airplane set, and for the pain and suffering due to their faulty toy.

### ***Testimony of Ryan Returner***

My name is Ryan Returner. After the hectic holidays were over, I went to Toys R Fun in order to return the Bricko Train set that I had purchased for my son because the wireless controller was not working properly. Right in front of me was Mr. Ou'Chee, another unsatisfied customer who was trying to return a Bricko Airplane set that had the same problem. The store manager refused to take

back my train set because the box was open and the train was considered an electronic toy. I was furious because the train set was defective and it was the store's responsibility to make an exchange. When a person thinks of an electronic toy, we think of computers, handheld digital devices, Wii and Game Cubes, not a Bricko set. The toy store manager was very adamant about not returning the Bricko set. He strongly adhered to the store policy and suggested I contact Bricko directly. I then communicated with the Bricko Group and they stated that they would get back to me, but no employee from their group returned my call. I called them because I was hoping they would replace the wireless controller.

The toy store manager also refused to take back the Bricko plane set Mr. Ou'Chee brought into the store to return. When I bought the train set, I was also helped by the assistant manager, Wend E. Werker. She said the train set could be returned to the store within 45 days if there was anything wrong with it.

The Bricko Group and Toys R Fun guarantee that all their toys are safe and are of the highest quality. I agree with Mr. Ou'Chee that they did not live up to their promise and assurances. This toy store was my favorite, but not anymore. I feel very fortunate that my son did not get injured like Gabe Ou'Chee. What a shame that the poor little boy had a concussion because of a defective toy. I can't believe it!

### ***Testimony of Brick O. Maker***

My name is Brick O. Maker and I am the owner of the Bricko Group. I recently inherited the company from my grandfather, Grandpappy Cobblestone Maker, when he retired from the family business seven months ago. We believe it is essential that the toys we make have durable and superior packaging before they reach our customers. The Bricko Group has always been a leader in toy safety and we make sure that the toys we manufacture are guaranteed for a lifetime. The Bricko Group had a lot of employees out before the holiday season. Our group has 20 people including myself. We confidently complete quality control tests for all the toy boxes before sending them to Toys R Fun. Our quality control department may not be as large as it was in the past, but we still get the job done.

All of our Bricko boxes are clearly stamped with warning signs and our instructions are very detailed in explaining the components of the toys. We strive for 100% of our Bricko shipments to be error free and all toys complete with all pieces and instructions. The accident that happened to Gabe Ou'Chee was primarily caused by consumer negligence and misuse of the plane inside the house causing the accident. In the directions, and on the box, it is clearly printed "Warning- OUTDOOR USE ONLY!" Additionally, the Bricko Airplane set was clearly labeled "For Eight-Year-Olds and Up."

Here at the Bricko Group, we take our bricks very seriously. Our motto at the factory is "No brick leaves too quick!" In addition, we stand by our policy that once a toy is shipped out to a store, the receiving store is responsible for the condition of the toy. Furthermore, customers are encouraged to contact our customer care hotline if any pieces are missing or broken.

I'm sorry the poor little boy got hurt, but it is evident that Mr. Ou'Chee used the plane set irresponsibly and did not follow the directions on the toy box. Hence, the Bricko Group is not liable for Gabe Ou'Chee's injuries.

### ***Testimony of Wend E. Werker***

My name is Wend E. Werker. I am the assistant store manager for Toys R Fun. On a bright, crisp December morning, Mr. Ou'Chee came to our toy store to buy the Bricko Airplane set. This was the toy of the season and I remember helping him find the one and only Bricko Airplane set on the shelves. He seemed very excited to have found the last one. I remember Mr. Ou'Chee looked a little puzzled when he saw the packaging, as the box looked a little old and beaten up. We have hundreds of toys in our store and the outside of the boxes can get damaged through shipping and handling.

The return policy is clearly stated on the store wall and all of our employees are well trained and conversant on details of this policy. Toys R Fun policy and Bricko policy excludes the return of an open box that contains a Bricko electronic toy. I remember mentioning to Mr. Ou'Chee that an open toy box cannot be returned. We have a separate section for the toys that have been previously

brought back to the store. I was certain that the plane he bought had not been previously returned as it was located on the toy store shelf. I also advised him that our return policy was up to 90 days and that electronics should be returned on or before 45 days.

As requested by Mr. Ou'Chee, I wrote on the receipt that the box was dented. I told him at the time that even if I wrote on the receipt that the box was dented, he still needed to follow the store's return policy. He asked me to write it anyway, and as it seemed to make him happy, I wrote the following on the receipt: "The box has some dents on it."

I offered Mr. Ou'Chee, as I do for all customers, the option to purchase our Buyer's Protection Plan. He refused to spend the extra money. If Mr. Ou'Chee had purchased the protection plan and registered the airplane set with the store, he would have been able to return it. Furthermore, Bricko inspects all the toys before they send them to our store and they ensure that all the pieces and instructions are included. We guarantee that our toys are safe and durable. The instruction manual from Bricko states that customers should not combine pieces from other toys. Additionally, it also instructs the user not to fly the plane indoors. Mr. Ou'Chee disregarded the directions in the instruction manual. It was Mr. Ou'Chee's negligence that caused the malfunction.

## INSTRUCTIONS

The plaintiff, the Ou'Chee Family, must prove by a preponderance of evidence that the defendants, the Bricko Group and Toys R Fun, are liable for Gabe's accident and that the defendants' carelessness in manufacturing a safe toy caused Gabe Ou'Chee's injuries.

## SUB-ISSUES

1. Are Toys R Fun and the Bricko Group liable for the damage of the television?
2. Are they together also responsible for the defective Bricko Airplane?
3. What are the parental obligations in supervising Jacob at all times to keep him safe?

4. Should the Bricko Group amend the quality control testing for their toy sets?
5. Should Mr. Ou'Chee have used different pieces from a previous set to construct the Bricko Airplane?
6. Should the Bricko Group focus on sturdier packaging of their toys to avoid any damage to the toys inside the box?

## CONCEPTS

1. Product liability.
2. Duty.
3. Parental responsibility.
4. Personal and property damage.
5. Credibility of the witnesses.
6. Burden of proof.
7. Comparative negligence.
8. Negligence.

## LAWS

**Product Liability – Manufacturing Defect:** A manufacturing defect may be established by proof that, as a result of a defect or flaw which happened during production or while in defendant's control, the product was unsafe and that unsafe aspect of the product was a substantial factor in causing plaintiff's injury.

In establishing this claim, a plaintiff must prove by a preponderance of credible evidence (greater weight of evidence) that (a) the product contained a manufacturing defect which made the product not reasonably safe; (b) that the defect existed before the product left the control of the defendant; (c) that when the accident happened the product was not being misused, or it had not been substantially altered in a way that was not reasonably foreseeable; and (d) the manufacturing defect was a proximate cause of the injury. Proximate cause means that the manufacturing defect was a substantial factor which singly, or in combination with another cause or causes, brought about the accident.

**Product Liability – Failure to Warn:** If a product fails to contain an adequate warning or instructions, it is defective. The defendant as the manufacturer or seller of a product has a duty to provide adequate warnings or instructions about the dangers the product may present. To decide the plaintiff's failure to warn claim, one must determine what warnings and instructions the defendant provided and whether those warnings and instructions were adequate. An adequate warning or instruction will communicate sufficient information on the dangers of the product and how to use the product safely. When deciding whether the information provided is adequate, one needs to take into account the characteristics of the people reasonably expected to use the product and ordinary common knowledge. In addition, plaintiff needs to establish that the failure to warn was a proximate cause of the injury.

**Parental Responsibility:** Parents have an obligation to properly supervise the activities of their minor children. A parent is liable for injuries to his or her minor child only if the parental supervision or lack of it is willful or wanton. To establish that conduct or inaction is willful or wanton, it is not necessary that the parent recognize his or her conduct as being extremely dangerous; it is sufficient that he or she knew, or had reason to know, of circumstances which would cause a reasonable person to realize the highly dangerous character of his or her conduct.

**Personal and Property Damages:** Damage is a loss or harm resulting from injury to a person or property. Damage refers to compensation, such as a money judgment, provided to a person who has suffered a loss or harm due to an unlawful act or negligence. The person at fault must compensate the injured party.

**Comparative Negligence:** Comparative negligence is considered if the plaintiff has contributed to cause the damages by his or her own negligence. In such a case, plaintiff's recovery will be reduced by the percentage he or she contributed, so long as his or her negligence is less than 50%.

**Negligence:** Negligence is the failure of an individual or agency charged with the duty of care to exercise the proper degree of care that a reasonable person would exercise under similar circumstances. It may be the doing of an act which the ordinary prudent person would not have done, or the failure to do that which the ordinary prudent person would have done, under the circumstances. By "a prudent person" it is not meant the most cautious person, but one of reasonable vigilance and caution. There can be no liability in negligence unless the plaintiff establishes both that they were owed a duty of care, and that there has been a breach of that duty.

# The Case of the Flying Messenger

## SCHOOL

Woodland  
Monroe Township  
Grade 3, Second Place

## TEACHER

Bethanne Augsbach

## STUDENTS

Frankie D' Aiello, Allison Brechman,  
Hayden Brower, Alexander Giambrone,  
Salvatore Grasso, Joseph Liuzzi,  
Maximilian Lobrow, Valeria Mancuso,  
Sakshi Manjegowda, Jennifer Marrone,  
Nicholas Spinelli, Jennie Tota

## FACTS

On the afternoon of December 22, 2012, at approximately 12:30 p.m., Mr. Otto Towner was riding in a cab from the Congress Hall Hotel on First Avenue heading to Radio City Music Hall to see the Christmas Spectacular with his family (his wife and three young children) when he received an emergency call from his mother. He had to have the cab stopped.

Mr. Otto Towner's mother had fallen in her home. She lives on 8th Avenue between 50th and 51st, which is a short walk from Radio City Music Hall. Mr. Otto Towner responded to this emergency by insisting the cab driver pull over immediately so he could jump out of the cab. He was going to run the two blocks to his mother's apartment even though the weather was extremely cold and windy outside. He asked the cab driver to take his family to Radio City so they wouldn't be late for the show. He was planning on meeting them there after he tended to his mother. She had fallen in the past so he thought once he got her up and her aide arrived, he'd be able to meet his family at Radio City.

Mr. Otto Towner opened the taxi's door on the left side of the car when Mr. Dee Livery hit the door and crashed his bicycle. Mr. Towner had not seen Mr. Dee Livery approaching the cab. There were signs in the cab stating all passengers are to exit the cab from the right side. Mr. Otto Towner was blocked from exiting the cab from the right as his whole family was between him and the door. The cab driver said nothing to stop Mr. Towner from opening the door to exit the cab.

Mr. Dee Livery was traveling northbound on his bicycle at the same time Mr. Otto Towner opened the cab's door. At the same time, a garbage truck was picking up garbage on the street and a banana peel had fallen out of the truck onto the street which led to Mr. Dee Livery having to quickly dodge the peel, causing him to swerve and lose control of his bike. Mr. Dee Livery is suing Mr. Otto Towner for \$2,819.99 to replace the bicycle; \$100,000 for medical bills and \$100,000 for the loss of income and aggravation.

## ISSUE

Were the injuries to Mr. Dee Livery and the damages to his bike caused by Mr. Otto Towner opening the cab door on the wrong side? Is Mr. Otto Towner responsible for his medical bills and damages to his bike?

## WITNESSES

### *For the Plaintiff*

Mr. Dee Livery  
Mr. Spotter

### *For the Defense*

Mr. Otto Towner  
Mr. Tax E. Driver

## **WITNESS STATEMENTS**

### ***Testimony of Mr. Dee Livery***

On Saturday, December 22, 2012, at approximately 12:30 p.m. I, Mr. Dee Livery, was riding my work bicycle, a Matte Metallic Bronze Trek Transport Plus bicycle, back from a messenger job. The cost of this bicycle is \$2,819.99 and it is my baby and my pride and joy! The weather was windy and cold but I am used to this. I am a professional messenger and work through all kinds of weather.

I was finishing my last morning delivery at the office of Mr. Hepworth, Esq., at 1251 6th Ave., Manhattan, NY, when this accident occurred. This attorney's office is near Radio City Music Hall.

I was traveling north on 6th Avenue crossing W. 50th St. when I saw a yellow cab stopping on the right side of the road. I was shocked when a passenger in this cab opened the rear left passenger door. I saw the man was talking on his cell phone. Obviously, he wasn't paying attention, because every New Yorker knows NEVER exit a cab from the left side. You must exit from the right...next to the sidewalk.

At the same time there was a garbage truck on the opposite side of the street picking up garbage so I had nowhere to go to avoid the cab's door. As I quickly approached the vehicles, I observed a banana peel in the street that may have been tossed from the garbage truck or can that was being emptied. Since I had no time to stop, I nervously swerved to the right as I applied my brakes but my tire skidded on the banana peel. I did gain control of my bike but not in time. My front tire hit the opened cab door and I flew over the window. My bike was smashed and I had lots of pain. After going to the hospital and having an x-ray, the doctor told me I had a broken leg.

The man who exited the cab did not pay any attention to me and didn't even stop to look and see if I was all right. Everyone knows cabs in New York City have a sign inside each of them that reads: "EXIT ON YOUR RIGHT." It states that there is a New York City ordinance that prohibits exit from the left side of a cab for public safety. The man, Mr. Otto Towner, did not look both ways before exiting the cab. He was not paying attention and was too busy

talking on his cell phone. I did not see the cab door open until it was too late. Mr. Otto Towner was negligent and is responsible for my injuries and bike repairs.

### ***Testimony of Mr. Spotter***

I am Mr. Spotter. I was driving the car behind the man in the cab. I saw the sanitation worker drop a banana peel and other garbage on the road as he was emptying the garbage cans into his truck. I saw Mr. Dee Livery's bike skid on the banana peel, but it looked to me like he had fully gained control of his bike. However, I knew for sure that his bike would crash into the cab door that had just opened on the wrong side. I saw the man getting out of the cab obviously distracted since he was talking on his cell phone.

I couldn't believe that the cab driver let his passenger out on the left side of the cab. Everyone knows that you get out of a cab on the right side, closer to the sidewalk; it is just so much safer. As soon as I saw the passenger open the left door, I saw Mr. Dee Livery skid and then flip over the cab door. I then pulled over next to the sidewalk, exited my vehicle and checked on the messenger to see if he was all right. While I knew his injuries weren't life threatening, I saw he had suffered a broken leg and many cuts and bruises.

### ***Testimony of Mr. Otto Towner***

It was early afternoon on December 22, my family and I were in town, and on our way to see the Christmas Spectacular at Radio City Music Hall. We used NYC Taxi to get us there. On our way we ran into some traffic on 6th Ave. While we were en route, I got a call from my mother telling me that she had fallen down and could not get up. She's 83 years old and refuses to leave her house and live with us. She's always been very independent.

My mom lives on 8th Ave. so I thought I could just jump out of the cab and run there to help her since it's only two blocks away. Then, once I was sure my mom was all right, I could just walk back over to Radio City and join my family.

As I exited the cab, I was talking to my mom on my cell phone trying to calm her. The next thing

I knew, Mr. Dee Livery was crashing into the door of the cab! I did look both ways before opening the cab door to make sure no one was there and I did not see him. The only thing I noticed was the rusty green garbage truck on the left of us that had some garbage flying out from the back of it.

All I know is that Mr. Dee Livery should have slowed down in the heavy traffic and should have been paying more attention to the road. Isn't he a professional messenger? Doesn't he know that he should be looking out for people opening doors and walking in the street? Why didn't he use his bicycle horn to alert me he was approaching quickly? Messengers are required to have a working horn to alert pedestrians that the messenger is approaching. He did not use his horn to warn me.

The cab driver started yelling at Mr. Dee Livery about the damage to his cab. Then the messenger began yelling at me about some sign in the cab about exiting the cab. I didn't see any sign; if it was there, it was blocked by my family.

I am sorry that Mr. Dee Livery was injured, but it was an accident, it was his own fault, and I do not take any responsibility for his actions.

### ***Testimony of Mr. Tax E. Driver***

I am Mr. Tax E. Driver. I drive a cab for NYC Taxi Service. Been driving a cab for 20 years in this city. I seen it all (laughing).

On December 22 at about 12:30 in the afternoon, I picked up a fare at the Congress Hall Hotel going to Radio City Music Hall. That hotel is at First Avenue and 38th Street and gets a lot of tourists. You know the type I mean...those Jersey people comin' to the city for Christmas. Always in a hurry and telling you what they want.

Anyway, I pick up this guy and his family.... wife and three kids. I didn't tell him that the cab only holds four passengers. Eh, it's Christmas! So he and his three kids crammed into my back seat and his wife jumped in the front passenger seat. Mr. Otto Towner was sitting directly behind me and his little kids were squished next to him. Turns out they're from Jersey...I knew it!

So we get on our way and get stuck on 6th Avenue a few blocks from Radio City. Christmas

traffic is unbelievable! His kids start talking loudly and the guy starts yakkin' on the phone with somebody. Next thing I know I'm stopped at a red light on 6th Avenue blocked in by heavy traffic and a garbage truck that like always is dumping trash all the way up the road. I see one of those crazy messengers losing control of his bike trying to avoid a banana peel...you gotta love that, a banana peel... like on TV or something! The guy was going too fast and not obeying traffic lanes - those guys never do - steering in and out of the traffic illegally. He knows he is not supposed to be riding alongside stopped traffic. He has to wait like everyone else.

Anyway, the man gets out of my cab, from the left, telling me his wife will pay me. It wasn't a problem because we were stopped in the traffic, no cars were moving. In the very same second, I turn around to talk to him and the next thing I know I hear is "CRASH!" I get out of my cab and see this messenger guy on the ground crying for help. He's yellin' at us like it wasn't his fault, which it was, of course.

At this point...it's crazy out there! I tell 'em I'm calling the cops! Next thing you know the cops are here and an ambulance takes the bike guy away to the hospital.

How does it end? I get no tip after driving 30 minutes in this traffic and my cab is messed up. I'm thinking, "Who's going to pay for this?" That's it. That's my story.

## **INSTRUCTIONS**

Mr. Dee Livery must convince the jury by a preponderance of the evidence that Mr. Otto Towner was negligent when he opened the cab's door and that this caused Mr. Dee Livery's injuries and related medical expenses, which also left him with no way to make a living since his means of transportation, his bicycle, has been severely damaged and deemed unusable; and that therefore Mr. Otto Towner would be responsible for the cost of the medical expenses and replacement of the bicycle.

## SUB-ISSUES

1. Did Mr. Dee Livery cause the accident by not paying attention to the road and his surroundings and for riding alongside traffic?
2. Was NYC Cab Company negligent for not enforcing the exit right sign and/or for allowing too many passengers in the cab?
3. Was the sign easily visible to passengers in the back seat? Should there be more than one sign?
4. Would a reasonably prudent person exit the cab from the left?
5. Are tourists expected to know the ordinances outside their state?
6. Should a professional messenger know how to avoid hazards, like trash on the road?
7. Is the garbage company negligent in this incident because the driver did not exercise caution while loading trash into his truck?

## CONCEPTS

1. Negligence.
2. Duty.
3. Breach of duty.
4. Preponderance of evidence.
5. Comparative negligence.
6. Causation.
7. Damages.

## LAWS

**Negligence:** Negligence is the failure of an individual or agency charged with the duty of care to exercise the proper degree of care that a reasonable person would exercise under similar circumstances. It may be the doing of an act which the ordinary prudent person would not have done, or the failure to do that which the ordinary prudent person would have done, under the circumstances. By “a prudent person” it is not meant the most cautious person, but one of reasonable vigilance and caution. There can be no liability in negligence unless the plaintiff establishes both that they were owed a duty of care, and that there has been a breach of that duty.

**Proximate Cause:** Plaintiff must establish by a preponderance of the evidence that defendant’s negligence was a proximate cause of the accident. In other words, plaintiff must establish that his injury is connected to the defendant’s negligent actions.

**Comparative Negligence:** Comparative negligence is considered if the plaintiff has contributed to cause the damages by his own negligence. In such a case, plaintiff’s recovery will be reduced by the percentage he contributed, so long as his negligence is less than 50%.

**Personal and Property Damages:** Damage is a loss or harm resulting from injury to a person or property. Damage refers to compensation, such as a money judgment, provided to a person who has suffered a loss or harm due to an unlawful act or negligence. The person at fault must compensate the injured party.

**Causation:** “But For” test: But for the actions of the defendant, the harm would not have occurred. If defendant is found to be a substantial factor, defendant is comparatively liable.

# The Case of the Slippery Bowling Alley: Hurtz v. Knock Out Pins

## SCHOOL

Mt. Pleasant Elementary  
Livingston  
Grade 3, Honorable Mention

## TEACHER

Carol Geers

## STUDENTS

Sid Chalasani, Matt Grossman, Olivia Halperin,  
Ethan Hirsch, Matt Hoffman, Emily Hunter,  
Daniel Jacobsen, Jack Levitt, Jeslin Muttappillil,  
Andrew Rhodes, Kevin Wang, Jeremy Zoller

## FACTS

On December 12, 2012, Bea Hurtz was celebrating her 9th birthday at Knock Out Pins. The guests arrived at 3:30 p.m. and were served pizza and water. When they were done eating, they went to the bowling lanes. Bea Hurtz was bowling and slipped on water. She fell on her stomach and the bowling ball rolled on her back. The owner of Knock Out Pins immediately called the ambulance, which took her to the hospital. Mrs. Hurtz is suing Knock Out Pins for the cost of the party and the medical expenses that she incurred from the fall that afternoon at the bowling alley.

## ISSUE

Was Knock Out Pins responsible for Bea Hurtz's injuries?

## WITNESSES

### *For the Plaintiff*

Rollin Bowl  
Sheezy Hurtz

### *For the Defendant*

Jen Clean  
Stan Strike



## **WITNESS STATEMENTS**

### ***Testimony of Rollin Bowl***

My name is Rollin Bowl and I am Bea Hurtz's cousin. I was at the bowling party on December 12, 2012, helping my Aunt Sheezy chaperone the bowling party. When the children were eating the pizza, I noticed the custodian washing the lanes. She left a bucket of water by a lane and one of the bowlers next to that lane dropped her ball and it hit the bucket and some water spilt onto a bowling lane. I don't know if the custodian mopped it up, because I was helping the children with their bowling shoes.

### ***Testimony of Sheezy Hurtz***

My name is Mrs. Sheezy Hurtz, Bea's mother. On December 12, 2012, we had planned a bowling party at Knock Out Pins for Bea's 9th birthday. Bea bowls at Knock Out Pins every Thursday. My daughter, Bea, was excited to go the birthday party. I picked her and her friends up from school and drove them to Knock Out Pins. Since it was right at the end of the school day, I had them serve the food when we got to the bowling alley.

Bea's cousin, Rollin, was helping out at the party, since he is 19 and was available that afternoon. He was helping me get all the guests their bowling shoes and helping them pick out bowling balls they could handle.

When it was Bea's turn to go, she was preparing to release the bowling ball and slipped on some water and fell on her stomach and her bowling ball ended up on her back. She couldn't move, so the owner called an ambulance. They brought her to the hospital. After examining her, they found she broke some vertebrae in her back. They put a rod in her back and she also went through intensive physical therapy to help her walk. Knock Out Pins was responsible for the water on the bowling lane and should pay for all of my daughter's medical expenses.

### ***Testimony of Jen Clean***

My name is Jen Clean. I have been working at Knock Out Pins since it opened. I have always cleaned up the facilities and have never left anything on the lanes. In all the years working at Knock Out Pins, I have never seen anyone get injured. When the children from the party went down towards the bowling lanes, I noticed that some of the guests at the party brought their water down by the bowling lanes. There is a big sign that states: NO FOOD OR BEVERAGES IN THIS AREA. I'm sure one of the bowlers spilt some water on the lanes, which caused Bea's injury. When I saw her fall, I called for assistance. I am very upset that the accident occurred, but I was not responsible for the accident.

### ***Testimony of Stan Strike***

My name is Stan Strike and I have owned Knock Out Pins for 15 years. It is a very popular bowling alley. I keep my bowling alley maintained and I have never had any incidents or complaints about my business or workers. Jen Clean is a valuable employee at Knock Out Pins.

On the afternoon of December 12, 2012, I was in my office when someone called to tell me that someone fell and couldn't move. I immediately called 911 and went over to assist Bea Hurtz. I questioned Jen to make sure she had properly cleaned the bowling lanes. We at Knock Out Pins are very upset that Bea fell, but she should have told her guests the beverages were not allowed in the bowling area. I gave the Hurtz's family and the guests free passes for their next visit.

## **INSTRUCTIONS**

The jury must decide by a preponderance of the evidence whether Bea Hurtz's injuries were a result of negligence by Knock Out Pins.

## SUB-ISSUES

1. Should Mrs. Hurtz have taken away the waters?
2. Should Knock Out Pins make announcements about beverages and food not being allowed in the bowling lanes?
3. Are more safety precautions needed at Knock Out Pins?
4. Were the party guests being supervised?

## CONCEPTS

1. Negligence.
2. Credibility of witnesses.
3. Burden of proof.
4. Contributory negligence.

## LAWS

1. Negligence is a legal cause of damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such damage, so it can reasonably be said that if not for the negligence, the loss, injury or damage would not have occurred.
2. Damages For Personal Injury: If the defendant is found to be negligent, the plaintiff is to be compensated for all his/her damages (past, present, and prospective), both special and general. This includes fair and adequate compensation for medical expenses and lost earnings plus amounts for pain and suffering.
3. Premises Liability: Owners and occupiers of property are legally responsible for accidents and injuries that occur on that property.

# The Ice Escapade: Ken Skate v. Katie Rink

## SCHOOL

Spring Garden  
Nutley  
Grade 4, First Place

## TEACHERS

Marcia Napolitano, Louise Walk

## STUDENTS

Joseph Bartell, Gabriella Haines, Julia Hollfelder,  
Beth Sorensen, Kayla Vu, Jenna Hughes,  
Emily Smyth, Pranav Kumara, Hannah Algieri,  
Natalie Realmuto, Gianna Zoppi,  
Adriana Minichini, Samantha Daly, Ava Bacik,  
Ryan Wallace

## FACTS

On July 15, 2012, 10-year-old Katie Rink went to the Icy Ice Skating Rink to enjoy a day of skating with her friends. One of her friend's mothers had brought the girls and was sitting on the side watching. Katie and her friends were skating around the rink when she noticed that her skate was untied. As Katie bent down to tie her skate, Ken Skate tripped over Katie and fell on the ice. He chipped his tailbone and dislocated his shoulder.

Ken is suing the Rink Family for all medical expenses and for his continuing physical therapy. He claims that the accident was Katie's fault for stopping in the middle of the rink.

## ISSUE

Is Katie Rink responsible for Ken Skate's injuries and should she pay for all his medical expenses?

## WITNESSES

### *For the Plaintiff*

Ken Skate  
Barbie Dahl

### *For the Defense*

Katie Rink  
Rob Zerver



## WITNESS STATEMENTS

### *Testimony of Ken Skate*

My name is Ken Skate and I can skate...quite well, if you don't mind me saying. I've been skating for seven years and I am a Golden Member of the Icy Ice Skating Rink. That means that I am a frequent customer and get a special discount.

On July 15, I was at the Icy Ice Skating rink with my partner, Barbie Dahl. We were practicing for an upcoming figure skating competition. Our routine has many twists and turns, so we needed a little extra practice time.

Barbie and I were skating along, when all of a sudden something struck my leg and I went down hard on the ice. I felt a terrible pain in my lower back and I couldn't move my left shoulder. I was taken to the hospital, where I was treated for my injuries. I broke my tailbone and dislocated my shoulder. I am still getting physical therapy to this day. The accident prevented us from entering the competition.

My accident was caused by a careless little girl who stooped down in the middle of the skating lane to tie her skate. She should have known better. The rules are posted at the entrance to the ice. They clearly state: "No stopping in the skating lanes." The Rink Family should pay for all my medical bills.

### *Testimony of Barbie Dahl*

My name is Barbie Dahl. On July 15, 2012 I was at the Icy Ice Skating Rink with my partner, Ken Skate. We have been partners for three years and he is my role model. We usually skate four times a week, but we had been practicing more often, since we had a competition coming up. That is why we were at the Icy Ice Rink on July 15 during Open Skate time.

As we were gliding along the skating lane, a child suddenly stopped and bent over right in front of us. I almost crashed right into her but I managed to get out of the way just in time. Ken wasn't so lucky. He crashed right into the girl and fell on the ice. He couldn't even move his shoulder after the accident. I went with him to the hospital. His injuries prevented us from entering the skating competition.

In my opinion, this accident was totally the girl's fault. She should not have stopped in the middle of the skating traffic. It was a violation of the rink rules. The Rink Family should pay for Ken's medical bills.

### *Testimony of Katie Rink*

My name is Katie Rink. I am 10 years old and am here to tell my side of the story. On July 15, I was at the Icy Ice Skating Rink with my friends. We were skating along when I noticed that my skate was untied. I had always been taught to make sure my skates are properly tied so I wanted to tie them as fast as I could. First, I checked to make sure there was no one behind me before I bent down. Then I crouched down to tie the laces. At that moment, a man came out of nowhere, skating fast and backwards. There was no time for me to get out of the way and he fell on top of me.

I am very sorry that the man got hurt, but it was not my fault. As per the rules of the rink, spins and jumps are not permitted during Open Skate times. The accident was Ken Skate's fault. If he cannot follow the rules, I'm not even sure if Ken Skate [pause] can skate.

### *Testimony of Rob Zerver*

My name is Rob Zerver. On July 15 I was at the Icy Ice Skating Rink with my son. It was a crowded day and while I was watching my son skate, I observed a man skating quite skillfully. He had all the moves. It was the plaintiff, Ken Skate. He was skating with a young woman and they were both very good skaters. I found out later her name is Barbie.

Anyway, Ken was spinning around when he tripped over the girl, the one that was crouched down on the ice. His partner saw the little girl, the defendant, Katie Rink, and got out of the way. But Mr. Skate didn't see the girl since he was doing a turn or something at that moment.

In my opinion, the reason Ken did not see Katie Rink is because he was not watching where he was going. He was facing the other way and not paying attention. It is too bad that he was injured, especially since he is such a good skater. However, I do not

think the Rink Family should be responsible for his medical expenses. The rules of the rink clearly state: "No spinning or jumping during Open Skate hours."

## INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the defendant, Katie Rink, was the cause of his injuries.

## SUB-ISSUES

1. Was the accident caused by Katie Rink stopping in the middle of the lane or by Ken Skate not paying attention to where he was going?
2. Was Katie old enough to have known not to stop in the middle of the rink?
3. Should Katie have gone to the side of the rink to tie her skate?

## CONCEPTS

1. Comparative negligence.
2. Contributory negligence.
3. Adherence to rink regulations.
4. Causation.
5. Damages.

## LAWS

1. Comparative negligence – If the plaintiff is also negligent but his negligence is not greater than that of the defendant, the plaintiff may recover damages but the amount will be reduced by the percentage of the plaintiff's negligence.
2. Foreseeability – In determining whether reasonable care has been exercised, you will consider whether the defendant should have known that the probable consequence of his or her act, or the failure to act, would have been some injury.

3. Causation – In order to find the defendant liable, you must find that the defendant's negligence was a proximate cause of the injury.
4. Contributory negligence – If the plaintiff's negligence contributed to his or her injury and he or she failed to act responsibly for his/her age, then his/her carelessness may reduce the responsibility of other parties.
5. Skating Rink Laws – All skaters must abide by the following skating rink regulations:
  - (a) Skating in a manner that endangers or interferes with other skaters' safety or pleasure is strictly forbidden.
  - (b) As the use of an ice skating rink and all its facilities have an inherent risk, any participation is totally at the user's own risk. No responsibility is accepted or undertaken for the well being of either the user or his/her property.
  - (c) Skaters may not impede the traffic flow of the skating lane. Any stopping must be done on the side of the rink.
  - (d) No racing or speed skating is allowed during public sessions (Open Skating time).
  - (e) Jumps and spins are not permitted during busy public sessions.

# To Rob or Not to Rob: State v. Rob Ornot

## SCHOOL

School No. 1  
Fort Lee  
Grade 4, Second Place

## TEACHER

Elsa Osso

## STUDENTS

Ron Biraci, Noah Burton, Kylie Chan,  
Daniel Govin, Anna Keis, Ayla Kim,  
Stephen Nah, Niko Papaioannou, George Ziaavras

## FACTS

On a lovely, warm August morning in 2012, Mrs. Mary D. Happily returned home from walking her dog Pepper in the park. She spent the rest of the day doing laundry and cleaning her home before getting ready to go out to a neighbor's birthday party with her husband. Mrs. Happily decided to wear her special ring for the occasion, but when she went to get it out of her jewelry box, it wasn't there. She looked everywhere in her room and throughout the house, but she couldn't find it anywhere. This particular ring was very special to her because it had been a gift from her husband for their twentieth wedding anniversary last year. The ring was solid, yellow gold, and since gold had become more valuable, it was probably worth about \$2,000.

The next day, Mrs. Happily's husband helped her search the entire house, and when the ring was still not found, they went to the local police station to write a report. Since they had heard of a series of recent robberies in nearby towns, they thought that there was a possibility that a burglar may have broken into their home and taken the ring without their knowledge.

It was a little more than a year after the incident, when on September 15, 2013, Mrs. Happily saw a young girl in the grocery store who was wearing a ring that looked exactly like the one she had lost. She approached the young girl and explained that the ring she was wearing belonged to her. The young girl was very upset and refused to give the ring to Mrs. Happily, claiming that it had been a

birthday present from her boyfriend. Mrs. Happily called the police, and the next day, the girl's boyfriend, Rob Ornot, was promptly arrested.

## ISSUE

Is Rob Ornot guilty of stealing Mrs. Mary D. Happily's ring? Should he have been arrested?

## WITNESSES

### *For the Prosecution*

Mary D. Happily  
Officer Ken A. Rests

### *For the Defense*

Rob Ornot  
Wendy Watching

## WITNESS STATEMENTS

### *Testimony of Mary D. Happily*

My name is Mary D. Happily. I am very upset by the circumstances of this case. I have been happily married for over twenty years. My husband and I have two wonderful children, and we have been living in the same neighborhood since we were married. It has always been a peaceful, safe place. But last year, when we heard of the robberies in nearby towns, we almost moved. We decided to stay

because we were so comfortable in our home and because our home is close to my husband's office.

On August 10, 2012, I took my dog Pepper out for his morning walk as usual. When I went home, I did some laundry and cleaned up the house. My son was visiting, so there was a bit more work to be done around the house. At about 5:00 p.m., I started to get ready to go to my neighbor's birthday party. Our husbands work for the same company, so we have become good friends over the years.

Since this was a special occasion, I decided to wear the ring that my husband had given to me as a gift last year when we had celebrated our twentieth wedding anniversary. The ring is very special to me because it was a surprise. We had taken a cruise, so I did not expect a present. I love it because it was so beautiful and such a thoughtful gift. I hadn't worn it for over six months, however, because I had lost some weight and the ring was a bit loose on my finger. To my great shock, the ring was not in my jewelry box when I went to get it.

I remember looking for it frantically that night when I got home from the party. The next day, my husband helped me look again. I kept looking for days, even after I wrote the police report. Officer Ken A. Rests was very kind and said that the police department would conduct an investigation. Unfortunately, the culprit and the ring were not found. That is, until I saw my beautiful ring on that young girl's finger at the grocery store on September 15, 2013! I couldn't believe that I had actually found my ring again after a whole year.

Maybe I did overreact that day, but I think that anyone else would have done the same thing. I approached the girl and explained that she was wearing my stolen ring, but she wouldn't listen to me. She claimed that it was a present to her from her boyfriend. But when the police officer saw that it was the same exact ring as the one in the picture that I had given him, he immediately arrested Rob Ornot, the young girl's boyfriend. I believe that he is the boy who is responsible for all of the robberies that occurred during that time. It is a shame, but he needs to learn a lesson and pay the consequences of his actions.

### ***Testimony of Officer Ken A. Rests***

I am Officer Ken A. Rests, and I have been working as a police officer for four years. The crime rate in this town is very low. It is a very peaceful community. That's why we were surprised when we had several robberies in neighboring towns last year. The culprit stole mostly jewelry and some money.

We conducted a thorough investigation. We worked together with the police officers in the other towns. We could not find any fingerprints, but we did find the same sneaker prints at the scene of the crimes. One of the reasons that I was confident when I arrested Rob Ornot was because he was wearing the size and brand of sneaker that matched those found at the crime scenes. Also, his description matched the description that had been given by a witness.

Rob Ornot has been living in the area since he was born. When I arrested him, I learned that he had been in some trouble over the years. When he was a teenager, he was caught selling cigarettes. He was also a bully in high school before he dropped out. I am really hoping that this incident will help Rob Ornot make good choices and be a better citizen in the future. He needs to be held responsible so that he recognizes that he will not get away with this type of behavior ever again.

### ***Testimony of Rob Ornot***

My name is Rob Ornot, and I want say right away that I am being falsely accused for something that I would never do. I did make some mistakes when I was younger, but since my mother became sick, I have been working hard to help her pay bills and to make her proud of me.

I admit that I was a bully during high school. I can't go back and change that now, but I have made it a point to apologize to the kids that I teased and hurt. I was going through a difficult time because my dad moved away, and I was very upset. When my mom was diagnosed with cancer, it was during the end of my junior year. I dropped out of school and got a job. She didn't want me to quit school, but I promised that I would go back once she got better. I am taking classes now, and I am also working.

Everything was going well until I was arrested for no reason. I am concerned because this is not good for my mom's health.

I would like to tell you what happened. On September 14, 2013, I opened my front door to go out for a jog when I looked down and saw a bird's nest on the lawn. The nest was in really good shape. I thought that it must have fallen out of the tree during the previous night's storm. Since my girlfriend is a first grade teacher who collects all kinds of science things for class, I quickly picked it up, brought it into the house, and put it in a shoe box. Later that night, I dropped the shoe box off at her parents' house. I knew she would be out for a birthday dinner with her girlfriends, but I wanted her to have it for school the next day.

What happened next is truly unbelievable. When my girlfriend went to show the nest to her students, the ring fell out. Thinking that I had surprised her with a birthday present, she put it on her finger. That same afternoon, she was attacked in the grocery store. Of course, she was upset by the incident with Mrs. Mary D. Happily. Wouldn't you be upset under the circumstances?

### ***Testimony of Wendy Watching***

My name is Wendy Watching. I have been Rob Ornot's neighbor since he was born. First of all, I am here to tell you that he is a good young man who would never steal anything from anyone. He has had some tough times, but he took care of his mother and helped her pay the bills when she was sick. Now he is back in school. He told his mother that he would go back to school when she got better, and he kept his promise to her.

I am also here to tell you that Rob Ornot's story is true even though it may sound unbelievable. My profession is a dentist, but my great hobby is bird watching. That is why I live so close to a wildlife reserve. There is a wonderful tree in Rob's front yard, and many years ago, I started to study the birds that build nests in the spring. I use binoculars and record what I see.

Last spring, I observed a fascinating magpie. I used my binoculars to watch the bird every day. I watched the magpie build its nest. The image was a bit blurry, but I saw and recorded something shiny that seemed to be embedded in the mud, grass, sticks, and other stuff that the magpie had gathered. Now, we all know that these birds are attracted to shiny objects, and Mrs. Happily's home is located just on the other side of the wildlife reserve. Mrs. Happily reported that the ring was loose on her finger. It is quite possible that the ring slipped off and that she never realized it.

When I looked through my binoculars on the morning of September 15, 2013, the nest was not in the tree. I believe that the magpie took Mrs. Happily's ring to its nest last spring, and that the nest remained in the tree until the storm knocked it down onto Rob Ornot's lawn. I also know that this particular ring was very popular last year. In fact, my sister-in-law received the same ring as a gift from my brother! It is evident that Rob Ornot should not have been arrested so hastily. He is not guilty beyond a reasonable doubt. As far as the sneaker print is concerned, it is a popular size and brand. In fact, Mrs. Happily's son even has a pair! Perhaps Officer Ken A. Rests should have claw-cuffed the magpie!

## **INSTRUCTIONS**

The jury must find beyond a reasonable doubt that Rob Ornot stole the ring that belonged to Mrs. Mary D. Happily.

## **SUB-ISSUES**

1. Was there enough evidence to make an arrest?
2. Who is the most credible witness?
3. Could Rob Ornot have stolen the ring?
4. Could the ring belong to someone else?

## CONCEPTS

1. Reasonable doubt.
2. Lost property.
3. Mislaid property.
4. Theft.
5. Misdemeanor.
6. Felony.
7. Credibility of witnesses.

## LAWS

1. Possession – a property interest under which an individual is able to exercise power over something to the exclusion of all others. It is the basic right that entitles the possessor to the right to recover damages against wrongdoers.
2. Theft – occurs when a person intentionally and fraudulently takes personal property of another without permission or consent.

# Sue the Zoo

## SCHOOL

Radcliffe

Nutley

Grade 4, Honorable Mention

## TEACHERS

Danielle Mosca, Marcia Napolitano

## STUDENTS

Riley Adams, Lily Cardone Merola, Rose Chrysoulakis, Morgan DeFluri, Gianni Feraco, Luke Figueroa, Christopher Gizzo, Michael Higgins, Nikhil Indugula, Laretta Martin, Donato Marucchi, Colleen McEnery, Thomas McEnery, Kevin Nally, Kimberly Rabbia, Arianna Roberts, Jillian Spitz, Lacie Tuosto, Jordan Zarro

## FACTS

On April 13, 2012 the Bitten Family went to the Nicholas Jury Zoo for the day. Five-year-old Ivan Bitten was very excited as he entered the zoo with his parents. First they visited the tiger exhibit and watched the zookeeper feed meat to the tiger. Their next stop was the petting zoo where children are permitted to feed and pet the animals. Ivan was able to feed the sheep and pet the goats.

As they left the petting zoo, Ivan ran ahead of his parents to get to the next exhibit, the ponies. His parents were following him, but before they could get there, they heard a scream, and realized that it was Ivan. When they caught up to him, he was crying his eyes out and holding his hand, and screaming, "I've been bitten! I've been bitten!" Mrs. Bitten examined Ivan's hand and saw that he had been bitten by one of the ponies and was bleeding.

The Bitten Family left the zoo and drove straight to emergency room. Ivan's finger was broken as a result of the pony's bite. He also needed five stitches to close up the gash on his finger.

The Bitten Family is suing the Nicholas Jury Zoo for all Ivan's medical expenses. They are saying that the zoo was negligent and it was its fault that Ivan was bitten.

## ISSUE

Is the Nicholas Jury Zoo responsible for Ivan Bitten's injuries, and should the zoo pay for all Ivan's medical expenses?

## WITNESSES

### *For the Plaintiff*

Betty Bitten

Tess Timony

### *For the Defense*

Zeus Keeper

Saul Ital

## WITNESS STATEMENTS

### *Testimony of Mrs. Bitten*

My name is Betty Bitten and my son Ivan was bitten while we were visiting the Nicholas Jury Zoo. Let me tell you about this tragic experience. The date was April 13, 2012, when my husband and I took our five-year-old son, Ivan, to the zoo. He just adores the animals. We started off at the tiger exhibit and saw the trainers feed the animals. It was amazing! Then we went to the petting zoo where my little Ivan fed some of the sheep and petted the goats. What wonderful photos I took of little Ivan and

the sheep! When we left the petting zoo, our son ran as fast as a cheetah to his favorite part of the zoo, the ponies. We were following as fast as we could when we heard a boy scream. It was Ivan!! We heard him shout, "I've been bitten!" "I've been bitten!" One of the ponies had bitten Ivan's finger.

You could imagine my horror when we got to the exhibit. Ivan's finger was bleeding and he was wailing in pain. We blasted off to the hospital. An hour later, we realized from the x-ray that Ivan needed five stitches in his finger. Also, his finger was broken. My poor baby!

I think it is the responsibility of the zoo to make sure their animals are properly kept away from the customers. They have to realize that many of their customers are children. If an animal can be easily reached by a child, there should be a zoo attendant present to supervise. There were none at the pony exhibit. That is why the zoo should pay for our hospital bills. We are suing the Nicholas Jury Zoo for the medical expenses, as well as for my poor little boy's trauma.

### ***Testimony of Tess Timony***

My name is Tess Timony and I am a frequent visitor at the Nicholas Jury Zoo. It is a wonderful place to visit, especially with children, except for one thing... the pony exhibit. I was at the zoo a couple of months ago and, as I stood with my children in front of the pony exhibit, the ponies kept running up to the fence, as if expecting someone to feed them. My children wanted to pet them; I had to keep reminding them not to pet the ponies because the sign said, "Caution. We bite." How can the zoo expect a child to pay attention to a sign, even if they can read, when they are excited to see the animals?

In my opinion, the zoo was careless with the way they built the pony enclosure. It is their fault that Ivan Bitten was...uh, bitten. They should pay for all the poor little boy's expenses.

### ***Testimony of Zeus Keeper***

My name is Zeus Keeper, and I have been the Nicholas Jury Zoo's keeper for the past five years. I am in charge of making sure that all exhibits are

running properly and the animals are well taken care of. I also ensure that all animal exhibits are secure and safe for our many visitors. The Nicholas Jury Zoo has thousands of visitors a day from all over who come to visit our beloved animals. We are a well known zoo.

As a zookeeper, I must follow all regulations for caring for the animals. The law states that all animals must be kept in an enclosure that keeps them healthy and comfortable. That is why ponies are kept in an open pen where they can run freely. After all, it is their home, and the people are visitors.

During the five years that I have been the zoo's keeper, there have not been any reported injuries at the Nicholas Jury Zoo. All exhibits in the zoo are equipped with signs that let the visitors know what they can and cannot do around the animals. At the entrance to the pony exhibit there is a sign that clearly states, "Caution! We bite!" This sign is there to warn all zoo visitors to be cautious near the pony exhibit. From my experience, these animals do not bite, unless provoked. Ivan and his parents should have been more careful and read the sign.

The zoo requires all small children to be accompanied by parents. If Mr. and Mrs. Bitten had stayed with their son, he would not have been bitten. On behalf of the Nicholas Jury Zoo, we are very sorry that Ivan Bitten was [clears throat] bitten while at our zoo. However, it was not our fault.

### ***Testimony of Saul Ital***

My name is Saul Ital and I saw it all happen. I went to the Nicholas Jury Zoo with my family on April 13, 2012. My daughter's favorite animal is a monkey, so, of course, that was our first place to visit. We enjoyed seeing the monkeys and were off to see the ponies. As we approached the pony exhibit, I saw a little boy arrive at the pony's fence and start romping around in front of the pony gate. Without hesitation, he leaned forward and reached inside the pen to pet the ponies. I started to call to him that this was not the petting zoo, and he should not be touching the ponies, when suddenly, the child screamed. The little boy was holding his hand and crying. There did not seem to be any supervision from any adults at first, but then his parents came running up to him.

I felt so sorry for the boy and his parents, but I do not think it was the zoo's fault. If you are a visitor at a zoo, you must follow the zoo's rules.

## INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the zoo was negligent and should be responsible for all her son's medical expenses.

## SUB-ISSUES

1. Should the Nicholas Jury Zoo have had a zoo attendant supervising the pony exhibit?
2. Were the Bittens adequately supervising their son?
3. Should the ponies have been so easily accessible to customers at the zoo?
4. Does a zoo have a right to allow animals to roam freely?
5. Does a zoo have a legal obligation to protect its visitors?
6. Was the sign at the pony exhibit sufficient warning about the ponies?

## CONCEPTS

1. Negligence.
2. Contributory negligence.
3. Causation.
4. Pain and suffering.
5. Zoo regulations.

## LAWS

1. Forseeability – In determining whether reasonable care has been exercised, you will consider whether the defendant should have known that the probable consequence of his or her act, or the failure to act, would have been some injury.
2. Contributory negligence – If the plaintiff's negligence contributed to his or her injury and he or she failed to act responsibly for his/her age, then his/her carelessness may reduce the responsibility of other parties.
3. If an insufficient enclosure contributes to an animal's ability to interact with humans, the zoo will be held liable for any injuries or incidents which occur as result.
4. Direct contact between the public and animals must not be permitted unless the zoo operator is satisfied that such animals are not likely to cause injury.
5. Any individual who visits a zoo and fails to follow the rules and regulations of that establishment that are designed to protect both the guest and the animals from harm, will be held responsible for any injuries or damages that may result.
6. Parents have an obligation to properly supervise their minor children.

# Are You Tough Enough to Wear Pink?

## SCHOOL

Johnnie L. Cochran Jr. Academy  
East Orange  
Grade 5, First Place

## TEACHER

Patricia Hurt

## STUDENTS

Skye Brown, Eshea Gilbert, Na'Zyia Johnson,  
Kailynn McIver, Matthew Parchment,  
Keith Rivera III, Ashante Rudolph, Giovanna Walker

*Any resemblances to characters, names, events and circumstances are intended only for the purpose of education, and all characters, events and circumstances described herein are fictitious.*

## FACTS

Breast Cancer Awareness Week is in October. During the month of October, students are encouraged at the Johnnie L. Cochran Jr. Academy to wear pink tee shirts in support of the cause. Brandon Survivor was excited to show his support for this worthy cause especially since his mother, Ima A. Survivor, was recently diagnosed with breast cancer. On October 5, 2012, Brandon wore to school, pink headbands, pink wristbands, pink socks, pink tee shirts and pink food coloring in his hair. Many students laughed and teased him as viewing his pink attire excessive.

Because of the commotion, Principal Discrim called Brandon to the office and ordered him to tone down his pink outfit by removing the pink dye from his hair. Brandon refused. Principal Discrim indicated that Brandon would be suspended for the remainder of the week for failure to adhere to his demand. Mrs. Ima Survivor was furious at Principal Discrim's refusal to respect how her son chose to honor Breast Cancer Awareness Week. Mrs. Ima Survivor and her husband filed a lawsuit against the East Orange school district for violation of their child's First Amendment right of freedom of expression.



## ISSUE

Did Principal Discrim violate Brandon's First Amendment right to freedom of expression by ordering Brandon to remove the pink food coloring from his hair?

## WITNESSES

### *For the Plaintiff*

Brandon Survivor

Ima A. Survivor

### *For the Defense*

Principal Discrim

Ms. Nononsense

## WITNESS STATEMENTS

### *Testimony of Brandon Survivor*

When my mother was first diagnosed with cancer, I was filled with sadness. Ms. Nononsense announced in class that during Breast Cancer Awareness Week students could wear pink tee shirts or ribbons. The first day of Breast Cancer Awareness Week, I decided to wear pink gloves, pink bandanna, pink tee shirt and dye my hair pink. The day I wore my pink to school a bunch of kids were picking on me. So I went home and told my mom about it. She told me that what they were doing was called bullying and it was not right. People shouldn't be picked on for looking or dressing different.

Many students questioned me as to why I had so much pink on. I told them that pink is the color that supports breast cancer. I also told them that my mom has breast cancer. They were shocked and sympathetic. People may feel sorry for me but I know my mom will survive.

I was really upset when the principal asked me to tone down my pink. Principal Discrim has no idea the emotional trauma I have been through with my mother. I was attempting to express myself.

### *Testimony of Ima A. Survivor*

I am outraged that my son's method to honor Breast Cancer Awareness Week was not respected. I filed a lawsuit as a matter of principle because he has constitutional rights that I believe have been violated. Any financial award received will be donated to the American Cancer Society. Secondly, I want my child's school record cleared of any suspension regarding this incident. Nothing bad is supposed to happen to you when you wear pink for Breast Cancer Awareness Week.

Breast cancer affects the entire family. Principal Discrim and his staff need to respect my son's freedom of expression for Breast Cancer Awareness Week. I want to live long enough to see my son become a responsible adult. My son truly believes in the cause he is supporting. Our family has been through so much since I have been diagnosed.

### *Testimony of Principal Discrim*

I am the principal at Johnnie L. Cochran Jr. Academy. On October 5, 2012, I ordered Brandon to remove the pink dye from his hair because it was causing too much disruption in school. Brandon was suspended for ignoring my demand. I respect Breast Cancer Awareness Week. The suspension had nothing to do with breast cancer. It has everything to do with being disobedient. Brandon was bringing unwanted attention to himself. I will also deal with any student that was harassing Brandon. Bullying at any level is not tolerated here.

### *Testimony of Ms. Nononsense*

I am Brandon's fourth-grade teacher. I originally decided to allow students to wear pink tee shirts for Breast Cancer Awareness Week. Students that couldn't afford pink tee shirts were told that pink ribbons were acceptable. The pink ribbon is a symbol for breast cancer everywhere. I wanted my students to understand the importance of breast cancer awareness. It can be a lot of fun for students

to take part in breast cancer walks and attend fundraisers whose proceeds go to promote breast cancer education. I do think that Brandon went overboard with his pink. It was not until recently that I found out his mother suffered from breast cancer.

## INSTRUCTIONS

The parents of Brandon Survivor must prove by a preponderance of the evidence that their son's constitutional rights have been violated.

## SUB-ISSUES

1. Can children exercise their First Amendment rights at school?
2. Can Principal Discrim reprimand Brandon Survivor about his attire during Breast Cancer Awareness Week?

## CONCEPTS

1. First Amendment of the U.S. Constitution.
2. Standard of reasonableness of the dress code violation.

## LAWS

The United States Supreme Court has ruled that for school officials to justify prohibitions of a particular expression of opinion, a student must engage in a forbidden conduct that would materially and substantially interfere with the requirements of appropriate discipline in the operations of the school. The constitutional rights of a student do not cease at the top of the school steps. School boards may enact reasonable regulations concerning student appearance in school. The standard of reasonableness centers around well-established facts that must be balanced against the legitimate right of school officials to maintain a safe and disruption-free learning environment. The Courts now require school authority to demonstrate the reasonableness of their rules before the courts will decide if the constitutional rights have been violated.

# The Case of the Pool Mishap: Michael Krab v. Hidden Springs Pool and Patrick Blue

## SCHOOL

St. Rose of Lima  
Haddon Heights  
Grade 5, Second Place

## TEACHER

Dan Quaintance

## STUDENTS

Isabella Garcia, Isabella Cappelli,  
Dehilia Rotchford, Caroline Delaney,  
Julianna Polander

## FACTS

On July 17, 2010, Camp Keystone, a camp with many African-American teenagers, called Hidden Springs Pool to ask if they could bring their campers to the pool as a reward for being well behaved. When they arrived at the pool, the pool manager let them in, but soon after the security guard told them they had to leave because they were being disruptive.

## ISSUE

Were the teenage campers discriminated against and asked to leave the pool because they were African-American?

## WITNESSES

### *For the Plaintiff*

Michael Krab  
Tony

### *For the Defendant*

Patrick Blue  
Steve Cling

## WITNESS STATEMENTS

### *Testimony of Michael Krab*

I am 13 years old and I go to Camp Keystone. The camp told us that if we were well behaved, we would earn a trip to a pool, and we did. When we arrived at Hidden Springs Pool, we were very excited and went into the pool. About five minutes later, the security guard came over and told us we were being too loud. When we asked why, he said the manager had received complaints about us. We said we did not know we were disturbing anyone and would be quiet, but the security guard told us we had to leave.

We may have been a little loud, and we did splash when we jumped in the water, but it was a pool and we were just excited to be there. I believe the real reason we were told to leave was because we are black and the white families did not want to be near us. We were very embarrassed when we had to pack up and leave.

### *Testimony of Tony*

I have been working as a lifeguard at the pool for the last 10 years. Most of the people who come to this pool are white families. On July 17, I was working my daily shift when I saw a group of African-American teenagers go into the pool. They were just playing the way normal teenagers

always play at the pool. They were a little loud, but so are the other teenagers who usually come to the pool. Soon after these teenagers came, some of the families started to leave. Then the security guard came over and told the campers they had to leave.

### ***Testimony of Patrick Blue***

I am the manager of Hidden Springs Pool. In July, Camp Keystone called me to ask if they could bring a group of campers to the pool who had won a trip for being well behaved. They did not tell me who the campers were and I said they could come. When they came to the pool, some of the other people at the pool started complaining that the campers were being too disruptive. When I went outside, I saw the group of teenagers splashing and making noise in the pool and playing loud music, and other families were packing up to leave. When I saw what was going on, I asked the security guard to tell the campers to leave.

### ***Testimony of Steve Cling***

I have been working for Mr. Blue as a security guard at Hidden Springs Pool for two years. On July 17, a group of teenagers from Camp Keystone came to the pool. Soon after they came, Mr. Blue started getting complaints about the teenagers from the other families at the pool, and families were starting to leave. Mr. Blue went outside to check it out. When he came back in, he told me to ask the campers to leave. He said the teenagers were jumping in the water and splashing, playing their music too loud and making too much noise.

I went to talk to the teenagers and told them that because they were being too disruptive, they had to leave. They said they would be quieter, but I told them it was too late because families were already starting to leave the pool. The campers then left.

## **INSTRUCTIONS**

The plaintiff, Michael Krab, must prove by a preponderance of the evidence that the Hidden Springs Pool and Manager Patrick Blue acted in a discriminatory manner when they asked Michael Krab and the other campers to leave the pool.

## **SUB-ISSUES**

1. Why were the teenagers asked to leave the pool?
2. Were the teenagers being disruptive?
3. Were the other pool visitors leaving the pool?
4. If so, why were the other pool visitors leaving?

## **CONCEPTS**

1. Credibility of witnesses.
2. Burden of proof: preponderance of the evidence.
3. Equal protection.

## **LAW**

The Civil Rights Act prohibits discrimination because of race or color.

# The Case of the Windy Falls Carnival Mishap: Parents of Stanley N. Fall v. the Windy Clouds Carnival Company

## SCHOOL

All Saints Academy  
Parsippany  
Grade 5, Honorable Mention

## TEACHER

Tracie Seitz

## STUDENTS

Destyne Arroyo, Jordan Dorsey, Felipe Garcia,  
Belton Haig, Brittney Hollinghurst,  
Christopher Keifer, Isabelle Lalo, Melissa Pathil,  
Husna Rehman, Lilianna Vidal

## FACTS

It was a windy July 4, 2012 day. Three 5th graders decided to ride on the oldest ferris wheel in the State of Illinois. This ferris wheel was located at a carnival in the town of Windy Falls. The ferris wheel was old and rusty and the restraint bar in each car was worn. The carnival worker, Bob Wheeler, explained the rules of riding on the ferris wheel and the three friends went into one car although the limit was two people per car. On the way down, Stanley N. Fall saw one of his classmates and stood up to wave to him. Stanley fell out of the car and onto the ground breaking his arm. Stanley's parents are suing the Windy Clouds Carnival Company for his injuries.

## ISSUE

Was the Windy Clouds Carnival Company negligent in maintaining the ferris wheel and therefore responsible for the plaintiff's injuries?



## WITNESSES

### *For the Plaintiff*

Stanley N. Fall  
Rowdy Rider

### *For the Defense*

Bob Wheeler  
Ida Witness

## WITNESS STATEMENTS

### *Testimony of Stanley N. Fall*

I went to the Windy Falls Carnival with two of my best friends on a windy July 4, 2012. We wanted to ride on the ferris wheel, which was the oldest ferris wheel in the State of Illinois. The carnival worker told us the limit for one car was two people, but we begged him to let us all go in the car. He told us we could not stand up. When we got in the car, it was really cramped and I was pushed to the edge. The belt was pushed over us, but it was loose so we were able to move. The ride started and, as we were coming down, I suddenly saw one of my classmates. Since the belt was rusty and old, I was able to stand up and wave to my friend. I fell to the ground and the next thing I knew I was in the hospital with a broken arm. I think the carnival company should pay for my surgery because their belt should have prevented us from being able to stand up.

### *Testimony of Rowdy Rider*

I was riding the oldest ferris wheel in the State of Illinois at a carnival in Windy Falls on July 4, 2012 with my two best friends. It was a very windy day. The car limit was two people per car, but we begged the carnival worker to let all three of us on. The ferris wheel worker said Ok and told us to stay seated. When he put the belt on, it was loose and rusty. I was in the middle. The ride started and, as we were coming back down, I saw Stan N. Fall, my friend, stand up to wave at a classmate. He fell off the ride and broke his arm. We were all cramped together. Stan didn't have a lot of room. It was also windy. All of these things are why I think he fell out of the car.

### *Testimony of Bob Wheeler*

On July 4, 2012, I was at the Windy Falls Carnival working. I run the oldest ferris wheel in the state. Three children came to the ferris wheel. The limit was two people per car, but they begged me to let three people on so I said Ok. I also told them the ferris wheel safety instructions which included not to stand up. After the ride started, and as soon as they were almost to the bottom, I saw the boy on the end stand up and wave his arm. He fell off the ferris wheel.

### *Testimony of Ida Witness*

I was at the Windy Falls Carnival on July 4, 2012 standing next to the ferris wheel. Since my children were on the ride, I was watching the ferris wheel. As I was observing the ride, I saw the worker who was operating the ride talking to three children as they were boarding their car. The ride began and as their car was coming down, I saw the boy on the end stand up and wave his arm. He then fell from the car onto the ground.

## INSTRUCTIONS

The plaintiff must convince the jury by a preponderance of the evidence that the defendant's negligence led to the plaintiff's injuries.

## SUB-ISSUES

1. Why were there three riders in the car?
2. Did the wind have an effect on the accident?
3. Did the Windy Clouds Carnival Company know about the faulty restraint belt?
4. Were there any prior accidents with this ride?
5. Are there any maintenance records for this ride?

## CONCEPTS

1. Burden of proof: preponderance of the evidence.
2. Negligence vs. contributory negligence.
3. Credibility of witnesses.

## LAW

Negligence – All of the following four elements must be met:

- A. The defendant has a duty to protect the plaintiff from injury.
- B. The defendant fails to fulfill that duty even if unintentional.
- C. The defendant's failure to perform their duty causes injury to the plaintiff.
- D. The plaintiff's injury is a direct cause of the defendant's breach of their duty.

Contributory Negligence – If the plaintiff's actions contribute to his/her injury, such act may reduce but not eliminate the duty of the defendant to protect the plaintiff from injury.

# The Big Breeze That Brought the Disease: Kaufaway v. Shell City

## SCHOOL

Brigantine North Middle  
Brigantine  
Grade 6, First Place

## TEACHER

Rita Coyne

## STUDENTS

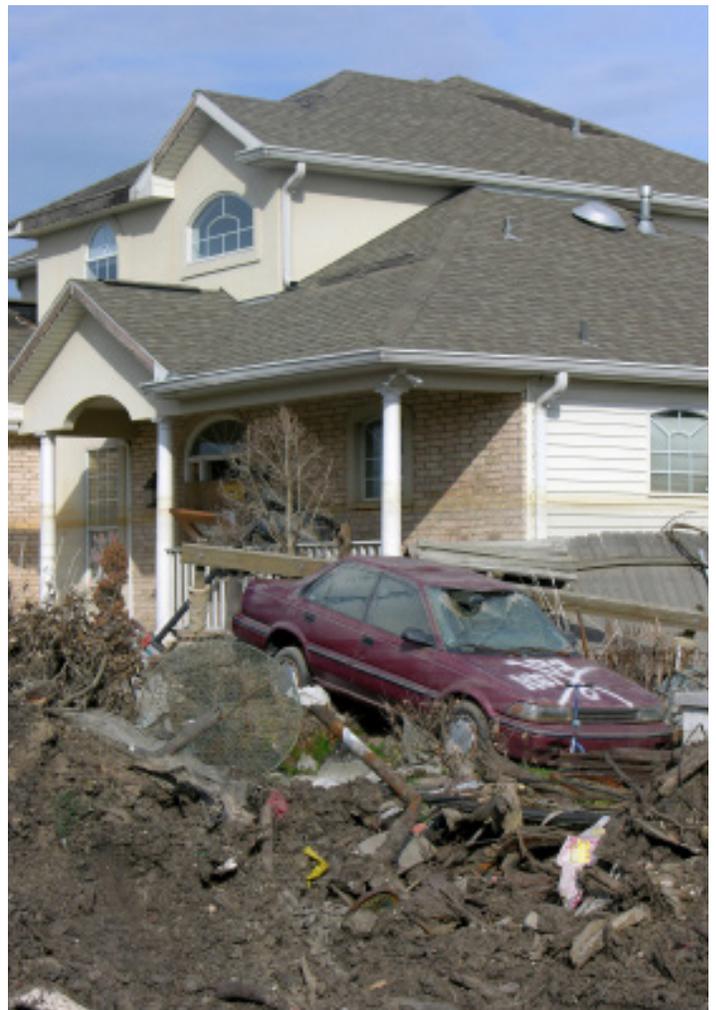
Amaan Butt, John (Jack) Corbett, Kevin Curau, Jenna DiBuonaventura, Jadin Eafрати, Maeve Faherty, Faizan Farooq, Amna Haider, Qurratulaaain (Annie) Imran, Kunal Jadeja, Kevin Kearns, Salwa Khan, Harrison Klaiss, Nicholas Massella, Natalia Mecca, Hannah Passerini, Jacob Porpora, Elijah Quinones, Sarah Rehill, Austin Sivley, Natale Stinson

## FACTS

On Monday, October 29, 2012, Hurricane Hades, a Category 2 hurricane, was predicted to hit the Northeast Region of the United States. Since most of the New Jersey barrier islands were at or below sea level, the Governor issued a mandatory evacuation order for those areas.

The Kaufaway Family, who lived in Shell City, followed all evacuation procedures and left the island promptly. The storm was predicted to hit at high tide, and so flooding was a concern. When the storm hit later that night, it packed 80 mph+ winds, severe high tides, and caused massive power outages. Sand was stacked five feet high, trees were upturned, power lines were downed, transformers blew, fires erupted, and houses and cars were flooded with corrosive salt water. Damage to the docks was extensive. Roads were impassable in spots due to the massive amounts of storm debris. It was the worst storm the town had ever seen.

After the storm, the city conducted a safety assessment to determine when it would be safe for residents to return. Five days after the storm, residents were permitted to return home. When the Kaufaways returned, they began the process of cleaning up all the debris on their property. This took several days, after which they assisted in cleaning the neighborhood. Storm debris was brought to the curbs of the residents, in accordance with the city's directive. It consisted of asbestos siding, insulation, sand, dirt, sheetrock, sawdust and many other items.



The city was overwhelmed with the cleanup and relief efforts. They directed the Public Works department to work overtime and many personnel pulled double shifts. In addition, the city hired outside private contractors to assist with the cleanup. Despite all of these efforts, the city was unable to remove the debris from the Kaufaways' home for eight weeks. At that time, the city transported numerous piles of debris and sand to a nearby municipal lot near the Kaufaways' home. The city topped piles of debris, dirt and other contaminants with sand. The sand piles were piled up to 25 feet high in spots.

Ken Kaufaway, who was 14 years old, thought the piles would be fun to sled down, and so grabbed his boogie board and invited some friends to join him. They had so much fun they went back every day after school for six weeks.

Two weeks later, Ken started coughing. His parents didn't think much of it at first, but then it started to worsen and woke him at night. It eventually became so severe that Ken had trouble breathing.

Mr. and Mrs. Kaufaway took Ken to his doctor, who ordered a Pulmonary Function Test (PFT) test. The results of the PFT indicated Ken had a 50% reduced lung capacity. The doctor took further tests and diagnosed Ken with chronic bronchitis.

## ISSUE

Was the city negligent for not removing debris in a timely manner and for storing debris in a residential area, thereby exposing its residents at length to contaminants from the storm and putting their health at risk?

## WITNESSES

### *For the Plaintiff*

Deb Ree Kaufaway

Dr. Rex Pitory

### *For the Defense*

Mayor Troy R. Hardest

Martin Maintenance

## WITNESS STATEMENTS

### *Testimony of Deb Ree Kaufaway*

My name is Deb Ree Kaufaway. I have been married for 16 years, and have two children, aged 14 and 9 years old. I am a lifelong resident of the island of Shell City.

On October 29, 2012, Hurricane Hades, a Category 2 hurricane, was predicted to hit our island. There was a mandatory evacuation ordered for our area, so I immediately made preparations to leave with my family.

The storm passed and five days later, we were finally permitted to re-enter the island. When we returned, we saw debris all over our property. We cleaned up the debris, and put everything at the curb, as directed by the city. Our boys helped us clean up the property. After we finished cleaning up our property, we assisted our neighbors.

The trash sat at our curb for a little over 8 weeks! I tried to remain patient, but since it was such a long period of time, I wound up calling the city 4 times to ask them when they were going to remove the debris. The city never gave us a firm answer and I felt they neglected our neighborhood.

Finally, after 8 weeks, the city removed the storm debris and moved it to a nearby lot along with drywall, asbestos siding, sand, dirt other material from the rest of the island. It looked to me like the piles were 25 feet and higher in some spots. It was unsightly and lent a film of dust over everything – including the cars and the sidewalk. I couldn't even open my windows to air my house out.

About two months after the city moved the debris to the municipal lots, I thought the worst had passed, but then my son, Ken, started developing a strange cough which continued to worsen over time. Eventually, it got to the point where it woke him up at night and he had trouble breathing.

My husband and I became concerned and so took him to his doctor. Dr. Rex Pitory diagnosed Ken with chronic bronchitis and said it was due to exposure to various contaminants and pollutants. He said there was a good chance it may even develop into pneumonia!

As we were driving home, we noticed the huge piles of debris still remaining at the municipal lot near our house and on various streets that my son walks by on his way to school. We followed the city's rules by evacuating and by putting all of our trash at our curb, but they took an abnormally long time in removing it. And, then when they did finally remove it, they stored it at a municipal lot in a family neighborhood! Furthermore, there were no signs on the lot indicating there was dangerous material stored there.

The city's negligence in not removing the debris promptly, and in storing it in a residential neighborhood afterward, thereby prolonging my son's exposure, is what caused Ken's disease. My son's exposure to these pollutants left by the city is unacceptable! My concern is not only for my child, but the other children of the island as well! I pay exorbitant taxes to this city and this is what I get...a child with a lung disease for the rest of his life.

### ***Testimony of Dr. Rex Pitory***

Hello, I am Dr. Rex Pitory. I went to college at Stackton State University and to medical school at NJ University. I have been a pediatrician for 20 years, and have been Ken's doctor since he was born.

On March 4, 2013, Mrs. Deb Ree Kaufaway came in to my office with her son Ken. She was concerned about Ken's coughing, wheezing and labored breathing. I examined the patient and observed he had shortness of breath and an irritated throat. I ran a Pulmonary Function Test (PFT) on him and the results showed he had a reduced lung capacity of 50%. Further testing showed Ken had chronic bronchitis.

Chronic bronchitis is a serious lung ailment. It can lead to many complications. Pulmonary hypertension causes the right side of the heart to work harder than it should, causing stress on the circulatory system. Ken's airways are narrowed and his lungs are inflamed. He has increased mucus in his lungs, causing shortness of breath that will worsen over time, especially with exertion.

Ken was always a healthy and athletic boy. Chronic bronchitis will seriously impair his ability to play on most sports teams. This disease is most

commonly caused by exposure to contaminants or air pollution - contaminants such as the ones the city failed to remove after the storm like sand, siding, sheetrock, dust and insulation. They all contain toxic particles that, if inhaled, can cause illnesses such as bronchitis.

Since the city neglected to clean up from the storm in a timely and thorough manner, the pollutants from debris in front of Ken's house, on his way to school and at the nearby municipal lot, have affected him now and will for the rest of his life. In addition, the city was negligent for not posting danger signs about the debris at the municipal lots.

Furthermore, the island of Shell City said it was safe to return after the storm, when it obviously wasn't. Home is supposed to be safe, not a toxic wasteland!

### ***Testimony of Troy R. Hardest***

Hello, my name is Troy R. Hardest. I am the mayor of Shell City, and have been for 12 years. I have my master's degree in business administration. I am married and have lived in Shell City since I was a small child.

On October 29, 2012 a Category 2 hurricane was predicted to hit our town. I immediately held a meeting with the Office of Emergency Management (OEM), and we decided to put our response plan into effect. In accordance with the Governor's Directive, I called for a mandatory evacuation, and reinforced this with phone calls, emails and texts to the residents. In addition, social media was utilized. To prepare for the storm, I directed the Public Works Department to build up the sand dunes in order to block the beach access walkways. I contacted the Police and Fire Departments to be on standby.

After the storm hit, there was massive damage. There was debris and sand everywhere. I was determined to keep the city safe, and so authorized overtime for all city employees to assist in the cleanup efforts. Even though our employees were working around the clock, the city hired private contractors for further assistance. The Public Works Yard was open additional hours and dumpsters were located throughout the city for private citizens to dispose of debris.

The city was overwhelmed with damage and debris. Much of the debris was cleared and moved to various municipal lots around the city. One of the Public Works Department employees saw children playing in the municipal lots and told them not to play there. Over the course of several weeks, the children continued to return and play in the lots, even though they were continually advised by our workers not to do so.

The children were not attended by any parents, who should have been keeping a better eye on their kids throughout the cleanup efforts. It is common sense to watch your children, especially when there are dangerous substances and construction material lying in the streets.

### ***Testimony of Martin Maintenance***

Hello, my name is Martin Maintenance and I am the director of the Public Works Department for Shell City. I have been working at the Public Works Department for 20 years, and have been director for 10 years.

Ever since Hurricane Hades hit, my crew and I have been working day and night. We worked overtime and are very concerned about our community. Many of us took damage to our own houses, but continued to work as hard as we could for the city. We lost our holidays, worked double shifts and weekends and this is the thanks we get – a lawsuit?

We can't do everything in one day. We try our best to please everyone. Our phones have been ringing off the hook. We have been trying to get to everyone and we have a process of starting at the South End of the island and progressing to the North End. The Kaufaways are located on the last street in the North End.

As the mayor testified, the kids have been playing in the lots each and every day, and every time we tell them not to play on the piles, they leave, but come right back. Their parents should have been more observant of their children. The parents are adults and should have known better than to let their kids play in dangerous debris.

At the very least, the parents should have warned their kids about the danger left by the hurricane.

## **INSTRUCTIONS**

The jury must decide by a preponderance of evidence if the island of Shell City was negligent for not removing debris in a timely manner, thereby causing Ken Kaufaway's respiratory disease.

## **SUB-ISSUES**

1. Was it the Kaufaways' responsibility for not watching their children more closely?
2. Should the Kaufaways have taken some more initiative and brought their trash to the dumpsters that were open to the public?
3. Should the city have stored the trash in a non-residential area?
4. Did Dr. Rex Pitory have positive evidence that Ken Kaufaway's bronchitis was, in fact, caused by the debris left over from the storm?
5. Did Ken Kaufaway and his friends know the danger of playing on the sand piles?
6. Should Shell City have posted warning signs at the municipal lots about the danger of the hazardous debris stored there?
7. Should Shell City have delayed the residents' return until most of the hazardous material was removed?

## **CONCEPTS**

1. Negligence.
2. Contributory negligence.
3. Causation.
4. Reckless conduct.
5. Witness credibility.
6. Parental responsibility.
7. Assumption of risk.
8. Attractive nuisance.
9. Burden of proof – preponderance of evidence.
10. Pain and suffering.
11. Liability.

## LAW

**Negligence** – Failure to exercise the care that a reasonably prudent person would exercise in like circumstances. It represents conduct that fails the standards of behavior established by law for the protection of others against unreasonable risk of harm.

**Contributory Negligence** – When a claimant has, through his/her own negligence, contributed to the harm he/she suffered, or has voluntarily disregarded warnings and assumed risk.

**United States Department of Environment Protection** – Land waste, such as debris, needs to be under management at all times.

**Primary Assumption of Risk** – When a plaintiff has released the defendant of risk, either expressed or implied, causing injury. When there is assumption of risk, there is no longer an obligation, running from the defendant to the plaintiff; therefore, there can be no negligence on his/her part.

**Secondary Assumption of Risk** – When the defendant does owe an obligation to the plaintiff, but the plaintiff proceeds to encounter a known risk imposed by the defendant's negligence.

**Attractive Nuisance** – Property owners may be liable for harm to children trespassing on their property if the harm is caused by a hazardous object or material on the land that is likely to attract children who are unable to appreciate the risk posed by that object or condition.

**US Resource and Recovery Act** – US law providing general guidelines for waste management removal and storage. The Resource Conservation and Recovery Act (RCRA) authorize the Environmental Protection Agency to control hazardous waste from generation to disposal.

**Federal Hazardous and Solid Waste Amendments** – These are the 1984 amendments to RCRA that focused on waste minimization and phasing out land disposal of hazardous waste as well as corrective action for releases.

**Danger Signs Notice Act** – Under Statute 40:15-18, warning signs are required to give notice of a potentially dangerous situation that may not be readily apparent to the public.

**Trespassing Law** – Under common law, the duty of care owed by an owner often varies depending upon whether the person injured on the premises was an invitee, licensee or trespasser.

**Premises Liability Law** – Premises owners are responsible for clearing public sidewalks and to maintain their premises so as not to pose a danger.

**Parental Rights/Responsibilities** – Under Statute 19:A, Domestic Relations, it is the responsibility of a parent to determine and control matters affecting a child's welfare and upbringing. Furthermore, they are to provide routine daily care and control of the child while taking into consideration the child's safety and well-being.

# The Case of the Missing Little Kids: Clair v. West Coast School District

## SCHOOL

George J. Mitchell Elementary  
Little Egg Harbor  
Grade 6, Second Place

## TEACHER

Jennifer Carnes

## STUDENTS

Anthony Diaz, Hannah Lin, Gianna Meola,  
David Smallwood, Vasiliki Tsilikas,  
Kurtis Wasylkowski

## FACTS

On January 14, 2011, at West Coast Elementary School, two young boys named Kurtis and Anthony Little were taken out of school by their father, David Little. At about 3:45 in the afternoon, when the aftercare and dismissal students were called, their mother Kate Clair was there to pick them up, as she had every day. When Kate went to sign the dismissal log, she noticed that the boys had already been signed out by her ex-husband.

Kate complained to the secretary that she had papers on file at the school that state she has full custody of Anthony and Kurtis and that David Little has no custody rights at all. Kate immediately called the police to report the boys missing. To this day they have not been found, and Kate Clair is suing the West Coast Elementary School District for damages for her pain and suffering due to their gross negligence which led to the disappearance of her sons.

## ISSUE

Is the West Coast School District responsible for the disappearance of Anthony and Kurtis Little by letting them leave the school with a non-custodial parent?

## WITNESSES

### *For the Plaintiff*

Kate Clair  
Will Hillbilly

### *For the Defense*

Superintendent Joseph Habe  
Mr. Sanderman

## WITNESS STATEMENTS

### *Testimony of Kate Clair*

I am Kate Clair. I am the mother of Anthony and Kurtis Little. I am suing the West Coast School District for letting my ex-husband pick up my children without authorization. It was January 14, 2012 at about 3:40 p.m. when I went to the front desk to sign out my boys. I asked the secretary, Mr. Sanderman, and he told me that a man had already picked them up. I was so worried that I snatched up the sign-out sheet and checked the signature. It was my ex-husband, David Little, whose signature was on the form. I was so scared, and I did not know where they were going. I took out my cell phone and called the police. I told them about the missing children.

After I hung up, I yelled at Mr. Sanderman. Soon the principal came and asked what all of the ruckus was about. I said that he had let my kids be kidnapped by my ex-husband and that he has no custody. Within minutes, the police came and started taking statements from everyone involved.

### ***Testimony of Will Hillbilly***

My name is Will Hillbilly and I live next door to Kate Clair. On January 14, 2012, around 5:00 p.m., I saw David Little driving up my street. The kids were in the back eating ice cream. He was driving rather slowly.

A few minutes later, Kate arrived home. She was hysterical. I asked her what the problem was, and she said her kids were not at school when she went to get them. I told her that they had just driven by the house in David's car. They were eating ice cream, and they looked fine. She calmed down a little and ran toward her house.

### ***Testimony of Superintendent Joseph Habe***

My name is Joseph Habe. I am the superintendent of the West Coast Elementary School. This unfortunate situation occurred on January 14, 2012. The two students, Kurtis and Anthony Little, were pick-ups every day. On that day, they were picked up by their father, David Little. A few minutes later, Ms. Kate Clair walked into the school to sign them out. The secretary told Ms. Clair that they had already left with their father.

Ms. Clair got angry with the secretary and started shouting about custody papers on file. The papers were in the boys' files, but they were over two years old. They were so faded, they were hardly legible. It is our district policy that all court-related documents be submitted at the beginning of every school year. It was reasonable for the secretary to believe that these papers were old since they had not been updated in years.

### ***Testimony of Mr. Sanderman***

My name is Mr. Sanderman. I am the secretary for the West Coast Elementary School. On January 14, 2012, Mr. Little picked his two sons from school. When the mother, Ms. Clair, came to pick up the same boys, she complained that their father was not legally allowed to sign the boys out. Our district requires updated custody papers each and every year. We did not have new papers for that year. In addition, different people signed those boys out all of the time. If Ms. Clair still did not want the boys to be signed out by their father, she should have notified us THIS year.

## **INSTRUCTIONS**

The jury must decide whether or not the West Coast School District should be required to pay damages to the plaintiff, Kate Clair, for pain and suffering caused by the disappearance of her sons. In order to award damages, the plaintiff must prove that the school district was negligent in their dismissal duties and therefore directly caused the kidnapping of her children. Since this is a civil case, the plaintiff must prevail by a preponderance of the evidence.

## **SUB-ISSUES**

1. Is Kate Clair liable for the disappearance because she had not provided the school with updated custody papers in two years?
2. Should the school have assumed the custody papers were still in effect since no new papers were handed in?
3. Was the WCE School negligent in their duties when dismissing the children?
4. Why had Ms. Clair not sent in new paperwork? Were the papers the school had still enforced by the court?
5. Should the secretary at the front desk have called Ms. Clair to double check the status of the old paperwork?

## **CONCEPTS**

Comparative negligence.

## **LAW**

West Coast Elementary School Board Policy GJ4321.67 states that all custodial court papers must be submitted at the beginning of each new school year.

Sole custody is defined as the only parent who has legal authority with regards to the minor children.

# Weight a Minute...I Need a Job!

## SCHOOL

Golda Och Academy  
West Orange  
Grade 6, Honorable Mention

## TEACHER

Marilyn Loewenthal

## STUDENTS

Emily Berger, Emmet Bikales, Jacob Friedman,  
Amalia Kamien, Aaron Lavitsky, Samuel Lurie,  
Noa Niv, Abbe Piels, Shana Slater

*Any resemblances to characters, names, events and circumstances are intended only for the purpose of education, and all characters, events and circumstances described herein are fictitious.*

## FACTS

Sewsen Needles is a 45-year-old woman who is the mother of four. She is a widow who is the only support for her children. Food must be put on the table, rent must be paid and bills are mounting. Sewsen was just able to make ends meet because she had a position as a seamstress for seven years at For Shore Sewing in Beach Heaven, New Jersey. Unfortunately, several months ago, Hurricane Mandy wiped out the business. Even though her employer, Mr. Darnett, considered Sewsen as his top seamstress, he did not have enough money to reopen his shop in a different location.

Sewsen began looking frantically for another position related to the clothing industry, which she loved. Because of the hurricane, jobs in her neighborhood were hard to find. Since she had no car and needed to be nearby to care for her children, job opportunities were even more limited. Her 15-year-old daughter Myra suggested using the library's internet as a resource to apply for a position. Things were looking really bleak when on January 9, 2013, Sewsen noticed something very appealing on Gregslist. The position was for someone who was pleasant, had sales experience and, most importantly, had a good eye for the expert fit and measurement of clothing. This was what

Sewsen had been looking for, so she immediately submitted her resume to Mr. Yul B. Surry, director of hiring at Gloomingsdales.

The next day, Mr. Surry contacted Sewsen by phone and by email. He was impressed by her experience and the attached letter of recommendation from Mr. Darnett, which claimed that she was a superior prospect as an employee. Her qualifications were what Yul had been looking for, and he was anxious to meet her to discuss the job. The position was available immediately.

On January 16, 2013, Sewsen Needles promptly appeared at Mr. Surry's door. The look on his face was a combination of surprise and disappointment. Since Sewsen had not yet uttered a word, it was obvious that Yul was turned off by her appearance. Sewsen knew that she had an obvious weight problem and was embarrassed by it. Yul sadly admitted that although Sewsen was probably a lovely person, she just was not the right person to work in their fancy store, whose goal it was to appeal to the trim, stylish woman. The store manager, Ima Allthat, had been sitting in the corner of the room. She apologized and said that she was certain that someone with Sewsen's credentials would be far better off applying to a store that appealed to the plus size woman.

Sewsen left the store upset and depressed. How could anyone have the nerve to place appearance above ability? Yes, she was overweight, but she was a hard worker and loved to deal with the public. She decided to act, hoping that the law would be on her side. She called a civil rights attorney and reached

the decision to sue Gloomingsdales claiming that she was discriminated against due to her weight problem.

## ISSUE

Did Yul B. Surry violate the law by discriminating against Sewsens Needles based on her weight?

## WITNESSES

### *For the Plaintiff*

Sewsens Needles

Mr. Darnett

### *For the Defense*

Yul B. Surry

Ima Allthat

## WITNESS STATEMENTS

### *Testimony of Sewsens Needles*

My name is Sewsens Needles. I am 45 years old, a widow, and a mother of four. I am the only support for my children and can barely supply the money to put food on the table for them. Bills are mounting; the rent is due soon. Unfortunately, I lost my previous job as a seamstress several months ago due to Hurricane Mandy. The hurricane also wiped out many of the businesses in my area. I have been frantically searching for a job in my area of experience - the clothing business. Since I have no car, it is even more difficult to look for employment.

My previous boss, Mr. Darnett, considered me his top seamstress and recommended me to many stores since he didn't have enough money to relocate his store. On January 9, 2013, I thought I had found the perfect job. I was excited when I searched Gregslist on the library computer. There was a position that would be perfect for me. It required sales experience and an excellent eye for the expert fit and measurement of clothing. That was what I had been looking for ever since the tragedy.

I submitted my resume to Mr. Yul B. Surry, the

owner of Gloomingsdales. I applied for the job by email and attached my letter of recommendation from Mr. Darnett. The following day, Mr. Surry contacted me, saying that he was impressed by my experience and my ability. Since my qualifications were what Mr. Surry had been looking for, he was anxious to meet me to clarify the duties and proceed with the hiring as soon as possible.

On January 16, 2013, I promptly appeared at Mr. Surry's door. I could tell by his expression that Mr. Surry was turned off by the way I looked. I already knew I had an obvious weight issue. However, I am always neat and clean. He sadly admitted that although I was a lovely person, I was just not the right person to work at their upscale store. Mr. Surry said that his goal was to appeal to stylish women. The store manager, Ima Allthat, had been sitting in the room. Then Mr. Surry called for Ima. She came up to meet me and said that she was sorry. She said someone with my credentials had better apply to a store for the plus size woman.

I left the store upset, angry and depressed. I did not believe that anybody would have the nerve to say something like that. Shouldn't ability come before appearance? I knew I was overweight, but I was a hard worker and loved to deal with the public. This is why I decided to act. I called a civil rights attorney and decided to sue Gloomingsdales based on the fact that I was discriminated against because of my weight. Not only did Gloomingsdales deny me a job, but they also denied me the funds to support my family.

### *Testimony of Mr. Darnett*

My name is Mr. Darnett. I was the owner of For Shore Sewing for over seven years in Beach Heaven, NJ. I am currently out of business due to Hurricane Mandy. This storm changed my life, my store was ruined, and I didn't have enough money to reopen it. One of my past employees, Sewsens Needles, was my head seamstress, and I was fortunate enough to have her work for me.

On January 9, 2013, Sewsens reached out to me saying that she had seen a wonderful opportunity at Gloomingsdales clothing store on Gregslist and had applied for the job. I was happy to write a letter of recommendation for her. She told me the job

description and, in my opinion, she was the “perfect fit.” The next day she called me and said that the manager had responded to her, asking her to come in to meet him in order to clarify the duties of the position. Sewsen was really excited and happy.

However, on January 17, 2013, Sewsen was very upset. She told me that the store owner had denied her employment because of her weight. Her weight never affected her performance at my store. I know that Sewsen has been struggling with a weight problem for a long time and has been trying to overcome it.

I think Sewsen has every right to sue Gloomingsdales. She has an excellent work history. Appearance should not be the issue. The issue is ability!

### ***Testimony of Yul B. Surry***

My name is Yul B. Surry. I am the owner of Gloomingsdales and I needed a new employee for my business. On January, 9 2013, I received a resume from Ms. Sewsen Needles. Her qualifications were perfect. She had experience and had an outstanding letter of recommendation.

When Sewsen arrived for the interview, she did not look like what I expected as a role model for my customers. As a courtesy, I asked her a few questions and she answered them well. Ima Allthat, the manager, was sitting at her desk in the back of the room at the time. When I finished interviewing Ms. Needles, I told her that the only problem was that her appearance was not fit for the job. In order to sell my clothing, I need someone who has the right appearance for the job - someone who attracts customers. When I called Ima Allthat over, she agreed with me and apologized to Ms. Needles. She ended the conversation by saying that she was certain that someone with Sewsen Needles’ experience would be better off by applying for a job at a store for plus size women. I definitely agree with this.

If I do not sell sell clothing, this will jeopardize my business, my family and my employees. Although Sewsen is a lovely person with good qualifications, she is not the right person to help sell for Gloomingsdales. The fact is that this store is my property, and I have the option to hire whomever I choose.

### ***Testimony of Ima Allthat***

My name is Ima Allthat. I am 41 years old and I am the store manager of Gloomingsdales, an upscale women’s clothing store. I have been Yul Surry’s main assistant for 15 years. As part of my job, I help in the hiring of new employees.

At Gloomingsdales, we are always on the lookout for slim, stylish women to meet our customers’ needs. On January 17, 2013, a full-figured woman named Sewsen Needles walked into Gloomingsdales and said that she had a meeting with Mr. Surry for a job. It appeared to me that Mr. Surry was stunned by her appearance.

After interviewing Sewsen for a short time, Mr. Surry asked me to speak with her as well. I saw the look of disappointment on his face. We both agreed that since Sewsen was a full-figured woman, she would be better off applying at a plus size woman’s store. We gently told Ms. Needles what we believed. She looked upset when she left the store.

I think that store policy is store policy and that it is not our fault that she is overweight. We cannot just hire anyone; we have a reputation to maintain and, in this economy, every potential customer is financially important.

## **INSTRUCTIONS**

The plaintiff must prove by a preponderance of the evidence that she was discriminated against based on weight.

## SUB-ISSUES

1. Does appearance, specifically weight, matter when selling clothing?
2. How much does one have to weigh to be overweight?
3. Do companies have the right to discriminate against full-figured individuals?
4. Should Sewsen have revealed her appearance before coming to the interview (full -figured)? Should it have mattered?
5. Does Sewsen have the right to sell clothing to non full-figured women if she is plus-sized?
6. Did Yul B. Surry humiliate Sewsen?
7. Was Ima Allthat just supporting her boss or was she speaking her true feelings?
8. Is being overweight a disability?

## CONCEPTS

1. Burden of proof - by a preponderance of the evidence.
2. Credibility of witnesses.
3. Definition of a disability.
4. Job performance.

## LAW

The Americans with Disabilities Act provides broad protection for individuals with disabilities. However, to be covered under this statute, an individual must first meet the definition of a disability - physical or mental impairment which limits performance.

Employers may hire whomever they choose as long as that choice adheres to the regulations put forth in Title VII of the Civil Right Act of 1964, which prohibits discrimination based on race, color, religion, sexual orientation or national origin.



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