

FOR GRADES 7–8

MOCK TRIAL EXERCISES



Featuring Winning Cases from the New Jersey State Bar
Foundation's Law Adventure 2008 Competition

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Preface

In 1995-96 the New Jersey State Bar Foundation launched a unique, law-related education program for middle school students – the Law Adventure Competition.

Students in grades seven and eight and their teachers are invited to create original mock trial cases. Each year the Foundation provides two themes for 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 Adventure programs in the spring. The seventh- and eighth-grade audiences serve as juries.

Following are the winning cases from the Law Adventure 2008 Competition. Themes for the 2008 contest were as follows: (1) Conduct in Public Places (such as sports events, malls, concerts, schools, etc.) – Rights and Responsibilities of Individuals and Institutions (2) Personal or Public Property Rights – This can include, but is not limited to, eminent domain, condo associations, access to beaches and waterways, open space, or public structures on private property (for example, cell phone towers).

The cases may be used as a guide to prepare a submission to the Law Adventure Competition or as a classroom exercise. Please note that some of the cases may contain “laws” created by the students for the purpose 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.

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

Law Adventure won the Award of Excellence in the 2002 Associations Advance America Awards program, a national competition sponsored by the American Society of Association Executives in Washington, D.C. This prestigious award recognizes innovative projects that advance American society in education, skills training, community service and citizenship.

If you would like to participate in the Law Adventure Competition, please call 1-800-FREE LAW or 732-937-7519 for a free copy of the State Bar Foundation’s Law Adventure Competition booklet, e-mail sboro@njsbf.org or write to Law Adventure, New Jersey State Bar Foundation, One Constitution Square, New Brunswick, NJ 08901-1520.

For information about other free, law-related education services available from the New Jersey State Bar Foundation, visit us online at www.njsbf.org.

This Land Is My Land

SCHOOL

Clinton Township Middle
Clinton
Grade 7, First Place

TEACHER

Judith Hammond

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FACTS

On June 7, 2006 a registered letter notified Farmer Crop that the Township of Hillsborough and the State of New Jersey were going to appropriate his land. The Township and the State were going to take the land through the process of eminent domain in order to construct low-income housing. Farmer Crop's family has farmed the 200 acres of land since 1855. He doesn't want to sell the land and had planned to pass it down to future generations.

This is the only commercial farm remaining in Hillsborough. It sells food to local stores and gives food to local needy families. Farmer Crop grows corn and wheat on his farm, raises chickens for eggs and cows for meat and milk.

The Township of Hillsborough must build low-income housing due to recently introduced state mandates. There is very little open land in Hillsborough that is suitable for building. The only other land available is near a river that is subject to flooding, and therefore unsuitable to build houses on. The township is offering Farmer Crop \$2.5 million for his land, which is fair market value. However, Farmer Crop does not want to sell his land because of personal memories and sentimental value.

ISSUE

Does the State of New Jersey have the right through eminent domain to force Farmer Crop to sell his land?

WITNESSES

For the Plaintiff

Heart E. Crop
Issel Stuff

For the Defense

Mayor Martin
Bob Buildit

WITNESS STATEMENTS

Testimony of Heart E. Crop

My name is Heart E. Crop. I am a farmer who has farmed this land for over 40 years. This farm has been in my family for six generations. All of my children and I were born on this farm. It is our home. I love it and have a strong emotional bond with the land. It holds many important memories for me, my family and many others in this community.

I don't want to give up the farm. It is more than a business, it is our way of life! We have rights too! My family has been providing food to local families for generations. We sell our food to the local stores and donate thousands of pounds of produce to food banks and people in need. Food is vital and more important than shelter. If you take away my farm, there will no longer be a local grower to support those in need.

There is plenty of other land in Hillsborough. The township owns 500 acres of parkland. This is an ideal spot for houses. Instead of taking my property, why can't some of the abandoned factories and industrial plants near the center of town be torn down? Leave my family alone!

We are an important part of the community. Many families have traditions that include our farm. At Halloween the kids pick pumpkins and run through the corn maze. We have a Christmas tree stand and many other festivities during the holiday season. In the summer we have a peach festival. Taking the farm away will mean that many in the community will lose out and many families will no longer be able to continue their family traditions. We are the heart of the community, a popular local meeting area, and politicians campaign there.

This land is important because previous generations are buried in the family graveyard. What is going to happen to those graves? It is very important to my family that we can farm this land as our ancestors did in the past and hopefully future generations will continue the tradition.

Testimony of Isell Stuff

My name is Isell Stuff and I am the store manager of Isell's Family Market. At least 20 jobs will be lost if this farm is taken away. Isell's Family Market provides terrific jobs for low-income people to help them get on their feet and improve their standard of living. Isell's provides jobs for many people with families. Without the food from Heart E. Crop's farm we will be forced to let these workers go.

Many jobs will be lost because food will cost more without local growers. Food will also cost more for the community, especially for those people in low-income housing that will have nowhere to buy



food and other necessities. A major concern is that once the farm is gone we will have to bring in food from different states and communities. The food will not be as fresh and healthy and will cost a lot more money. We will have to incorporate shipping and handling in the sales price.

Another concern is that local people who do not have a car will find it difficult to buy food. They will have to travel to town to another store, and this is impossible because there is no public transportation. They will have to pay for a taxi, which will cost a great deal. This will have a huge impact on those that can afford it the least.

We dispute the need for taking the land for low-income housing because there are only four low-income families in our town. We can provide housing for them without taking Farmer Crop's land. Which is more important – food or shelter?

Testimony of Mayor Martin

My name is Mayor Martin and I am the Mayor of Hillsborough. Personally, I would like to see the farm stay. My family likes the farm and its traditions and enjoys the excellent local produce. However, professionally I have no choice.

One of my jobs as mayor is to obey State mandates and the State of New Jersey has told us we must provide more low-income housing units. This is a very expensive area in which to live. We need this land for families who cannot afford to buy houses at the market value. Farmer Crop was offered \$2.5 million for his land, which works out to be \$12,500 an acre, more than a fair return for his land.

He declined the offer. He stated that his family had owned the farm for generations and he would not sell for any reason. We acknowledge that the farm is a valuable local landmark, which provides both enjoyment and needed produce. However, it is more important for us to build houses. We are mandated by the State and we cannot disregard this order.

There are many reasons why we must have this particular site. Farmer Crop's farmland is at a higher elevation than most of the other land in Hillsborough, so it is not prone to flooding. It is the only large piece of land available. Other areas are not suitable because the parcels of land are not big enough.

There is another farm in Hillsborough but we cannot use it because it is located next to the river that is subject to flooding. Another possible area we considered was the abandoned industrial plant on the other side of town. Many years ago the factory on that site produced paint. We tested the soil and found that leftover waste dumped into the ground had contaminated the land with lead and other dangerous chemicals. It is too hazardous to build anything on. For eight months we had paid contractors to inspect any areas of land that might be suitable for building. However, no other land has been found.

We are bound by the State mandate to build these houses and unfortunately, there is nowhere else suitable for building. If we don't specify a location and start building, we will be heavily fined by the State. There is no more time to look for other

land. The yearlong time frame allowed by the State has passed. We need to start making plans for the infrastructure of the project and to start hiring architects. We know that the community will initially suffer because its main food source and local attractions will be taken. However, I am sure that those concerns do not outweigh the importance of this building project.

Testimony of Bob Buildit

My name is Bob Buildit and I have worked for the township of Hillsborough for 27 years. I am a nationally recognized contractor, and have constructed many housing developments, both large and small. I have many years of experience with State contracts and regulations regarding the building of homes. State Plans are often difficult to follow because they are complex, dependent on funding, reliant on permits and many other restrictions.

It is not easy to find a parcel of land that meets all the State criteria. We have two years remaining in which to finish the project. If we don't meet this timeline, we'll have to renew the permits, and face fines from the State, which would cost a lot of money for the taxpayers in our county. We've been looking for land for this project for over a year and we have not found another site that complies with the State requirements for low-income housing.

In Hillsborough there is only one piece of property that is suitable, and that is Mr. Heart E. Crop's land. We thought we found another piece of land. However, when we tested the soil, we discovered that the land was contaminated with toxic chemicals and therefore is not suitable for building.

A smaller piece of farmland near the river isn't suitable because the ground floods during major rainstorms. The soil is unstable and the ground is constantly being eroded. Mr. Heart E. Crop's land is the only land in Hillsborough that is sizable, and suitable to support the large number of low-income homes. My years of experience with the State programs and private land contractors has led me to determine without question that this is only land in the Hillsborough suitable for the low-income housing project.

INSTRUCTIONS

The plaintiff, Farmer Heart E. Crop, must prove by a preponderance of the evidence that the Township of Hillsborough and the State of New Jersey do not have the right to take his farmland through eminent domain.

SUB-ISSUES

1. What are property rights?
2. When do private and public rights conflict?
3. Should the need to protect farmland/open spaces override the need for housing?
4. Was there a need for more low-income housing or could this have been addressed in another manner?

CONCEPTS

1. Burden of proof – preponderance of the evidence.
2. Credibility of witnesses.
3. Property rights.

LAW

1. Fifth Amendment to the U.S. Constitution (1791)
“...nor shall private property be taken for public use without just compensation.”
2. *Fallbrook Irrigation Dist. v. Bradley*, 164 U.S. 112 (1896)
3. *Berman v. Parker*, 348 U.S. 26 (1954)
4. *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984)
5. *Kelo v. New London*, 545 U.S. (2005)
6. Eminent Domain Reform Bill (No. A3257) 2006

BIBLIOGRAPHY

<http://www.firstamendmentcenter.org>
<http://www.safestate.org>
<http://www.njsbf.org>
<http://www.megalaw.com>
<http://www.findlaw.com/caseload/supreme.html>
“The Regional Economist,” January 2007,
www.stlouisfed.org
<http://www.njeminentdomain.com>
Mangini, Vincent J. “The State of Eminent Domain Reform in New Jersey.” *Mercer Business*, October 1, 2006.

The Case of the Controversial Creek

SCHOOL

Harrington Park
Harrington Park
Grade 7, Second Place

TEACHER

Joan Dever

STUDENTS

Michael Baek, Katie Batchelor, Julie Chong,
Christina deLescinskis, Kathryn Fuselier,
Charlie Gleason, Brian Kang

FACTS

Richie Rich owns a sprawling piece of private property that spans the Crocus Creek in southern New Jersey. He has owned the property for eight months. Three months after the purchase, Richie Rich saw a fisherman fishing outside of his living room window on property that he assumed was private.

The fisherman entered the creek from a public access ramp several miles away. He was fishing off of a small boat that he took downstream. The fisherman had been coasting the waters of Crocus Creek for many years, long before Richie Rich moved to town. He grew up around the creek.

After numerous attempts to keep the fisherman off of Crocus Creek, Richie Rich filed a complaint with the county officials. They spoke to the fisherman about his fishing habits but he protested against the accusations.

The fisherman, Gold N. Perch, was a lifelong resident of Cloister, the town surrounding Crocus Creek. He had seen the creek age. Gold N. Perch was outraged when Richie Rich ordered him off what he called private property. As an outdoorsman, Gold N. Perch argued that no individual has the right to claim ownership to a natural waterway.

Richie Rich argued that this creek is not really a natural waterway. He stated that the creek is a runoff from the nearby reservoir and therefore, a man-made waterway, making it private property. Richie Rich believes that Gold N. Perch is trespassing.

Richie Rich said that he has spent his own money to restore the creek and the banks. However, the creek runs for 11 miles, and is home to many ecosystems. Gold N. Perch argued that due to its length and the bounty of organisms, it cannot be called man-made. Mr. Perch has decided to sue Mr. Rich for unjustly ordering him off what he believes to be public property.

ISSUE

Does Gold N. Perch, as a representative of the public, have the right to legally fish in the waters running through the private property owned by Richie Rich?

WITNESSES

For the Plaintiff

Gold N. Perch
Environ Mental

For the Defense

Richie Rich
Hosse A. Down

WITNESS STATEMENTS

Testimony of Gold N. Perch

My name is Gold N. Perch. I have grown up and fished in the Crocus Creek my entire life. The previous landowner, who never built a house on the bank of the creek, never accused me of fishing on private property. The new owner, Richie Rich, bought the land and built a house on it.

Three months after the purchase, he complained that I was fishing on his private property and ordered me off the land immediately. He called the cops and they removed me from the creek. Richie Rich seems to be unaware that Crocus Creek is a natural waterway. A private homeowner does not have private property rights to natural waterways. Richie Rich does not have the right to order me to stop fishing in this creek. He denies the fact that Crocus Creek is a natural waterway and claims that because the creek runs from the man-made reservoir 11 miles away, the creek must be man-made, and therefore his.

How could a man-made runoff possibly flow for 11 miles across the State of New Jersey and contain whole ecosystems of living organisms? Environmentalists have worked countless hours to keep the creek healthy and teeming with life.

Testimony of Environ Mental

My name is Environ Mental. I work for PPP. PPP is short for Please Preserve the Perch. I have worked very hard to keep Crocus Creek's perch healthy and safe. While I was recording the perches' social behavior, I heard arguing coming from the location of Richie Rich's house. I went to investigate and saw Richie Rich yelling at my good friend Gold N. Perch for trespassing on his property in order to fish at his favorite spot.

I was confused because he had been fishing in this waterway for many years and never had any problems with the former landowners. I pushed into the shouting match and asked what was wrong. Richie Rich told me, in an extremely rude and disgruntled tone, that this "ignorant buffoon" was trespassing and that he was going to call the police if Gold N. Perch didn't get off his land. Gold N. Perch

immediately retaliated. He said that Richie Rich did not have the right to do any such thing, that he was most certainly, under no circumstances, going to get off of the creek.

I was astounded at Richie Rich's display because my fellow workers at PPP and I were under the impression that Crocus Creek was a natural waterway. Fishermen have been taking advantage of its immense length and its established ecosystems. Gold N. Perch is most certainly in the right and should be free to fish anywhere on the creek.

Testimony of Richie Rich

My name is Richie Rich, and I own a piece of property that spans the nuisance waterway called Crocus Creek. Eight months ago, I bought the property around the creek. About three months later I noticed that a man was fishing in my creek. I politely told him that this was my private property and he had to hightail it out of here. Gold N. Perch rudely refused. He insisted that he had fished on the river for years and that he was not doing anything wrong.

I marched into my house and called the police. When the cops arrived, I explained the situation. They told Gold N. Perch that they would let him slide this time but he was advised to leave the property for good. He proceeded to question the law and justice in this situation. Gold N. Perch was then forcibly removed from the creek by the police and taken home.

The next day, I began looking into fencing for my land. The fencing company assured me that I had every right to put a fence around my land but it was not wise for me to fence in the creek, too. They told me that the fence would rust. I gave in and did not fence in the creek. However, I hired a man to clear out some of the debris by the creek.

A week later, I was enjoying the beautiful day outside my window when I noticed Gold N. Perch was in my creek again. I was outraged! I called law enforcement again and he argued in a manner similar to the week before. He was removed again.

I received word later that week that I was expected to appear in court. I called up Gold N. Perch and asked what I could have possibly done to have him call me to court. He claimed that it was public land, and I had no right to call the cops on him. And here I am!

Testimony of Hosse A. Down

My name is Hosse A. Down. I am a maintenance worker for Dowd's Fencing and Landscapes. A couple weeks ago, Richie Rich called me to install fencing around his land and perform some maintenance on the banks of the creek running through his property. He mentioned to me that he wanted to prevent a local fisherman from fishing on his land because the fisherman believed it was public property.

Richie Rich then proceeded to show me a map of the area where he wished the fence to be. It was signed by the company which listed the house that showed it was his property. Knowing that a fence could harm or kill fish going through the creek, through both rust and sharp wires, I was able to talk him out of it. However, Richie Rich paid out of his own pocket to spruce up the land. So I agreed to remove the debris that had accumulated around the creek. When cleared, I was paid and left.

The following week I went over to Richie Rich's residence to check on the land (company policy). I overheard arguing between Richie Rich and another person. When I looked around the bend, from a distance I saw Gold N. Perch, a stranger I had seen but never met, and some law enforcers arguing. I witnessed Gold N. Perch being taken off the property. When the chaos ended, I requested to check on the land. Richie Rich accepted, and I found everything was the same. Then I left Richie Rich to attend another job.

Richie Rich paid to fix up the creek. He owns the land surrounding the creek that runs from a man-made reservoir and he obviously owns the waterway. Richie Rich has every right to order Gold N. Perch off of the land.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Gold N. Perch's rights were violated when Richie Rich prevented him from fishing on a public waterway that runs through private property.

SUB-ISSUES

1. Is Crocus Creek a natural waterway?
2. Is it reasonable to assume that a creek that runs 11 miles long and contains fresh fish cannot be a result of man's intervention?
3. Do the rights of the public take precedence over the rights of an individual?
4. Does Gold N. Perch's individual rights provide that he can navigate the waterway, but not have the right to fish from its waters?

CONCEPTS

1. Burden of proof – preponderance of the evidence.
2. Credibility of the witnesses.
3. Personal vs. private property rights.
4. Totality of circumstances.
5. Right to privacy.

LAW

1. The New Jersey State Constitution, Article 10, Section 4 forbids individual, joint, and corporate landowners from obstructing free navigation.
2. New Jersey state law states that the public has a right to use a navigable river and the river bed up to the high water mark for navigational, fishing, recreational, and other permitted purposes.

The Case of Erthville Township vs. Mr. Appleseed

SCHOOL

Heritage Middle
Livingston
Grade 7, Honorable Mention

TEACHERS

Helene Hinck, Pamela Giannotto

STUDENTS

Meaghan Annett, Jason Cai, Rachel Holtz,
Jesse Kirsch, Jenna Pearlson, Kristin Tsuo

FACTS

Mr. Appleseed is a very successful apple orchard owner. He owns several acres of farm land. In order to make his crops grow well and be appealing to the public, he uses many different types of pesticides and fertilizers that contain many chemicals.

A stream is located on the border of his property at the bottom of the hill and is connected to a public lake located in a recreational park. There are many fish that thrive in the stream and lake, and many people visit and fish in the lake.

According to studies done by the town, the fish population in the stream and lake has decreased by 50% since September 2007. People refuse to go near the public lake because the fish are dying. People are also concerned about the welfare of their children. They sometimes swim in the lake. Citizens are requiring the pond to be cleaned up.

ISSUE

Should Mr. Appleseed be held responsible for the reestablishment of the public lake in the town of Erthville?

WITNESSES

For the Plaintiff

Jean Greenthumb
Fred Fishbein

For the Defense

Jonathon Appleseed
Alyssa Quito



WITNESS STATEMENTS

Testimony of Jean Greenthumb

My name is Jean Greenthumb. I have a degree in environmental science. I have worked as an environmentalist at SOE (Save Our Earth) for eight years now. In the town of Erthville I have been the Environmental Director for five years.

I live in the town and have always worked very hard for my town to ensure it is a great place to live. The lake has always been the pride of all the citizens in the town and has provided recreation for all.

In the past few months the fish that live in the lake have been dying. People are afraid to go to the lake because they are afraid it contains toxic chemicals. I tested the water and I found it contains many chemicals that are toxic. These chemicals can be found in pesticides.

It is my belief that the toxins are coming from Mr. Appleseed of 75 Orchard Lane. He lives on a large hill and when it rains, the runoff flows into the stream that borders his property. His apple farm produces delicious juicy apples that many people enjoy, but he uses many pesticides. When the runoff flows into the stream, it carries the pesticides that kill the fish and ruin the lake.

Testimony of Fred Fishbein

My name is Fred Fishbein. I am a very experienced fisherman. I have been fishing in Erthville's lake for 12 years now. I fish there because whenever I do I always get a decent amount of live fish for my dinner. But, ever since a few months ago, the catch I've caught has not been very good. Either all the fish are dead or I don't get any at all, since all the fish have just disappeared from the lake. Before, fish would be swimming freely throughout the lake and the lake was alive with fish. Now, it's so hard just to get one decent fish to eat. This is just difficult for me. I've actually talked with the other fisherman that also fish at the lake and they've told me that they experience the same problem.

Testimony of Jonathon Appleseed

My name is Jonathon Appleseed. I have lived in Erthville all my life. My family has owned this estate in Erthville for more than 100 years. We have never had a problem on Appleseed Orchard. In 1964, 1977, 1986, 1994, 1995, and 2006 these apples were named most fragrant apples by The Fruit and Apple Administration. Our customers have always been content with the apples that have been grown on the Appleseed Orchard. In fact, just recently, my award-winning apples have been demanded in 12 other states. The pesticides I use from Spray-On are safe and do not harm any aquatic animals.

I find it outrageous that Erthville is suing me when my family and I have given thousands of apples to local charities and supplied dozens of apples for the annual Erthville Apple Fest. My family also gives a 20% discount to Buyrite for every bushel of apples they buy to sell, and a 20% discount for every bushel of apples they buy to make their apple pie, which I am sure every citizen of Erthville buys weekly. Suing me means Buyrite's profits will drop considerably, and 12 states will be angry at Erthville for not supplying them with the Appleseed Orchard's wonderful apples.

Testimony of Alyssa Quito

My name is Miss Quito and I am the president of the company called Spray-On. My company produces pesticides that kill insects that infect fruit and vegetables. Spray-On was started in 1995 and has never gotten complaints or been sued. Mr. Appleseed has been our customer for a number of years and he has been very satisfied with our pesticides. Our pesticides have little or no effect on aquatic animals. The insecticides that Mr. Appleseed uses are the organophosphate and carbamate type. These types of insecticides from our company are only slightly toxic. If some soil contained with these insecticides eroded into the stream, there would be no harm to the fish. However, there is no proof that the pesticides were in the runoff. Mr. Appleseed uses limited amounts of pesticides on his apples, according to our directions.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Mr. Appleseed and the pesticide company are responsible for the contamination of the lake.

SUB-ISSUES

1. Should Mr. Appleseed be forced to cease the use of his pesticides and fertilizers?
2. Did Spray-On change the chemical makeup of their products?
3. Should the creators of products at Spray-On be put on trial for producing possible dangerous and toxic chemicals?
4. Should there be a further investigation to see if the pesticides are the cause of the problem?

CONCEPTS

1. Burden of proof – preponderance of the evidence.
2. Credibility of witnesses.
3. Responsibility of a private land owner for caring for public recreation area.

LAWS

Riparian Rights

A riparian parcel of land is a parcel of land that borders a natural body of water. Owners of a riparian parcel of land own the upland, his/her building and dock, bottomland offshore of the water, the aquatic vegetation in the bottomland, the ice above the bottomland, the rights to fish, hunt, swim, and boat on the entire body of water.

Prohibited and Restricted Use Pesticides

A. Prohibited Pesticides (7:30-2.9)

No person shall distribute, sell, offer for sale, purchase, or use any pesticide which has been suspended or canceled by the EPA or state, except as provided for in the suspension or cancellation order.

B. Restricted Use Pesticides (7:30-2.10)

(a) The following pesticides are restricted use pesticides which can only be purchased and/or used by certified and licensed pesticide applicators or by people under their supervision.

1. Any pesticide classified by the Administrator of the EPA for restricted use under the provisions of section 3(d)(1) of FIFRA.
2. Any fumigant including, but not limited to, those listed below, except:
 - i. Any pesticide containing naphthalene, ortho-dichlorobenzene, and/or paradichlorobenzene as the sole active ingredient or in combination with another active ingredient which is not classified for restricted use if the pesticide product is used to control mosquitoes or clothes moths, or to repel warm-blooded animals;
 - ii. Any sulphur candle fumigator intended to control general household pests;
 - iii. Any coils containing pyrethrins and/or allethrin as the active ingredient which are used to control flies and/or mosquitoes;
3. Any aquatic pesticide which contains labeling instructions indicating that the pesticide is intended for use on aquatic sites, except any “minimum risk” pesticide exempted from regulation by N.J.A.C. 7:30-2.1(m)5.

Ben Badson: The Bad Son?

SCHOOL

South River Middle
South River
Grade 7, Honorable Mention

TEACHER

Renée S. Fidek

STUDENTS

Heather Collazo, Nicole Cruz, Thomas Drum,
Keith Duhrkoop, Evan Kohlmayer, Chris Maltez,
Lucy Razzano

FACTS

On Wednesday, November 21, 2007, in Stop & Fall Supermarket, a child named Ben Badson was pushing a cart, and ran into a display of cans. When Mya Badson turned around to grab a gallon of milk, a cart was pushed into a display of canned tomato sauce. An employee, Ivan Hurtten, had been stacking them for a one-day Thanksgiving sale when they toppled over him, and he fell to the ground. Mya Badson checked to see if he was okay, and apologized, but Ivan was so angry he told Mya to just go away.

Then a cashier, Ivy Chequen, ran over to see if Ivan was alright. When she saw the severity of his injuries, she helped him up and rushed him to the hospital. He ended up with a broken collarbone and a cut from his eye to the corner of his lip, which needed 19 stitches. Ivan Hurrten is suing Mya Badson for inappropriate conduct in a public place, pain and suffering, and for all of his medical bills.

ISSUE

Was Ben Badson's conduct in Stop & Fall Supermarket inappropriate and did it cause Ivan Hurtten's injury?

WITNESSES

For the Plaintiff

Ivan Hurtten
Ivy Chequen

For the Defendant

Mya Badson
Ben Badson

WITNESS TESTIMONY

Testimony of Ivan Hurtten

My name is Ivan Hurtten. On November 21, 2007, I was working at Stop & Fall Supermarket. I normally stock the shelves in the food aisle, but that day I was in the middle of making a tower of tomato sauce cans for the one-day Thanksgiving sale. The store was getting crowded, so I made sure I didn't bump into anyone. Suddenly, I saw a shopping cart and Ben Badson coming towards me. I was trying to jump out of the way, but the cans came roaring down on top of me. I fell to the ground, felt a sharp pain in my shoulder, and got hit in the face with a can.

The boy's mother came over in a matter of seconds. She asked me if I needed an ambulance. I said no and told her to go away. The boy and his mother apologized but it was his fault. His mother should have been watching him.

Ivy Chequen was at her cash register, directly across from the accident. She heard the little boy scream and she ran right over to see what happened. Ivy helped me up off the floor and took me to the hospital.

I suffered a broken collarbone and a cut from my eye down to the corner of my lip, which needed 19 stitches. The accident prevented me from visiting my family in Connecticut. My Thanksgiving was completely ruined!

Testimony of Ivy Chequen

My name is Ivy Chequen. On Wednesday, November 21, 2007, I was working at my job at Stop & Fall Supermarket. I am a cashier there. A few minutes before the accident, I saw Ben Badson running. I told him to stop and he did - for a moment. Obviously, he is not a good listener as he did the same thing again, which caused the accident.

I was checking someone out when I heard Ivan Hurtten scream and Ben Badson standing next to him. I excused myself from the customer to see if Ivan was okay. I saw him under a ton of tomato sauce cans with Ben and his mother, Mya Badson. Mya was just across the aisle when this took place. I believe I saw her turn around to get milk out of the refrigerator. I asked Ivan if he was okay and he said he was fine.

I knew he was hurt. I helped him get up and rushed him to the hospital. The doctors took X-rays. He suffered a broken collarbone and a cut from his eye to the corner of his mouth which required 19 stitches. I know Mya was not watching her son because she was still getting food when I first heard the scream. She was not at the scene until after the accident occurred.

Testimony of Mya Badson

My name is Mya Badson. On Wednesday, November 21, 2007, I went shopping with my seven-year-old son, Ben Badson. I turned around for a second to reach for a gallon of milk. My son was standing next to the half full cart, a few feet away, when I heard a big bang!

I turned around and saw tomato sauce cans all over the floor along with employee Ivan Hurtten. I grabbed for my son and tried to help Ivan. He said he wasn't in a lot of pain and I could tell by the slit from his eye to the corner of his mouth that he was. I asked if he wanted me to call an ambulance, but he said he was fine.

A cashier, Ivy Chequen, rushed over and started to panic. I tried to calm her down. I asked them if there was anything I could do. Then, for no absolute reason, Ivan Hurtten started to scream at me and told me to leave.

I think that my son Ben is a good kid, but boys will be boys. A little while before the tomato sauce can incident, Ivy Chequen yelled at my son for running around and misbehaving. I told him to stop it and behave. I also told him that I would let him buy something if he was good, so he immediately stopped being bad. I think that when Ivan saw my son trip, he saw it as an opportunity to get money, so he pushed himself into the cans and made the fall worse than it actually was. Ben would never do anything like that on purpose.

Testimony of Ben Badson

My name is Ben Badson. I am seven years old and in second grade. On Wednesday, November 21, 2007, my mom and I went food shopping at Stop & Fall Supermarket. As my mom was getting milk, I was just trying to help by pushing the cart closer to her so she could put the milk in it. I didn't realize that my shoelace was caught in the wheel. I tripped and lost control of the cart.

Before I could do anything, the cans toppled over Ivan Hurtten. All I saw was Ivan screaming at my mom and telling her to leave him alone. I got scared and started to cry.

Then Ivy Chequen came and helped Ivan up. After all this trouble we left Stop & Fall. I didn't mean to hurt anybody. I didn't know my shoelace was caught in the wheel. I'm just a little kid, and I would never do anything like this on purpose.

INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that Ben Badson's behavior/conduct in a public place was unacceptable and the direct cause of Ivan Hurtten's injury.

SUB-ISSUES

1. Did Ben Badson's shoelace really get caught in the wheel?
2. Did Ivan fall into the cans harder than necessary, making the injury worse?
3. What kind of worker is Ivan?
4. Is it possible that Ivan Hurtten and Ivy Chequen planned an accident to get out of work?
5. Should Mya have been paying more attention to her seven-year-old son?
6. Should Ben have been pushing the cart in the first place?
7. Should Stop & Fall Supermarket share any of the blame since they had Ivan stacking cans on the floor instead of a shelf on one of the busiest days of the year?
8. Is there an expectation that a certain code of conduct will be followed in a supermarket?
9. Was the cart too full for a seven-year-old to push?
10. Was the shopping cart broken, and if so, should the store be held responsible?

CONCEPTS

1. Preponderance of the evidence.
2. Credibility of witnesses.
3. Definition of conduct in a public place.

LAW

"MD Code, Criminal Law, § 10-201. Disturbing the public peace and disorderly conduct

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2)(i) "Public conveyance" means a conveyance to which the public or a portion of the public has access to and a right to use for transportation.

(ii) "Public conveyance" includes an airplane, vessel, bus, railway car, school vehicle, and subway car.

(3)(i) "Public place" means a place to which the public or a portion of the public has access and a right to resort for business, dwelling, entertainment, or other lawful purpose.

(ii) "Public place" includes:

1. a restaurant, shop, shopping center, store, tavern, or other place of business;
2. a public building;
3. a public parking lot;
4. a public street, sidewalk, or right-of-way;
5. a public park or other public grounds;
6. the common areas of a building containing four or more separate dwelling units, including a corridor, elevator, lobby, and stairwell;
7. a hotel or motel;
8. a place used for public resort or amusement, including an amusement park, golf course, race track, sports arena, swimming pool, and theater;
9. an institution of elementary, secondary, or higher education;
10. a place of public worship;
11. a place or building used for entering or exiting a public conveyance, including an airport terminal, bus station, dock, railway station, subway station, and wharf; and
12. the parking areas, sidewalks, and other grounds and structures that are part of a public place."

Bibliography

<http://www.srislawyer.com/PracticeAreas/MARYLAND-MD-DISORDERLY-CONDUCT-CRIMINAL-DEFENSE-ATTORNEY-MD-LAWYERS-LAWS.asp>

Pesticides Poisoning

SCHOOL

East Brook Middle
Paramus
Grade 7, Honorable Mention

TEACHER

Kathy Murray

STUDENTS

Whitney Cairnes, Diana Cho, Daisy Lee,
Stephanie Pallotto, Gabrielle Zeiler

FACTS

At approximately 4:45 p.m. on April 13, 2005, two eleven-year-old boys, Josh Kerry and Tyler Freed, were walking down Lexington Place towards the cul-de-sac. They lived on Lexington Place all their lives and always walked to the cul-de-sac to cut through a nearby neighbor's yard to get to their friend Tracy's house. They didn't know that new neighbors, the Newmanns, had moved into the property they usually cut through, but they did notice a fence was installed.

The Newmanns installed the fence when they moved in so that the children would not cross through their yard anymore. What the kids were not aware of was that pesticides were just applied by Mr. Newmann to kill all the bugs and grow new grass. Josh and Tyler hopped the neighbor's new fence, not thinking twice. Tyler tripped and fell, getting the toxic dirt all over him. The Newmanns neighbor, Kelsey Knoxville, was sitting by her window and saw the boys, but after she saw Tyler get up, she just thought Josh and Tyler were crossing to Tracy's house, as usual.

Later that night, both children had serious migraines, blurred vision, and were sweating excessively. Josh and Tyler were checked into Boise Grace Hospital. After running a series of tests, Tyler was diagnosed with severe pesticide poisoning, while Josh just had a minor case. Their doctor, Dr. Goodwill, asked them to give a brief description of the day's events. Tyler recalled the incident at the Newmanns. Tyler's parents are now filing a lawsuit against the Newmanns.

ISSUE

Are the Newmanns at fault for putting down pesticides without posting a warning sign or is Tyler at fault for trespassing through the Newmanns' yard?

WITNESSES

For the Plaintiff

Tyler Freed
Doctor Goodwill

For the Defense

Mr. Newmann
Kelsey Knoxville



WITNESS STATEMENTS

Testimony of Tyler Freed

On, I think, April 13 my friend Josh and I were going to cross through our neighbor's yard, like we always did, to get to our friend Tracy's house. When we arrived at what we thought was the old neighbor's house, there was a newly added fence. We thought that it was to keep their dog Sparky from running away. So we continued on our way and hopped the fence.

I, being the klutz that I am, slipped on the fence and fell. I was fine then and just popped back up and waited for Josh to hop over. He did and we traveled on towards Tracy's.

Later, after dinner, I was sweating a lot, had blurry vision, and my head hurt badly. My mom took me to the emergency room at Boise Grace Hospital. My doctor, Dr. Goodwill, diagnosed me with pesticide poisoning. Now I'm dealing with the side effects.

Testimony of Doctor Goodwill

At about 7 p.m. on April 13, 2005, two boys were checked into the hospital that I work at, Boise Grace Hospital. I was told they were suffering from severe migraines, excessive sweating, and blurred vision. After doing a series of tests on them, I diagnosed them with pesticide poisoning.

Tyler's case was more severe than Josh's. I asked them to tell me what had happened within the past couple of hours. They then recalled that they climbed over a fence on their new neighbor's yard. I asked a nurse to call the Newmanns. They said that they used pesticides to help get rid of all of the insects. I gave Tyler and Josh special medications and kept them overnight.

Testimony of Mr. Newmann

My wife and I recently moved to our new home on Lexington Place. We lived there one month before this specific incident. Many of the kids in the neighborhood crossed through our yard although we didn't quite know all of them. My wife and I were tired of it and didn't want it to go on anymore. We had a fence installed to keep the kids out. The children gradually stopped crossing through our yard.

In addition, the grass in our yard was bug infested. To get rid of the insects we laid down some pesticides. We thought it didn't matter anymore what we did in our yard because the kids had apparently stopped crossing through. When the defendant crossed through our yard on April 13 at 3:30 p.m., we had just laid down the pesticides so it was still fresh on the ground. We hadn't intended to harm anyone through this process.

Testimony of Kelsey Knoxville

I was at my desk doing homework after school, when all of a sudden I saw Tyler and Josh hop over the Newmanns' fence. My desk faces out my window so I can see everything that happens in the Newmanns' yard. The Newmanns are my new next-door neighbors. They are extremely nice to me.

I have always lived in this house, and ever since Tyler and Josh met Tracy, they always cut through my neighbor's yard. Josh and Tyler hadn't crossed through the Newmanns' yard in a while so I thought that they had stopped this nonsense. I'm pretty positive that they didn't ask the Newmanns' permission to cut through their yard.

On the day in question, I was at my desk on my computer when I heard a thud. I looked out my window and saw Tyler sprawled in the dirt. I was scared but then he got back up. I continued to watch and saw that Josh quickly hopped over the fence, and proceeded with Tyler. I didn't think that much about it and I continued with what I was doing. It seemed like another daily crossing, but I guess not.

INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that the Newmanns were negligent and therefore caused Tyler's medical condition.

SUB-ISSUES

1. Did Tyler Freed and Josh Kerry have the right to cross through the yard without asking permission from the Newmanns?
2. Should the Newmanns have put a sign on the fence to indicate pesticides were on the lawn?
3. Since the Newmanns were aware of the problem with children passing through their yard, shouldn't they have put up a "no trespassing" sign?
4. Even if warnings had been posted, is it likely that the kids would have ignored them in any event, and jumped the fence anyway?
5. If the purpose of the federal law is to protect workers, does the right to have a warning extend to others, like Tyler and Josh?

CONCEPTS

1. Burden of proof.
2. Preponderance of evidence.
3. Trespassing.
4. Private property (property rights).
5. Negligence.

LAW

1. Trespassing is an interference with or invasion of the property of another without permission.
2. According to EPA, which is a federal law, warning signs must be posted to warn agricultural workers in advance about pesticide applications.
3. Negligence is carelessness and it is the breach of the "duty of care" expected of reasonable people.

One Hot Riot

SCHOOL

George G. White Middle
Hillsdale
Grade 7, Honorable Mention

TEACHER

Suzanne Pausz

STUDENTS

James Almeida, Ally Angels, James Breen,
Jordan Deitsch, Evan D'Elia, Vincent DePinto,
Christina Giovanni, Sara Petro,
Shruthi Thyagarajan, Kim Wang, Molly Simio

FACTS

On the night of September 28, 2007, a 13-year-old girl named Anne O. Ying went to the Stardust Cinema to see *Freedom Authors* with her friend, Ida Klutz. Anne O. Ying made a comment to her friend during the movie about the new candy, Flaming Danger, which she had just tried. "That candy was so hot! My mouth is on fire!" she said.

A 13-year-old boy sitting behind the girls, Mitch Undastud, overheard the comment. Mitch has Tourette syndrome and suffers with echolalia, which is the repeating of words or phrases of others, also known as a vocal tic. As Mitch got older, his symptoms decreased. However, tics often worsen with excitement. So when Mitch heard the word "fire," he became very anxious. He then began to repeat the word "fire" loudly and rapidly, causing people to believe that there was a fire.

Many people began to scream and someone pulled the fire alarm. When Ida Klutz was running towards the fire exit, she slipped over a spilled soda and broke her ankle. The police then came and arrested Mitch Undastud for disorderly conduct in a public place.

ISSUE

Should Mitch Undastud be liable for disorderly conduct despite having Tourette syndrome?

WITNESSES

For the Prosecution

Anne O. Ying
Ida Klutz

For the Defense

Mrs. Undastud
Bob Livious



WITNESS STATEMENTS

Testimony of Anne O. Ying

I am Anne O. Ying, a 13-year-old from Townsville, Idaho. On the night of Friday, September 28, 2007, I called up my friend, Ida Klutz, to see if she wanted to go see the new movie that had come out, *Freedom Authors*. I was really excited to see this movie. When we got there, I saw that they had a new candy called Flaming Danger. The box had a warning to everyone who tried it saying how hot it is and to be careful. Since I have an adventurous personality, I decided that I would try it. Bad idea.

Ida and I went into the theater and the movie began. I popped a Flaming Danger in my mouth and immediately spit it out. It was the hottest candy I had ever tasted! Ida asked me what was wrong, and I replied, "This candy is so hot! My mouth is on fire!"

The movie had already begun, so I was talking in a fairly quiet tone not to disturb other people. Unfortunately, it was during a quiet scene of the movie. Suddenly I heard someone sitting behind me screaming "fire." He wouldn't stop. I thought it was just a misunderstanding, but soon everyone was yelling and someone even pulled the fire alarm. Ida and I then thought it was a real fire so we began to run to the fire exit. Ida lost her footing and fell; we believed she slipped on soda that had been spilled in the excitement. She could not get up so I helped her to her feet. She used me as a crutch and limped out the door.

The police came and checked the place out and determined it was all a misunderstanding and that there was no fire. Ida was taken to the hospital where they told her she had broken her ankle. The police told us that the boy sitting behind us, who had Tourette syndrome, had repeated the word loudly and caused the uproar. The police arrested him for disorderly conduct. Even with his condition in mind, I still believe that he is old enough to know better than to repeat the word "fire" in a crowded area.

Testimony of Ida Klutz

I am Ida Klutz, a 13-year-old from Townsville, and friend of Anne O. Ying. On the night of Friday, September 28, 2007, Anne and I went to see *Freedom Authors*. We went to the counter and Anne bought a box of Flaming Danger candy. Even though the box said it was very hot and to be careful, being Anne, she bought them anyway. When we sat down, Anne opened the box and ate one piece. Immediately, she spit it out, and I knew that something was wrong. When I asked her what the problem was, she said, "This candy is so hot! My mouth is on fire!" Then, a kid sitting behind us kept screaming fire over and over again, and people started panicking. Someone even pulled the fire alarm.

When we were all running to the exits, I was caught in the commotion and fell on spilled soda. My ankle was in pain. Anne helped me onto my feet and she helped me limp outside. The police arrived as we exited the building, and they told us that there was no fire. They charged the kid who was sitting behind us with disorderly conduct. It was entirely his fault that I broke my ankle. Now I am on crutches and devastated that I can't play soccer for the rest of the season.

Testimony of Mrs. Undastud

I am the mother of Mitch Undastud, a 13-year-old boy with Tourette syndrome. A symptom of Tourette syndrome are tics. A tic is an uncontrollable action or repetition of a verbal phrase. This word repetition is called echolalia, which Mitch has.

On the night of Friday, September 28, 2007, Mitch's friend, Bob Livious, called and asked him to go to the movies to see *Freedom Authors*, the new movie that everyone was talking about. I was a bit worried about letting him go without a parent because of his condition, but I figured that his symptoms had gotten better over the last couple of years.

After about an hour, I received a telephone call from the police informing me that Mitch had been arrested for disorderly conduct. Shocked and outraged, I drove down to the police station to pick him up and to sort out the situation. I was told that Mitch had caused panic and a false evacuation from the theater, and had caused a girl to break her ankle.

I believe that this problem is not my son's fault. He was unaware that what he was doing was unacceptable because of his condition. I did not tell Mitch's friends about his disorder because I felt that it would only embarrass him and allow his peers to stereotype him. When Mitch started disrupting the peace at the theater, his friend was unaware of what was happening and wasn't able to handle the situation properly. Because of his condition he could not control his behavior. I think that this was just a preposterous misunderstanding and Mitch should not be held responsible for the incident.

Testimony of Bob Livious

My name is Bob Livious and I have known Mitch Undastud since I was just a little boy. I didn't know he had Tourette syndrome until this incident happened at the Stardust Cinema. It is extremely unfortunate that I had to find out this way and someone had to get hurt because of it. I still stand behind Mitch because he was never the kind of person who would cause a riot.

On September 28, I had invited Mitch to the movie theater to see *Freedom Authors*. I was sitting next to Mitch when the movie started. Just as everyone started to quiet down and the movie began, a girl sitting next to her friend said, "This candy is so hot! My mouth is on fire!"

I heard Mitch begin to shout the word "fire" repeatedly, and a panic began. Everyone was screaming and shouting the word "fire," just like Mitch had. Before I knew what was going on, the fire alarm was pulled by a panicking movie viewer, and it caused a riot. We quickly ran outside and we saw a limping girl that appeared to have hurt her leg. The police came and told the entire crowd of panicking viewers that there was no fire. Somehow the police found out that Mitch had been the one shouting "fire." Then he was arrested for disorderly conduct in a public place.

When I saw Mrs. Undastood at the police station, she explained to me and the police officers that Mitch had Tourette syndrome. This is the first time I had learned of Mitch's condition. I was shocked when the police continued to press charges because Mitch wasn't in control of his actions.

INSTRUCTIONS

The prosecution must prove beyond a reasonable doubt that Mitch Undastud caused a riot at the movie theatre and should be charged with disorderly conduct.

SUB-ISSUES

1. Should Mitch have known not to shout fire in a crowded movie theatre?
2. Should Anne O. Ying have said, "My mouth is on fire," so loudly?
3. Should Mrs. Undastud have let Mitch go to the movies without a parent?
4. Should Mrs. Undastud have told Bob Livious about Mitch's condition?
5. Should the police have talked to Mrs. Undastud before charging Mitch?

CONCEPTS

1. Disorderly conduct.
2. Tourette syndrome.
3. Credibility of the witnesses.
4. Beyond a reasonable doubt.

LAW

Disorderly Conduct - Any person who shall commit any violent, noisy, or riotous conduct, or who shall use any profane, abusive or obscene language, or in any way commit a breach of the peace, or do anything that shall be dangerous to the inhabitants of the City shall be deemed guilty of a misdemeanor.

The Case of the Wheelie Woeful Wipeout

SCHOOL

Ramapo Ridge Middle
Mahwah
Grade 7, Honorable Mention

TEACHER

Barbara Connolly

STUDENTS

Rebecca Damante, David Ingersoll,
Aaron Weinstein

This exercise was created by children and is 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.

FACTS

On Friday, September 22, 2006, Rob Noxious and his friends were hanging out at the Jersey Shore Mall, while using their Wheelies. This was their usual Friday activity. On this particular day, they were shopping for equipment that they needed for various sports.

Donte Lykidds, a security guard, approached Rob and his pals in front of JCNickels and asked them to stop using their Wheelies. Soon after, the group split up and decided to meet later at the food court.

At 5:20 p.m. Rob was heading down the west wing. Ignoring Mr. Lykidds' request, Rob decided to use his Wheelies to get to the food court faster. As Rob rode along, he began to lose control and fell backwards, hitting his head and back. A witness, Susie "Specs" Tator, saw the accident occur and quickly called 911.

Rob and his family are suing the Jersey Shore Mall for the cost of his medical treatments, physical therapy, as well as his pain and suffering.

ISSUE

Should the Jersey Shore Mall be held financially responsible for the injuries caused to Rob Noxious while using his Wheelies in the mall?

WITNESSES

For the Plaintiff

Rob Noxious
Susie "Specs" Tator

For the Defense

Donte Lykidds
Emma Ployee

WITNESS STATEMENTS

Testimony of Rob Noxious

My name is Rob Noxious and I am 15 years old. On September 22, 2006, I was in the mall with my friends. I go to the Jersey Shore Mall almost every weekend. Sometimes I get yelled at by Mr. Lykidds for things like running or hanging out with my friends. That crank is always getting on our backs about something, so we usually ignore half of what he says to us.

On September 22, everything was as it normally is. My friends and I were hanging out in the mall, looking in stores and rolling on our Wheelies. Later, we decided to meet up at the food court to get some dinner. On my way, I slipped and fell on my back. The next thing I knew, I was in an ambulance. Because of this incident, I can't run, skateboard, or play any sports.

Every morning I wake up with back pain and it's really hard for me to get a good night's sleep. My life really hasn't been the same since the accident. Our insurance only covered six of my physical therapy sessions. My family has money problems, so paying for the expensive physical therapy that I need is really difficult on us. My parents are falling behind on other bills now and they don't know what to do. My mom said that the mall should be held financially responsible for my injuries since they allowed my friends and me to use our Wheelies. If they hadn't, I never would have been using them that day.

Testimony of Susie "Specs" Tator

My name is Susie "Specs" Tator, and I work at Opal Vision in the Jersey Shore Mall. On Friday, September 22, 2006, I was taking my lunch break, when I saw an adolescent, who I later learned was Rob Noxious, fall pretty badly while using some sneakers with wheels in the heel. They are called Wheelies. I immediately ran over to help and called for a medic. When a mall security guard arrived, he asked how the accident occurred. I told him that Rob had slipped and fallen while rolling along. Upon hearing this, the grumpy security guard started lecturing Rob in a rather harsh tone. He said that because Rob had disobeyed his rules, the accident was entirely his own fault.

I spend a lot of time in the mall, and I have never seen any security guard asking children to stop using these Wheelies. Although the mall has policies against skateboarding, roller-skating, and biking, Wheelies are not specifically mentioned, and I see them being used all of the time. In my opinion, the mall has not taken enough action against these Wheelies, and therefore the mall is at fault. I believe that this negligence caused Rob's accident.

Testimony of Donte Lykidds

My name is Donte Lykidds. On Friday, September 22, 2006, I was working my usual shift as a security guard at the Jersey Shore Mall. During one of my patrols, I noticed Rob Noxious and his gang rolling around on their Wheelies, disturbing various customers. This was their usual Friday activity and, once again, it was up to me to stop it. I yelled at Rob and his friends to stop. Rob immediately halted, and although he refused to make eye contact with me, I knew he got the message.

Ten minutes later, I received a call on my radio. It was to notify mall security that a young patron had an accident near the food court and needed serious medical attention. A witness told me that Rob had fallen while using his Wheelies. He had endangered his life and others by disobeying my orders and I believe that the blame for this accident lies solely on Rob. Rob and his social counterparts are always causing problems.

We even have reason to believe that Rob is responsible for some minor vandalism. I have spoken to Rob about using his Wheelies countless times. In fact, I constantly have to tell kids not to use their Wheelies on mall property.

Having been warned suitably, I believe that Rob Noxious is solely responsible for any injuries that have befallen him while using his Wheelies on the mall premises. I believe that it was Rob's blatant disregard for the rules and not the negligence of the mall that is to blame for this unfortunate accident.

Testimony of Emma Ployee

My name is Emma Ployee. I'm 17 years old and I work at JCNickels in the Jersey Shore Mall. On Friday September 22, 2006, I was folding shirts in

the front of the store. Suddenly, I heard a commotion. Of course, it was Rob Noxious and his gang rolling around on their Wheelies. They were at the mall almost every Friday and there had even been some rumors that Rob and his friends had been trashing things around the mall.

On September 22, Donte Lykidds, one of the security guards, yelled at Rob and his friends about using the Wheelies in the mall. Although Rob tried to ignore Mr. Lykidds, Rob stopped rolling on his Wheelies for a while. Mr. Lykidds made it very clear that Wheelies are forbidden. A couple of minutes later, when Mr. Lykidds had left the area, I noticed Rob passing the store using his Wheelies again. This time, he was alone. He continued down the west wing towards the food court. I heard about the accident later that evening.

I feel bad that Rob was hurt, but I believe it was his own fault. He injured himself because he broke the rules. Plus, he's always giving the security guards a hard time. I don't think it's fair to hold the mall responsible when Rob knew that he shouldn't have been using the Wheelies in the mall.

INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that the defendant's actions were negligent and were the cause of the plaintiff's injury, pain, and suffering.

SUB-ISSUES

1. Had Donte Lykidds told Rob and others not to use Wheelies in the mall?
2. Does using Wheelies fall under a category as written in the rules?
3. Should Rob have been using the Wheelies in the mall?
4. Was Rob acting appropriately in the mall?
5. Did the mall security guards properly enforce a no-skating rule?
6. Did Rob put himself or others at risk by using his Wheelies?
7. Is the Jersey Shore Mall responsible for any injuries sustained on the premises?

CONCEPTS

1. Negligence.
2. Burden of proof: preponderance of the evidence.
3. Credibility of witnesses.
4. Liability.
5. Wheelie (a fictitious brand of sneaker that has a wheel tucked into the heel of the shoe).
6. Pain and suffering.

LAW

1. Any conduct that could be considered disorderly, disruptive, or that interferes with or endangers business or mall visitors is strictly prohibited. In the Jersey Shore Mall, such conduct may include, but is not limited to running, loud offensive language, spitting, throwing objects, fighting, making or using obscene gestures, gang signs, skateboarding, roller-skating, or bicycling.
2. A landowner or the occupiers of a property have legal responsibility for any injuries or accidents that occur on the property.

A Private Paradise?

SCHOOL

Harrington Park
Harrington Park
Grade 7, Honorable Mention

TEACHER

Joan Dever

STUDENTS

Daniel Farrell, Liam Fuller, Hannah Johnson,
Sam Kim, Jennifer Meyers, Jaclyn Siegel,
Mason Vialonga, Caitlin Walker

FACTS

Pelican Harbor has an exclusive four-mile stretch of pristine beach along the New Jersey coastline. A line of high-end adjacent homes face this expanse of beautiful shoreline. This private section of homes in Pelican Harbor has prevented beach-goers from accessing what is supposed to be a public beach. Lack of a public access pathway has denied residents of Pelican Harbor, who do not own waterfront property, from enjoying this serene, but purportedly public beach.

On August 17, 2006, Jack Jones was caught trespassing on a piece of private property currently surrounding Pelican Beach in Pelican Harbor. The private property lines run from one home to another, and there is no way to enter this section of beach without crossing private property lines. Owners of the beachfront homes have “NO Trespassing” signs prominently displayed on their front lawns. Jack Jones has been cited numerous times for trespassing over the past several years. He has decided that it is time to bring this travesty of justice to light.

Jack Jones states that residents of Pelican Harbor cannot get to the beach. Tax dollars are used to maintain a beach that inhabitants of the town don’t have the pleasure of using. People who are paying to preserve this beach have been cited for trespassing while trying to get to it! Jack Jones has filed a com-

plaint against the Township of Pelican Harbor for not providing public access to the beach, thus creating an atmosphere of a “private beach” for elite homeowners. He is suing the township for not providing the residents of Pelican Harbor with access to their public beach.

ISSUE

By not providing a viable pathway through private property, has the Township of Pelican Harbor violated Jack Jones’ right of access to a public beach?

WITNESSES

For the Plaintiff

Jack Jones
Gnarly Nick

For the Defense

Mayor Royam
Iyam A. Snootipants

WITNESS STATEMENTS

Testimony of Jack Jones

My name is Jack Jones and I own a home in the town of Pelican Harbor. Recently, I was charged with trespassing on private property while trying to gain access to the span of beach known as Pelican Beach. I am here to file a complaint with the local town government for blocking a portion of public beach property.

My home is two blocks away from a section of a public beach that is surrounded by private property. I want to walk to that beach and not have to drive to the upland access that is two miles away from my home. As I know from experience, the people of Pelican Beach are paying ridiculous taxes. A portion of these taxes are used to maintain beaches including the one that is cut off by private property and that we cannot get to without trespassing.

The town government has promised access to this public beach for years, but they haven't done anything. There have been people caught trying to sneak on to this beach. They have been getting yelled at for trespassing by the homeowners that own the private property that encircles the beach.

Testimony of Gnarly Nick

My name is Gnarly Nick and I am a surfer. There are awesome waves at Pelican Beach, but I cannot get to these superb waves because of the dumbfounding town government that agreed to let people build property surrounding the surf. Meanwhile, they tell people like me that this is a public beach. How can it be a public beach if I cannot carry my surfboard over the dunes and go surfing? I am totally confused. I have to enter the beach two miles up or risk trespassing on private property. The beach is supposed to be enjoyed by everyone.

How can these people object to looking out their windows and seeing dudes like me riding waves? It seems to me that the only solution is to hold the town to their commitment to build a pathway that allows the people who reside in this town to get to their beach! Additionally, many beaches restrict surfers. I have a right to take a stand and be able to surf on this promising public beach legally. Let

us reach the beach! Enough is enough; I'm here to stand up for all of the residents of this town. Our sweet beach can't be preserved for a small group of elite homeowners.

Testimony of Mayor Royam

I am Mayor Royam. Pelican Beach was purchased for public use, but since the land around it is privately owned, this beach has no immediate access. This section of beach is deemed public, and there is a pathway just a few short miles down the road. I understand the concern of the citizens of Pelican Harbor, but there is simply nothing in my power that I can do.

The money for this is not in the budget, and raising taxes is a very unpopular solution. If I keep raising taxes, I will never get re-elected! Only a handful of residents have ever complained about this issue. There is no easy solution. As I see it, the town's hands are tied. There is no legitimate place to build an access as all the land adjacent to the beach is privately owned.

Imposing the right of eminent domain is not an option for a situation like this. Who is going to give up their private property to allow the town to build this path? We would have to increase taxes to create this access and it is not supported by the public. Forcing the residents to give up private property would be an abuse of power.

Testimony of Iyam A. Snootipants

I am Iyam A. Snootipants. The property in question is my property. I don't object to people on the beach, but I don't want them trespassing. It's not my fault that these people can't reach the ocean. I can't do anything about this problem. I won't allow a path to be built on my property. I'm sure I speak for all of the beachfront residents when it comes to privacy. I don't want strange people walking alongside my home.

Building a path would lead to the building of a parking lot, and that could possibly lead to a public restroom which would lead to a snack shack. This

chain of destruction would not end until all of our property was gone! I paid for this property, and these people are trespassing. I don't want it to lead to the destruction of my private property, so we should not build a path. Maybe this beach is public, but the land surrounding it is private. It is still accessible. If you really want to reach this beach, you can go just a little bit out of your way. I say, keep my land banned.

INSTRUCTIONS

The plaintiff must show by a preponderance of the evidence that the Township of Pelican Harbor violated Jack Jones' right to access to a public beach.

SUB-ISSUES

1. Is the access that is located two miles from Mr. Jones' home adequate?
2. Does the mayor's interest lie with the public or himself?
3. Is the use of eminent domain a viable solution?
4. Can the town be held responsible for the fact that private property encircles the beach?

CONCEPTS

1. Burden of proof by a preponderance of the evidence.
2. Credibility of the witnesses.
3. Private verses public property rights.

LAW

Public Trust Document of New Jersey

The Public Trust Doctrine provides that public rights to tidal waterways and their shores in the State are held by the State in trust for the benefit of all of the people...In New Jersey, the Public Trust Doctrine recognizes and protects natural resources as well as recreational uses such as bathing swimming, sunbathing, and walking along tidal waterways and their shores.

a. Public Access and Use - As the trustee of public rights to tidal waterways and their shores, it is the duty of the State to not only allow and protect the public's right to use them, but also to ensure that there is adequate access to these sites. Access ensured by the Public Trust Doctrine can be classified into different types, including:

Linear/lateral access

Perpendicular Access

Visual access

Perpendicular access refers to the ability of the public to reach tidal waterways and their shores by corridors **across land that may or may not be publicly or privately owned**. Examples include street ends that abut beaches or other shorelines, public access easements across private property, dune walkovers and trails or walkways that lead to tidal waterways and their shores. Without the ability to reach the tidal waterways and their shores via perpendicular access, rights provided by the Public Trust Doctrine are essentially lost to the public, exemplifying the importance of this type of access. It is up to the state and local governments to ensure that this access is provided and preserved.



To Live or Not to Live Here!

SCHOOL

Wanaque Elementary
Wanaque
Grade 8, First Place

TEACHER

Paula Basedow

STUDENTS

Kim Amar, Jennifer Bacon, Frank Forster,
Ashley Gillies, Jesse Restaino, Amanda Tornese,
Stefan Wasilewski

This exercise was created by children and is 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.

FACTS

Mayor Takehouse and the Livingston Town Council have recently started proceedings to declare the property of Iban Livehere and several of the surrounding properties “in need of redevelopment.” This action taken by the mayor and town council gives the municipality the right to condemn all the properties by eminent domain and move ahead with plans to build a new strip mall on the condemned properties.

Iban Livehere has filed a lawsuit against the town of Livingston. Mr. Livehere is suing the town contesting the determination of his home being included in the area “in need of redevelopment.” He maintains that the town has decided to take houses away from civilians for the benefit of developers and commercial interests by invoking the law of eminent domain.

The plaintiff, Iban Livehere, further claims that his house and property have been kept in very good shape since 1903 when his grandparents purchased the property. Mr. Livehere is determined not to be evicted from his historic home.

Mayor Takehouse and Livingston's Town Council argue that although Mr. Livehere's home is well-maintained, the vacant storefronts, odd sized and different shaped properties and buildings, and the poor condition of the surrounding properties depress their values and limit the use of the properties and the area in general. The defendants, Mayor Takehouse and the Livingston Town Council, further emphasize that the proposed strip mall will improve the community's living conditions, boost the surrounding property values, and provide a commercial ratable to lower taxes in a town where the taxes are rising more quickly than the salaries.

ISSUE

Do the Mayor of Livingston and the Town Council have the right to force Iban Livehere to sell his house in order for the town to use his property to build a strip mall?

WITNESSES

For the Plaintiff

Iban Livehere
Ima D. Fender

For the Defense

Mayor Will Takehouse
Penny Pincher

WITNESS STATEMENTS

Testimony of Iban Livehere

My name is Iban Livehere. The Livehere Family has lived on the same property in the town of Livingston since 1903. I remember my grandfather proudly pointing out to me that the Red Sox won the first World Series over the Pirates in 1903. Anyway, our family has kept our home in perfect condition for all that time.

It is my duty to fight for the right to keep my house standing in order to remain in the town I love and continue my family's rich tradition as one of the town's oldest families. My family and I would be devastated if laws of eminent domain caused our eviction from the home that has witnessed births and so many wonderful memories and family traditions. Our family has worked hard to build this community into the wonderful town it is today. I expected to live and die in this house. It is un-American to uproot my family from the town we love and take our house away simply to advance the greed of a local developer, who conveniently was the consultant who wrote the report condemning our home and the surrounding properties.

Testimony of Ima D. Fender

I've lived across the street from Iban Livehere for as long as I can remember. It is a shame to hear that they are planning to take away his home. Even if it is old and the other houses around it are falling apart, the Livehere Family has always maintained their house, keeping it in the best shape possible. To hear that the town is taking it away is truly terrible, and for what... more shopping for the town in the form of a new strip mall?

Mayor Will Takehouse and the Livingston Town Council will be leaving these people without a home. Iban and the whole Livehere Family have been very active members of our community. They have put their hearts and souls into making their house warm and cozy, just to have their home taken away by the town they have worked so hard to build. This is an unspeakable injustice! As a fellow member of the community, I speak for all of us in saying please reconsider the location of the new mall and spare the Livehere's historic home.

Testimony of Mayor Will Takehouse

Under the advice of an independent economic consultant, Ms. Penny Pincher, the town council and I have decided to go ahead with a redevelopment project, which would allow for the construction of a new strip mall in our town. It was with very careful consideration that both the town council and I chose the location for the new strip mall. This mall will bring townspeople together due to the new community center that will be built amidst the various stores.

I am aware that some people are talking about how wrong it is to take down houses; however, this project will help our town in many ways. By making it convenient to buy supplies locally and by lowering taxes, our town will prosper. This redevelopment project will improve the community's living conditions and will give us the opportunity to deal with parking and traffic issues.

The town council and I are deeply sad to have to temporarily displace the Livehere Family, but we feel confident that we can help them relocate to another property in the township. It is not like we are just taking their property without payment. We intend to pay them the Fair Market Value for their home. The town council and I have actually offered Mr. Livehere a very generous settlement for his property, given the depressed values of the surrounding properties, in order to compensate him for his sacrifice.

Testimony of Penny Pincher

I was commissioned by Mayor Takehouse and the Livingston Town Council to study and then report back to them regarding the possible identification of areas in town that could be designated for redevelopment. Upon completing my study, I reported my findings, as they authorized, noting that one or two of the homes in the proposed area of redevelopment are maintained, but the "mixed use" neighborhood fits the State's legal definition of a redevelopment area, where a municipality can exercise eminent domain and approve a replacement building plan by a developer it chooses.

INSTRUCTIONS

The jury must decide by a preponderance of the evidence if the mayor and town council have the right to take over Iban Livehere's home according to laws of eminent domain.

SUB-ISSUES

1. Does Iban Livehere's house's historic value have any effect on the outcome of this case?
2. Does the town's need for lower taxes through increased ratables, like the proposed strip mall, outweigh the needs of one family?
3. Does the town's claim of redeveloping a "blighted" area of town really apply to the Livehere home?
4. Does Penny Pincher's role as a local developer pose a "conflict of interest" in her acting as the town's consultant on this issue of town redevelopment?

CONCEPTS

1. Burden of proof – preponderance of the evidence.
2. Credibility of the witnesses.
3. Laws of eminent domain.
4. Circumstantial evidence vs. direct proof.
5. Reasonableness of actions taken.
6. Rights of community vs. rights of an individual.
7. Definitions of:
 - a) Eminent Domain.*
 - b) Public use.*
 - c) Fair value.*

LAWS

1. Fifth Amendment Rights: The Fifth Amendment limits the right of eminent domain by requiring that takings be for "public use" and that "just compensation" be paid for the taken property.
2. Law of Eminent Domain.

*The following definitions were obtained at this website:

ExpertLaw Library dated July 2004 @ http://www.expertlaw.com/library/real_estate/eminent_domain.html

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Definition of Eminent Domain - Eminent domain refers to the power possessed by the state over all property within the state, specifically its power to appropriate property for a public use. In some jurisdictions, the state delegates eminent domain power to certain public and private companies, typically utilities, such that they can bring eminent domain actions to run telephone, power, water, or gas lines. In most countries, including the United States under the Fifth Amendment to the Constitution, the owner of any appropriated land is entitled to reasonable compensation, usually defined as the fair market value of the property. Proceedings to take land under eminent domain are typically referred to as "condemnation" proceedings.

Definition of Fair Value - Fair value is usually considered to be the fair market value - that is, the highest price somebody would pay for the property, were it in the hands of a willing seller. The date upon which the value is assessed will vary, depending upon the governing law. If the parties do not agree on the value, they will typically utilize appraisers to assist in the negotiation process. If the case is litigated, both sides will ordinarily present expert testimony from appraisers as to the fair market value of the property.

Definition of Public Use - Ordinarily, a government can exercise eminent domain only if its taking will be for a "public use" - which may be expansively defined along the lines of public "safety, health, interest, or convenience." Perhaps the most common example of a "public use" is the taking of land to build or expand a public road or highway. Public use could also include the taking of land to build a school or municipal building, for a public park, or to redevelop a "blighted" (meaning an area in need of redevelopment) property or neighborhood.

Ravens or Rebels?

SCHOOL

East Amwell Township
Ringoes
Grade 8, Second Place

TEACHER

Janet Higgins

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FACTS

Crowville, New Jersey recently had an increase in street gang activity. Members of gangs were loitering in neighborhoods to claim their territory. Residents of the neighborhoods, especially the senior citizens, were frightened and upset. In response to this problem, Crowville enacted a town ordinance which states: "If a police officer observes a person whom he/she suspects to be a criminal street gang member loitering as a member of a group in a public place, that person shall be ordered to leave the area. If the person does not leave the area, he/she is in violation of the ordinance and can be arrested for a misdemeanor crime with a fine of \$1000 and/or one year in jail." However, the law is being challenged by several Crowville citizens who believe that it violates the Constitution. Recently, a similar law in Chicago was declared unconstitutional.

A group of five 16- and 17-year-old teenagers were at Homestead Place, a housing development in Crowville, New Jersey at about 11:30 p.m. on October 30, commonly known as mischief night. While they were walking around, they were playing music on their portable stereo. A senior citizen living in the development by the name of Elle Durly woke up from a sound sleep when she heard the noise from the group. After being disturbed several times, Mrs. Durly called the police to report the disruptive teenagers.



About 20 minutes later the police arrived at the scene. Elle Durly pointed out the group to the policemen, Officers Ken Cuffum and Will Findja. The officers gave the group their first warning and told them to move. They clearly identified one of the teenagers as Sean “Splicer” Quint, who was known to the police as a member of the Ravens gang. Also, the officers noticed that most of the teenagers were wearing clothing resembling the colors and style of the local street gang, the Ravens, along with noticeably similar tattoos and body piercings. The street gang, the Ravens, wear black and purple clothing with Raven emblems and designs. They have piercings on their eyebrows and their lips. All the members of the gang have a raven tattoo on their right shoulder.

About an hour later, the officers returned to the scene and the group was still there. The officers got out of their cars to confront the group a second time. When the teens saw the police, the group ran away from the officers. Officers Cuffum and Findja were able to run down two members of the group, Emma Wannabe and Dylan Quint.

Emma was wearing a large shirt with a Ravens emblem. She also had piercings on her eyebrow and lip. She was wearing purple lipstick. Dylan was wearing a Ravens shirt and had a large tattoo of a raven on his right shoulder. Also, the police saw a knife in Dylan’s back pocket and when they asked about it, Dylan became very argumentative. The police had met Dylan before when his brother, Sean, was under suspicion of being involved in a gang-related crime. Therefore, the officers arrested Emma Wannabe and Dylan Quint for violating the local ordinance against loitering in a public place while being suspected of membership in a street gang.

When the police took the kids back to the station, they found out that Emma also had a criminal record. She had stolen a shirt from the store Hot Topic when she was 13 years old. Emma and Dylan await their criminal trial.

ISSUE

Did Emma and Dylan violate the town ordinance against loitering while being suspected of street gang activity?

WITNESSES

For the Prosecution

Officer Ken Cuffum

Elle Durly

For the Defense

Emma Wannabe

Dylan Quint

WITNESS STATEMENTS

Testimony of Officer Ken Cuffum

My name is Officer Ken Cuffum and I have been on the police force for nearly seven years. I am a citizen of Crowville and have three kids and a lovely wife. My family and I live nearby in the Homestead Development.

The night of the incident, the station received a call around 11:30 p.m. from an old woman named Elle Durly about a group of loud and obnoxious teens. Our chief sent Will Findja and me to go check it out. When we got there, we found a group of teens hanging out and playing loud music. In the group, I recognized two of the teens – Dylan and Sean “Splicer” Quint. I met both boys while investigating Sean’s alleged involvement in a gang-related crime.

We told the whole group that we received a complaint about their loitering and disturbing the public, and advised them to leave the area immediately. We left and returned about an hour later to make sure they were gone, but the teens were still there. We confronted the teens for a second time and they began running away. Doing our job, we chased them down the street and were able to catch

Emma Wannabe and Dylan Quint. Both were wearing clothing suggesting that they were members of the local gang, the Ravens. Also, they had several body piercings and Dylan even had a Raven tattoo on his right arm in the style of the gang. We saw a knife in Dylan's pocket. When we asked him about it, Dylan began shouting and calling us names. He yelled out that the law for loitering was unfair and out to get the teenagers.

We took Dylan and Emma to the station and checked into their backgrounds. Other officers spotted Dylan and told us they knew him and had seen him around town with his brother and other alleged gang members. We also found out that Emma had a criminal record of shoplifting. We had enough evidence to charge them with loitering while being suspected of gang activity.

Both Officer Findja and I support the loitering law. It helps us to prevent serious crimes and keep gang members from intimidating others. It is an example of modern police work.

Testimony of Elle Durly

My name is Elle Durly and I live in the development called Homestead Place. I've lived here for 16 years and have never experienced any problems in this neighborhood. However, on October 30, I awoke to hear loud music playing. Shortly after that, I went back to sleep hoping it would not happen again. I woke up two more times from the loud music. The third time, I looked out of my bedroom window and saw a disruptive group of teenagers playing the loud music and standing in the street. I noticed that they looked very threatening since I saw body piercings and even one tattoo. I felt it was time to call the police, so I called them.

Twenty minutes later, the police arrived and I went outside. I pointed out the group of disrespectful teenagers. The officers, Ken Cuffum and Will Findja, gave them a warning and told them to move. However, the teenagers never left! I was happy when the police returned about an hour later. I watched the officers talk to the teenagers again. All

of a sudden, I saw teens running everywhere. The officers then chased them and caught up with a young girl and boy. I saw both youngsters being put in the police car.

I know some people in this town are against the loitering law. I am not one of them! I want to feel safe in my own neighborhood. This law is there for my protection. I feel safer when it is enforced.

Testimony of Emma Wannabe

My name is Emma Wannabe. I am 16 years old and in the tenth grade at Crowville High School. I am a straight A student with an occasional B here and there. Most people perceive me as generous, fun-loving, and kind to others. You can even ask Dylan's brother, Sean. Everyone knows he has a crush on me. Sean was with us that night because he follows me around all the time. I made a mistake and went out on a date with him once and now he won't leave me alone.

Working at the supermarket takes up most of my time after school. I work there four days a week and one day on the weekend. When I am not working, I volunteer for various community service organizations like the animal shelter, soup kitchen, and local parks. I also help at the recycling center and organize local fundraisers like the walk-a-thon. As many of my friends know, I am a huge Baltimore Ravens fan. I've rarely missed one of their games on television, and I love expressing my team spirit by wearing a Ravens jersey.

On October 30 I was wearing my Ravens jersey because we were all going to a party dressed as Ravens fans. My jersey has nothing to do with any street gang. I was shocked when the officers thought my lip and eyebrow piercings were a sign of being in a gang. I got both of those as rewards for good grades. As far as any criminal record, I did take a shirt from Hot Topic when I was younger. I made a mistake and did community service as a punishment. That is how I became involved with volunteering. I am sorry for what I did and will never steal anything again. This criminal charge of being

a member of the Ravens gang is crazy! This law makes me look like a criminal when I am not. I am not a Ravens gang member; I am a Ravens fan!

Testimony of Dylan Quint

My name is Dylan Quint. I was just hanging out with some friends on the way to a party on October 30. We weren't blasting music; we were listening to it and having a conversation. I was just wearing the same kind of clothes as my friends. As for the tattoo, I have it because the Ravens are my favorite football team. I got it after the last Ravens game. I was wearing my Ravens jersey because I was with my friends and we are all fans. I want you to know that I am innocent and not a gang member. I know my brother has been in trouble before, but I was not involved.

When the officers asked me about the knife in my pocket, I was mad! That knife belonged to my grandfather and I carry it around to remind me of him. I got defensive and angry because I was upset. My grandfather just passed away and I didn't want my friends to see me cry. The loitering law is ruining my life. I am a teenager who likes to hang out with my friends. People always think that I am in trouble, especially when they see me with my brother. The police are wrong about me being a gang member.

INSTRUCTIONS

The prosecution must prove beyond a reasonable doubt that Emma Wannabe and Dylan Quint violated the town ordinance against loitering while suspected of being street gang members.

SUB ISSUES

1. Were the teenagers disturbing anyone else in the neighborhood?
2. Did anyone else in the neighborhood complain?
3. Were the teens wearing the same clothing as the gang members?
4. Was Dylan's brother actually a member of the Ravens?
5. Does the town have a curfew?
6. Has Mrs. Durly complained before?

7. Had the Ravens been in the neighborhood at any other time?
8. Did mischief night have anything to do with this incident?
9. Has there been any gang activity in the area?

CONCEPTS

1. Conduct in public places.
2. Loitering.
3. Gang activity.
4. Disturbing the peace.
5. Burden of proof.
6. Credibility of witnesses.

LAW

Crowville Town Ordinance 1520:

"If a police officer observes a person whom he/she suspects to be a criminal street gang member loitering as a member of a group in a public place, that person shall be ordered to leave the area. If the person does not leave the area, he/she is in violation of the ordinance and can be arrested for a misdemeanor crime with a fine of \$1000 and/or one year in jail."

Maple Shade Nursing Home v. State of Wyoming

SCHOOL

Chestnut Ridge Middle
Sewell
Grade 8, Honorable Mention

TEACHER

Lori Bathurst

STUDENTS

Rebecca Caughron, Connor Hornibrook,
Connor Lyons, Rachel McDermott

FACTS

On May 28, 2008, the State of Wyoming passed a bill that would allow an airport to be built within the state. The purpose of the airport would be to give the state's residents a faster way of transportation, as the nearest airport for miles is in Denver. It is inconvenient for residents to travel all the way to Colorado to catch a flight. The construction company bought almost enough land to build the airport. They soon discovered that there was a problem.

On four acres of land was a nursing home and senior care center: Maple Shade Nursing Home and Senior Care Center. The building has been around for 56 years and is home to 250 senior citizens, many of whom are well into their seventies and eighties. In fact, one resident recently turned 103.

Many of the patients have diseases such as Alzheimer's, diabetes, rheumatoid arthritis, and senile dementia. In addition, many of them have nowhere to live besides the nursing home. Many of them are the only remaining members of their families. Only a few of them have family members living relatively nearby.

The company tried desperately to buy the nursing home so that they could build. They claimed that it would be in the way of the runway. Within a few years, they would need to expand on the property where the nursing home is. They offered almost twice the amount of the property's value, but the nursing home still rejected the offer.

After seeing that there was no other option, the airport construction company turned to the government. They thought that maybe the government could use eminent domain to take over the nursing home's property. The nursing home does not believe that the airport is essential and is therefore saying that eminent domain is not an option. The government was going to go through with their plan until the nursing home brought the case to court.

ISSUE

Does the Maple Shade Nursing Home and Senior Care Center in Wyoming have the right to deny the law of eminent domain and to not turn the land of their facility over to the government to build an airport?

WITNESSES

For the Plaintiff

Don Clozette
Tay Caramum

For the Defense

Aaron D'Stait
Ivana Portt

WITNESS STATEMENTS

Testimony of Don Clozette

I am the chief executive of Maple Shade Nursing Home and Senior Care Center. My establishment serves an honorable purpose: we care for the senior citizens of our country. I was recently informed by someone who claims to be the “Head of Transportation of Wyoming” that there are plans to build an airport directly where our care home stands.

I was shocked by this idea! How can you ask over 250 senior citizens to move out and stand by while their home is established somewhere else because an airport had to be built where their home used to be located? Finding a new location for our center could take months, perhaps years!

Many of our residents have no local family or no family at all. Many of the local families cannot take in their loved ones, even temporarily, because of living space restrictions. Is it probable that a family in an apartment with two children can take in another person indefinitely? Or even a family of three or four children in an average-sized house? It is very difficult to arrange housing for our residents while the home is moved. Our nursing home is self-supporting due to a trust fund established by CRCR Corporation, a wealthy mining company in Wyoming. I do not understand why the airport cannot be made any smaller or simply built in a different location.

Testimony of Tay Caramum

I am the daughter of Dee Sebilitee, an 89-year-old resident at Maple Shade Nursing Home and Senior Care Center. I live in Colorado Springs. I am very disturbed by the prospect of moving my mother's nursing home so an airport can be built in the same location. I am concerned about my mother's well-being while the home is moved.

It would be extremely difficult to house my mother indefinitely in my home. My husband, my daughter, her three children, and I live in a rather small apartment. My daughter's husband is in the National Guard fighting in Iraq. My youngest granddaughter suffers from cerebral palsy and is confined to a wheelchair. It is a squeeze to house all of us, let

alone another adult. I feel terrible that I am unable to let my mother live with us, but I do not see how it could be possible.

Aside from a housing situation, I am very concerned about my mother's health care. She suffers from diabetes and needs assistance in regulating her medications and injecting her insulin from a syringe. At the nursing home, she has always received this type of aid, but who will assist her when she is no longer living in the home? I am in complete denial that the government would allow the senior residents of Maple Shade to be sent away for who knows how long while an airport is built in the home's place.

Testimony of Aaron D'Stait

I am the Governor of the State of Wyoming. As well as fulfilling my other duties as Governor, I oversee the building of any public place that appears to be necessary in Wyoming. I was recently informed by the Head of Transportation of Wyoming, Ivana Portt, that an airport is needed in an area that has no airports for hundreds of miles. In fact, the closest airport to this location is in Denver, Colorado. Whether it is for business, pleasure, or a medical emergency, it is both crucial and convenient that the airport be built in the proposed location.

It seems that there are no reasons to oppose the new airport, but there is a complaint from one of the local establishments. Maple Shade Nursing Home and Senior Care Center is located in the area where the proposed airport is to be built. They refuse to move the location of their facilities. We could have tried to compromise with the nursing home if they were located on a less significant part of our building ground, but unfortunately, they are practically in the center of everything. I, of course, sympathize with the residents of Maple Shade, but frankly, the airport would benefit and help more people than the nursing home does. It is a necessary part in the economy of our state as well as a benefit to our country. It will lead to increased economic development of our region and enhanced national security.

Testimony of Ivana Portt

I am the head of the Transportation Department of Wyoming. My job includes deciding whether a location is in need of another means of transportation, and overseeing that all the regulations, when building, are met. I approved the building of the airport because it will ultimately benefit hundreds of thousands of people. I am sorry for the inconvenience at Maple Shade but in reality, the airport could help many more people than the nursing home can. In addition, we are not shutting the business down; we are merely asking them to move their establishment's location.

Consider this: A little girl needs an emergency operation and the only hospital that can perform the operation is in Houston, Texas. There is no airport within a reasonable distance, and her parents would have to drive her miles and miles to reach the nearest airport. In that time she could die! But if the airport was built, we could get her from here to Houston in no time, and that time difference could possibly save her life. The importance of this airport is a serious matter.

INSTRUCTIONS

The personnel, owners, and residents of the Maple Shade Nursing Home and Senior Care Center in Wyoming must prove by a preponderance of the evidence that their nursing home is a necessary component and home to the residents that cannot be replaced. They also must prove that the airport, attempting to be built in the area of the home, is unnecessary.

SUB-ISSUES

1. Does eminent domain exclude being able to take control of land being used for care centers?
2. Will the government offer of the fair market value offset the care center's financial freedom due to the financial trust?
3. Is the government liable for finding the residents of the care center a new and responsible care center they can live in?

4. If the government is liable, will the price differ (increase or decrease)? If so, will the residents be responsible for paying the new fee?

CONCEPTS

1. Preponderance of the evidence: burden of proof.
2. Credibility of witnesses.
3. Importance of the airport being built within the area.
4. Extent of eminent domain.

LAW

1. Eminent domain refers to the power possessed by the State over all property within the State, specifically its power to appropriate property for a public use. In some jurisdictions, the State delegates eminent domain power to certain public and private companies, typically utilities, such that they can bring eminent domain actions to run telephone, power, water, or gas lines. In most countries, including the United States under the Fifth Amendment to the Constitution, the owner of any appropriated land is entitled to reasonable compensation, usually defined as the fair market value of the property. Proceedings to take land under eminent domain are typically referred to as "condemnation" proceedings.
2. Eminent domain law and legal procedures vary, sometimes significantly, between jurisdictions. Usually, when a unit of government wishes to acquire privately held land, the following steps (or a similar procedure) are followed:
 - a. The government attempts to negotiate the purchase of the property for fair value.
 - b. If the owner does not wish to sell, the government files a court action to exercise eminent domain, and serves or publishes notice of the hearing as required by law.

- c. A hearing is scheduled, at which the government must demonstrate that it engaged in good faith negotiations to purchase the property, but that no agreement was reached. The government must also demonstrate that the taking of the property is for a public use, as defined by law. The property owner is given the opportunity to respond to the government's claims.
 - d. If the government is successful in its petition, proceedings are held to establish the fair market value of the property. Any payment to the owner is first used to satisfy any mortgages, liens and encumbrances on the property, with any remaining balance paid to the owner. The government obtains title.
 - e. If the government is not successful, or if the property owner is not satisfied with the outcome, either side may appeal the decision.
3. There are several types of takings which can occur through eminent domain:
 - a. Complete Taking - In a complete taking, all of the property at issue is appropriated.
 - b. Partial Taking - If the taking is of part of a piece of property, such as the condemnation of a strip of land to expand a road, the owner should be compensated both for the value of the strip of land and for any effect the condemnation of that strip has on the value of the owner's remaining property.
 - c. Temporary Taking - Part or all of the property is appropriated for a limited period of time. The property owner retains title, is compensated for any losses associated with the taking, and regains complete possession of the property at the conclusion of the taking. For example, it may be necessary to temporarily use a portion of an adjacent parcel of property to complete a construction or highway project.
 - d. Easements and Rights of Way - It is also possible to bring an eminent domain action to obtain an easement or right of way. For example, a utility company may obtain an easement over private land to install and maintain power lines. The property owner remains free to use the property for any purpose which does not interfere with the right of way or easement.
 4. Fair value is usually considered to be the fair market value - that is, the highest price somebody would pay for the property, were it in the hands of a willing seller. The date upon which the value is assessed will vary, depending upon the governing law. If the parties do not agree on the value, they will typically utilize appraisers to assist in the negotiation process. If the case is litigated, both sides will ordinarily present expert testimony from appraisers as to the fair market value of the property.
 5. At times, fair value includes more than the price of an item of property or parcel of real estate. If a business is operating from the condemned real estate, the owner is ordinarily entitled to compensation for the loss or disruption of the business resulting from the condemnation. In a minority of jurisdictions, the owner may also be entitled to compensation for loss of "goodwill," the value of the business in excess of fair market value due to such factors as its location, reputation, or good customer relations. If the business does not own the land, but leases the premises from which it operates, it would ordinarily be entitled to compensation for the value of its lease, for any fixtures it has installed in the premises, and for any loss or diminishment of value in the business.
 6. Ordinarily, a government can exercise eminent domain only if its taking will be for a "public use" - which may be expansively defined along the lines of public "safety, health, interest, or convenience." Perhaps the most common example of a "public use" is the taking of land to build or expand a public road or highway. Public use could also include the taking of land to build a school or municipal building, for a public park, or to redevelop a "blighted" property or neighborhood.

BIBLIOGRAPHY

http://www.expertlaw.com/library/real_estate/eminent_domain.html#1

Ol' MacDonald Had a Cell Phone Tower, E-I-E-I-O

SCHOOL

Marlboro Middle
Marlboro
Grade 8, Honorable Mention

TEACHER

Barbara Gallo

STUDENTS

Victor Kang, Grace Liu, Nolan Lum

This exercise was created by children and is 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.

FACTS

Pleasant Acres is a fast growing town in the mountainous region of northern New Jersey. Though it was previously home to a large number of farms, falling crop prices have forced many of the farmers to sell their land and leave the area. As a result, over the past decade, Pleasant Acres has grown into a more urbanized town, with residential areas replacing the farms. The area is ill equipped to cater to the needs of its newer, more technologically demanding citizens. Poor cell phone reception has become a key concern, and Pleasant Acres' town board, as well as LCPC, a large cell phone company, has gotten many complaints on the issue.

Auld MacDonald, one of Pleasant Acres' few remaining farmers, has been hard put to sustain himself and pay Pleasant Acres' high property taxes in the face of the falling crop prices. In order to preserve ownership of land that has been in his family for generations, MacDonald negotiates a deal with LCPC to lease a portion of his land to build a 160 foot cell phone tower to provide better service to its customers.

However, residents are complaining that the eyesore of a cell phone tower will be visible from their neighborhood. There are concerns about the pos-

sibly dangerous radiation the tower would emit and the lowered property values as a result of the tower. They discover that MacDonald has not obtained what they view as a required zoning variance.

Though the town's agricultural zoning restrictions do not state that building cell phone towers on agricultural property requires a permit, the restrictions on class U-1, H-3 property state that no building on the property may be of greater height than 80 feet, while the tower is 160 feet tall. The statute itself says, however, that certain exceptions may be made, and Farmer MacDonald believes that the tower is an exception to the rule because it supports the common welfare of the town.

Maud Neyboar, who lives the closest to the tower, claims the statute does not expressly list cell phone towers as an applicable exception, and has decided to file a grievance against MacDonald on behalf of the concerned residents for not following through with standard zoning variance procedure, and for lowering their property value unjustly as well as jeopardizing their health.

MacDonald believes that he is taking steps to maintain his farm, and since the town policy calls for "the protection of existing agricultural lands, to encourage the preservation and the retention of the land in its natural state to promote agricultural vitality," he believes that he has the right to build a cell phone tower. In his view, the farm is his property, and he has the right to do whatever he wishes on his own land.

ISSUE

Does Farmer MacDonald have the right to build the cell phone tower on his property?

WITNESS STATEMENTS

For the Plaintiff

Maud Neyboar

Reeles Tate Ayjant

For the Defense

Auld MacDonald

Xavier Purt

WITNESS STATEMENTS

Testimony of Maud Neyboar

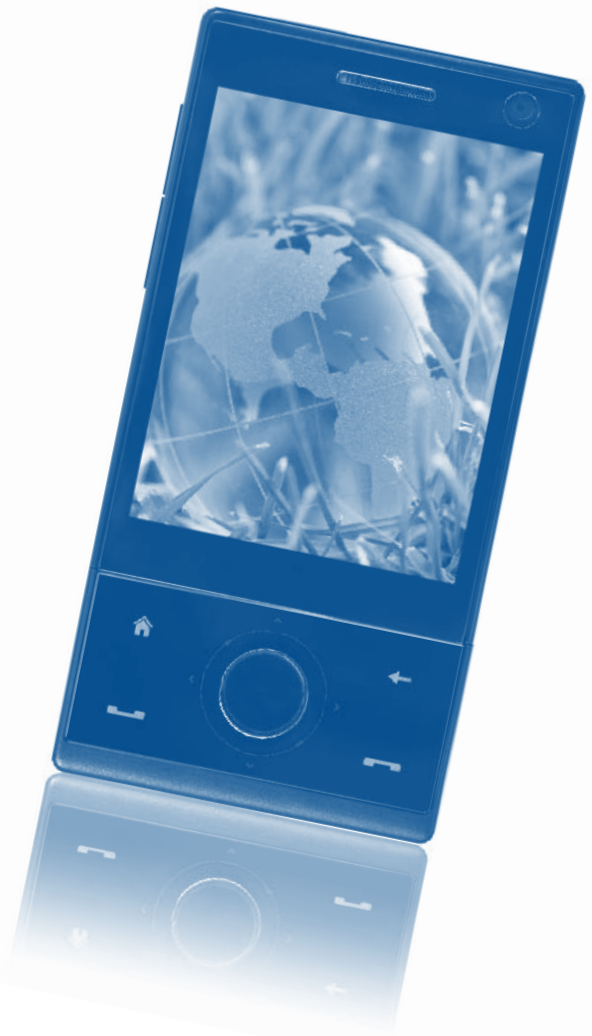
I am a neighbor of Farmer Auld MacDonald and my family and I have been residing in Pleasant Acres, NJ for five years. We have always bought our produce from his farm stand and have supported his agricultural endeavors. We have had no problems with Mr. MacDonald until he planned to have that eyesore of a tower put up. The tower will negatively impact the view and make it less enjoyable to live in Pleasant Acres.

Worse yet is the threat of possibly harmful radiation from the tower. Although experts say that these waves are harmless, experts have, in many previous cases, been proven wrong. More than 100 physicians and scientists at Harvard and Boston University Schools of Public Health have declared cellular towers a radiation hazard. And 33 delegate physicians from seven countries have called cell phone towers a "public health emergency." Our concerns are based on the information and reports that we have studied.

The Neighborhood Association, of which I am an officer, has been overwhelmed with complaints from many residents whose property directly borders

Auld MacDonald's farm. These residents have been seeking to leave the area, only to find that their property has experienced a dramatic drop in value because no one else wants to live next to a cell phone tower.

I also happen to be a sitting member of Pleasant Acres' ten-member zoning board. Mr. MacDonald is completely ignoring the standard procedure in zoning regulations. He is neglecting to obtain the proper variance in modifying the existing parameters of his property. Town regulations state that: "The entire area of the village is divided by the ordinance into six classes of use districts, denominated U-1 to U-6, inclusive; three classes of height districts, denominated H-1 to H-3, inclusive... U-1 is restricted to single family dwellings... and farming... The height districts are classified as follows: In class H-1, buildings are limited to a height of 2 1/2 stories, or 35 feet; in class H- 2, to 4 stories, or 50 feet; in class H-3, to 80 feet...."



Mr. MacDonald's property is of the U-1, H-3 type. The proposed height of the cell phone tower would be 160 feet tall, 80 feet above the height limit. While there are exceptions to this classification, "as in the case of church spires, water tanks, etc.," since much of the town does not support the cell phone tower plans, it should not be considered an accepted exception. Furthermore, had he approached the zoning board with the alterations in mind, the zoning board would have judged the benefits and disadvantages of setting up a cell phone tower in the area. Instead he chose to ignore the required protocol.

In order for the cell phone tower to comply with our zoning laws, he should have asked the board for the tower to be labeled an exception. According to the FCC Telecommunications Act, Section 704, "nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities," with a few exceptions. The local zoning board is still responsible, under the Act, for decisions concerning the zoning of cell phone towers, another reason why Farmer MacDonald needs to consult the zoning board first.

We are not saying that Pleasant Acres does not wish to have a cell phone tower built. In fact, I believe we all understand the need for the tower. However, we the residents simply feel that the tower could be built elsewhere with the same results, and less of a negative impact. The tower need not be on a plot of land near to residential developments where it could generate issues such as lowering property value and health concerns. There are probably plenty of more suitable, less densely populated areas in Pleasant Acres that would be much less negatively impacted by the construction of a cell phone tower.

Testimony of Reeles Tate Ajant

I have worked in Pleasant Acres for 15 years as a local real estate agent, and as such I am familiar with the property values in this town. I believe that it is because of the plans for the construction of a cell phone tower that the property value of the houses near Mr. MacDonald's farm have dropped, and will continue to drop.

Mrs. Neyboar's neighbor's home was sold for \$720,000 before the plans for the tower were unveiled. Her other neighbor's house, whose house is comparable in size, acreage, and upkeep to the \$720,000 house, was sold for only \$660,000 after the cell phone tower plans were revealed. I have seen the same thing happen numerous times in similar towns in the state. Plans for a large project, such as this cell phone tower, would be publicized, and then many people would seek to leave the area, only to find that their property values have dropped significantly.

Trends for the county and state have been positive for the last year or so, and I know that this drop for Pleasant Acres, which is confined to the vicinity near Mr. MacDonald's farm, is certainly related to the planning of the tower. Homeowners interested in selling their houses in Pleasant Acres will find offers much lower than what most hope for, with the cell phone tower visible from the backyard. Buyers do not want to live near a cell phone tower for the same reason that the sellers do not.

The tower, whether or not it is disguised as a tree, will still be unsightly, and the health concerns pose yet another problem. Even if the cell phone waves are harmless, there is a degree of uncertainty about the issue because some experts say that they are safe while others say they are not. Concerns, whether or not they are groundless, will still cause many people to want to move away and keep prospective buyers from making higher offers. The structure makes the town an unattractive place to settle, and it is because of all these reasons that property values have already begun to drop.

Testimony of Auld MacDonald

My name is Auld MacDonald and I have been a farmer in Pleasant Acres all my life, as have generations of MacDonalds before me. Lately it has been harder to live off my farm, as crop prices have been dropping, not to mention escalating property taxes in Pleasant Acres. My harvest now fetches only half the price the same harvest did ten years ago. Over the last few years I have been forced to sell portions of my farm to developers in order to sustain myself and my family.

When I heard that LCPC was seeking to build a cell phone tower in the vicinity to provide better service to its customers, I immediately realized that I could lease them a portion of my property to provide me with some additional revenue that will allow me to keep my farm. They analyzed my property and decided that a specific corner would be perfect for optimal signal strength.

We negotiated a deal to lease a portion of my land to LCPC for the construction of the cell phone tower. The tower would be disguised as a tree in order to minimize damage to the neighborhood view. The deal would allow me to maintain my farm and earn some additional cash. This agreement is perfectly in my rights to negotiate because the town policy for agriculture, Zoning Ordinance 4-2 of Chapter 18.110, allows farmers to take steps to “encourage the preservation and retention of the land in its natural state in order to promote agricultural vitality.” Without the tower, I would have to sell my farm. Besides, the residents have been complaining of low cell phone reception for a while now. This tower fixes that problem.

The town zoning regulations on conditional uses that require permits on agricultural property (zoning ordinance §4-4 as provided in Chapter 18.110) do not include cell phone towers. I am in no way lawfully obligated to acquire a permit from the town zoning board in order to build the tower.

Furthermore, though Mrs. Neyboar has expressed some concern over whether or not the tower is over the height limit placed on U-1, H-3 districts, the ordinance itself states that certain exceptions may be made, such as “church spires, water towers, etc.” As the church spires and water towers are both structures that benefit the public and promote the general welfare, I feel that the cell phone tower too should go into the category of a building constructed for public service, thus exempting it from the 80-foot height maximum.

The lowered market values of Mrs. Neyboar's neighbor could easily have nothing to do with cell phone towers. There are too many factors to say decisively that the decrease in property value can be solely attributed to the cell phone tower plans.

In addition, the farm is my land, not my neighbors'. This farm has been in my family for genera-

tions. I have the right to place this cell phone tower on it if I so choose. The town and my neighbors cannot and should not restrict my property rights by stopping construction of this tower. It is essential to my continued residence in Pleasant Acres. I want to live here as my forefathers have. As long as I have the funds, which I will get from leasing my land for the cell phone tower, I shall. And as long as I retain the right to do what I want on my property, a right given to me by the law, the tower will be built.

Testimony of Xavier Purt

I am Xavier Purt, a representative of LCPC, the cell phone company. Recently, LCPC has been getting numerous complaints from Pleasant Acres, New Jersey, that there is low cell phone reception. As the area has transitioned from being an agricultural region to a more developed one, more people are using cellular phones. The mountainous nature of the region interferes with cell phone signals. In order to better service our customers, we have had to construct more of these towers.

When we made our need for a cell phone tower in the Pleasant Acres region public, Mr. MacDonald approached us and offered to lease a portion of his land to us. We pinpointed a certain corner on Farmer MacDonald's land that we decided would be ideal for optimal signal strength to neighboring areas, and then LCPC negotiated a deal with Mr. MacDonald to lease that corner of his farm to construct a cell phone tower. It simplified matters for us, and his terms were quite reasonable. It would not only improve the reception of Pleasant Acres, but also the surrounding area's reception as well. The reception complaints of the residents would be addressed.

The Federal Communications Commission's Telecommunications Act of 1996 says, in Section 704, that the act does not diminish the power of local and state zoning authorities except with certain limitations on zoning for cell phone towers. It expressly states that, “The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof...shall not prohibit or have the effect of prohibiting the provision of personal wireless services,” thus making sure that town zon-

ing ordinances cannot block the construction of the cell phone tower.

The people who live nearest to the site of construction, such as Mrs. Neyboar and other residents of Pleasant Acres, have been voicing concerns about the effect of cell phone radiation on their health. Cell phone towers emit only very small amounts of RFR, or radio frequency radiation, hardly enough to have a negative effect on health. LCPC's towers comply with the FCC's regulations on the maximum amount of RFR that can be emitted.

For ten years, we at LCPC have collected and analyzed data extracted from thousands of communities and have published numerous studies on this issue. Our results deny any negative effect of the cellular phone waves on humans. The FDA stated in its July 2001 Consumer Update that "[t]he scientific evidence does not show a danger to users of wireless phones, including children and teenagers." The same applies to cell phone towers.

Even the American Cancer Society says that the energy level of radio waves coming off cell towers is too low to cause any noticeable human health impacts, and that a person would have to stand right in front of an antenna to pick up even tiny amounts of radiation. Unlike X-rays or gamma rays, radio-frequency electromagnetic radiation is "non-ionizing," which means that it does not have the power to break the bonds that hold molecules (like DNA) together in cells. Our extensive data collection reinforces our already strong argument. Mrs. Neyboar and the other residents need to look at the information and hard facts that our reputable scientists have collected. We are convinced that cell phone waves pose no health threat.

Furthermore, health issues cannot stop tower plans, because the FCC Telecommunications Act's Section 704 states that: "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions." The excuse that the tower and its RFR could be damaging to the area around it and could prove

to be detrimental to residents' health is not only groundless, but, because of Section 704 of the Act, also voided, and thus cannot hamper tower construction plans.

INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that Auld MacDonald does not have the right to build a cell phone tower on his property.

SUB-ISSUES

1. Is the effect of cell phone radiation on the health of the residents a valid argument?
2. Does Mr. MacDonald have the right to negatively impact the property value of residents of Pleasant Acres?
3. Does Mr. MacDonald have the right to affect the aesthetics (view and beauty) of the residents' property?
4. Is the speculative evidence on property value provided by the residents valid?
5. Are the zoning ordinances that block the cell phone tower plans valid despite the FCC Telecommunications Act, Section 704?
6. Is the cell phone tower considered a structure built to provide for the common welfare?
7. Should the cell phone tower be placed elsewhere, in a more "suitable" location that causes less inconvenience?

CONCEPTS

1. Personal property rights.
2. Burden of proof: preponderance of the evidence.
3. Credibility of witnesses.
4. Speculatory evidence vs. direct evidence.

LAW

1. *Village of Euclid, Ohio v. Ambler Realty Company* (Justice Sutherland: Court Majority Opinion)

Relevant passage: “What would be the effect of a restraint imposed by one or more of the innumerable provisions of the ordinance, considered apart, upon the value or marketability of the lands, is neither disclosed by the bill nor by the evidence, and we are afforded no basis, apart from mere speculation, upon which to rest a conclusion that it or they would have any appreciable effect upon those matters.”

2. Pleasant Acres’ zoning ordinance (based on Euclid’s case 272 U.S. 365, 381). Description taken from Supreme Court case summary of *Village of Euclid v. Ambler Realty Company*

Relevant passages: “The entire area of the village is divided by the ordinance into six classes of use districts, denominated U-1 to U-6, inclusive; three classes of height districts, denominated H-1 to H-3, inclusive; and four classes of area districts, denominated A-1 to A-4, inclusive....U-1 is restricted to single family dwellings, public parks, water towers and reservoirs, suburban and interurban electric railway passenger stations and rights of way, farming, non-commercial greenhouse nurseries, and truck gardening...

Class U-1 is the only district in which buildings are restricted to those enumerated...In addition to the enumerated uses, the ordinance provides for accessory uses; that is, for uses customarily incident to the principal use, such as private garages. Many regulations are provided in respect of such accessory uses.

The height districts are classified as follows: In class H-1, buildings are limited to a height of 2 1/2 stories, or 35 feet; in class H- 2, to 4 stories, or 50 feet; in class H-3, to 80 feet. To all of these, certain exceptions are made, as in the case of church spires, water tanks, etc.”

3. Agricultural Zoning Regulations for Pleasant Acres (Based on Santa Clara, California). The following conditional uses may be established only by first securing a use permit in each case as provided in Chapter 18.110 SCCC.

- (a) Agricultural processing plants.
- (b) Cattle feed yards.
- (c) Farm-labor camps.
- (d) Frog farms.

- (e) Golf course (except driving tee or range, miniature course, and similar uses operated for commercial purposes).
- (f) Hog farms.
- (g) Stands for the sale of produce raised on the premise.

(Zoning Ord. § 4-4)

18.08.020 Intent

To provide for the protection of existing agricultural lands, to encourage the preservation and the retention of the land in its natural state to promote agricultural vitality, and to provide an interim zoning for lands newly annexed to the City. (Zoning Ord. § 4-2).

4. FCC Telecommunications Act of 1996 Section 704

(7) Preservation of Local Zoning Authority

(A) General Authority- Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof:
 - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
- (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

- (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
- (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

BIBLIOGRAPHY

http://www.cancer.org/docroot/PED/content/PED_1_3X_Cellular_Phone_Towers.asp?sitearea=WHO

<http://www.mountshastaecology.org/17other01cellphones.html>

<http://www.codepublishing.com/ca/santaclara/frameless/code.pl?cite=8>

<http://www.dentalplans.com/articles/30106/>

<http://www.fda.gov/cellphones/qa.html>

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=272&invol=365>

The Naked Truth

SCHOOL

Ventnor Middle
Ventnor City
Grade 8, Honorable Mention

TEACHERS

Rita T. Ritzel, Nancy B. Swartz

STUDENTS

George Djambinov, Bryan Duffy, Eric Gerner,
Dominic Marinucci, Melanie Stein, J.J. Walker

This exercise was created by children and is 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.

FACTS

Eta Lambda, a fraternity on the Butgers University campus, was pledging a group of potential fraternity members. The pledges were asked to do many silly and mischievous pranks. As a final task for admission to Eta Lambda, the pledges were asked to streak onto the football field on the opening day of the season while the game was in play.

Eight pledges ran out onto the field while the Alaskan University Bullworms team was attempting a field goal. The field goal was missed due to a distraction created by the streakers. As a result, the Bullworms lost the game to the Butgers Amoebas.

Campus police arrested all but one of the streakers. The last streaker, Seymour Butt, continued to run all around the field. The players from both teams were annoyed that the play had been stopped and began to chase him.

One of the linebackers, Bonsvaldo Strongo, from the Bullworms was particularly annoyed since the team had missed their field goal. He tackled Seymour hard. Campus police handcuffed Seymour and escorted him off the field. They roughly put him in the police car, banging his head. His parents were called to bail him out and they took him home for the night.

Seymour slipped into a coma and died that night. The cause of death was head trauma, but it was undetermined whether it was caused by the tackling or the banging of his head on the police car. Seymour Butt's parents are suing Butgers University, Alaskan University, the NCFL, Eta Lambda, and Bonsvaldo Strongo for the wrongful death of their son.

ISSUE

Who is responsible for the wrongful death of Seymour Butt?

WITNESSES

For the Plaintiff

Sheena Butt
Cris Cross

For the Defense

Willie Restue
Bonsvaldo Strongo

WITNESS STATEMENTS

Testimony of Sheena Butt

I'm Seymour's mother, Sheena Butt. When I picked up Seymour from the police department, he just wasn't himself. He repeatedly told me he had sharp pains in his head. He also wasn't walking like he normally would; he was kind of swaying side to side. I drove home quicker than usual because I knew something was wrong. I gave him some Anvil to relieve some of his pains. I also gave him some ice to hold against his head.

It was about 7 p.m. when he said he wasn't hungry and he wanted to go to bed. I led him up to his room and he still looked a little woozy. He fell asleep very fast. Around 9:30 p.m. I thought I heard him groaning but when I went in to check on him he was still asleep.

Later, when I went into his room, he didn't move and he wasn't breathing. My husband Harry and I are devastated. Seymour was such a wonderful son. I don't see how anyone could not realize the waste of a life with such potential for greatness. The college should not allow such pointless pranks, and all of the others responsible for my son's death should be ashamed.

Testimony of Cris Cross

My name is Cris Cross. Seymour and I were both pledging Eta Lambda Fraternity. We were told that we had to streak across the football field on opening day as part of our initiation. If we refused, then we wouldn't be allowed in the fraternity. It was just supposed to be a silly prank, but it got way out of control.

The six other pledges and I were caught by campus security within a minute of running onto the field, but Seymour was way too fast and they couldn't catch him. While I was being handcuffed, I could see the players from both football teams chasing him along with the campus security.

It was a pretty funny sight, until Bonsvaldo Strongo tackled him. He hit Seymour so hard that he had whiplash and his head slammed onto the hard turf. When he got up, I swear that I could see an impression where Seymour's head had landed. At first, he was just lying on the field.

Two campus security officers ran over, and picked him up and handcuffed him. It looked like they were just dragging him over to the police car, where I had already been escorted. Seymour looked dazed and confused. The campus police were so rough putting him in the car that his head hit the door frame with a loud "thump."

Testimony of Willie Restue

I am the captain of the Campus Police. This isn't the first time we've had streakers on the field. So our men knew how to properly handle a situation like this one. When the eight streakers ran out on the field, we called for code lavender, which means breaking of the rules during a major sports event, which would call for backup.

Our men successfully apprehended seven of the streakers. The last streaker was pretty fast, and our men could not keep up with him. Eventually, one of the football players tackled him and he went to the ground. We quickly handcuffed him and rushed him to the police car.

It was already a huge scene, and we wanted it over as soon as possible. One of the campus officers escorted the naked Mr. Butt to the police car. Mr. Butt struggled so I pushed him into the car, while Mr. Butt lifted his head and hit the car door frame. We drove him to the station and kept him there until his parents bailed him out.

Testimony of Bonsvaldo Strongo

My name is Bonsvaldo Strongo. I am exchange student from Russia. I am strong like bull. American football is new to me. I play good football game. I like play it; it make father proud.

We were down by two and must stop other team from blocking our field goal. All was ready. I see our kicker about to kick ball through posts. But then my eyes see eight imbeciles in nude run onto field.

Those fools ruin beautiful play. Ball does not go in posts! I must end this. I tackle final nude runner with force and laugh when officers bring him to car. He seemed perfect normal and right in head. But I do not think that police should have slammed his head on car. I do believe that police caused nude runner's death, not me.

INSTRUCTIONS

Plaintiff must prove by a preponderance of the evidence that Alaskan University, the NCFL, Rutgers University, Eta Lambda, and /or Bonsvaldo Strongo's actions were unnecessary and resulted in the wrongful death of Seymour Butt.

SUB-ISSUES

1. Is Eta Lambda Fraternity responsible for putting pressure on its pledges?
2. Did Bonsvaldo Strongo tackle Seymour Butt with the intent of causing serious bodily harm?
3. Did the campus police officer use excessive force on Seymour Butt?
4. Should Seymour's parents, Mr. and Mrs. Butt, have taken their son to the hospital for further evaluation?

CONCEPTS

1. Credibility of witnesses.
2. Negligence.
3. Liability.
4. Preponderance of the evidence.

LAWS

1. **Hazing** - 2C:40-3. Hazing; aggravated hazing
 - a. A person is guilty of hazing, a disorderly person's offense, if, in connection with initiation of applicants to or members of a student or fraternal organization, he knowingly or recklessly organizes, promotes, facilitates or engages in any conduct, other than competitive athletic events, which places or may place another person in danger of bodily injury.
 - b. A person is guilty of aggravated hazing, a crime of the fourth degree, if he commits an act prohibited in subsection a. which results in serious bodily injury to another person.
2. **Excessive Force** - 2C:3-9. Mistake of law as to unlawfulness of force or legality of arrest; reckless or negligent use of excessive but otherwise justifiable force; reckless or negligent injury or risk of injury to innocent persons.
3. **Liability** - Those responsible for the death of a civilian are liable for damages relating to that person's death.

BIBLIOGRAPHY

<http://stophazing.org>

<http://lis.njleg.state.nj.us>

A BLUELOZER

SCHOOL

Burnet Middle
Union
Grade 8, Honorable Mention

TEACHER

Barbara E. Grillo

STUDENTS

Jasmin Bayla, Diana Carvalho, Francela Chacon,
Christina Dziedzic, Leah Estillero, Devon Gallucci,
Natalia Glowinska, Julia Hodczak, Christine Ma,
Joel Maruthanal, Alvin Mathew, Jovan Oliver,
Motolani Oyetunde, Sarah Pascual, Riddhi Patel,
Michelle Roache, Christopher Sousa, Ogechi Umejei

FACTS

On November 3, 2007, there was a soccer game between the LA Lozers and the NY Blue Cows. The Blue Cows were winning 1-0 when the Lozers were awarded a penalty kick in the 39th minute. David Mistit took the penalty shot but missed the goal all together. Shortly afterwards, Zach Mintos put up a sign that read, "If Lozers lose this game, Mistit should be shot!" The stadium officials quickly got complaints from the crowd about Zach. The officials asked Zach to stop and when he refused, they kicked him out. Zach then took them to court.

ISSUE

Is holding up a sign that someone should be shot, protected by freedom of speech?

WITNESSES

For the Plaintiff

Zach Mintos
Fanny Fanwell

For the Defense

Paul Mercury
David Mistit

WITNESS STATEMENTS

Testimony of Zach Mintos

On November 3, 2007, I attended the soccer game between the LA Lozers and the NY Blue Cows. I attended the game because I am a LA Lozers' fan. The game was very close, even when the Blue Cows scored a goal. I was excited when the Lozers were awarded a penalty kick. It was our chance to come back.

When David Mistit took the penalty kick and missed the goal all together, I was furious. I expressed my beliefs and feelings with a sign. I wrote: "If the Lozers lose this game, Mistit should be shot!" I just put up the sign to express myself. I never said that I was going to shoot him.



The security in the stadium asked me to put the sign away. I told them that I was expressing my beliefs and I would not put the sign down for any reason. I have freedom of speech and it's guaranteed in the First Amendment. They kicked me out of the stadium. I missed half of the soccer game, which I paid to watch. Worst of all, though, I was denied my civil rights!

Testimony of Fanny Fanwell

I was in the crowd that day. There was nothing wrong with Zach expressing his thoughts and feelings. I am a big fan of the LA Lozers too and I was disappointed as well. He could hold up the sign because freedom of speech is protected in the First Amendment.

Everyone knows that Zach was not serious. He would not have actually shot David Mistit. If he had a gun, it would be a different story. Since he did not, he was not threatening David Mistit. In fact, security kicked Zach Mintos out for no reason and violated his civil rights.

Testimony of Paul Mercury

I was head of security in the match of LA Lozers v. NY Blue Cows on November 3, 2007. It was a close match with much excitement and enjoyment. The stadium got tense as David Mistit missed a penalty kick.

At first I thought it was normal, but then I started to get complaints from the crowd. They told me they felt uncomfortable and scared. It was my duty to protect the fans so I went to investigate the problem. I saw that Zach Mintos was holding up an inappropriate sign. For the well-being of the crowd, I asked Zach to put down his sign. After he refused, I kicked him out of the stadium.

Testimony of David Mistit

On November 3, 2007 there was a soccer game between my team, the LA Lozers, and the NY Blue Cows. I had taken a penalty shot for my team and missed the goal. Shortly afterwards I looked at the

crowd and saw a sign that frightened me. It read "If Lozers lose this game, Mistit should be shot!" This sign made me think that someone might shoot me if my team lost the game. In my opinion, it was a threatening sign. I thought I was in danger.

When the officials told Zach Mintos, the person who made the horrible sign, to leave, I felt a bit more relieved. I did not feel that I was in as much danger as if he were still there. That sign did frighten me nonetheless, whether he remained there or not.

INSTRUCTIONS

Zach Mintos must prove by a preponderance of the evidence that his civil rights were violated.

SUB-ISSUES

1. Was Zach Mintos' behavior acceptable in a public arena?
2. Was the threat credible?

CONCEPTS

1. What is the credibility of the witnesses?
2. Preponderance of the evidence.

LAW

First Amendment of the U.S. Constitution – Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Tourette Trouble

SCHOOL

St. Mary's Regional
Vineland
Grade 8, Honorable Mention

TEACHER

Mari DiOrio

STUDENTS

Jessica Bertonazzi, Kristin Blank, Larissa Ciancaglini,
Lauren D'Ottavio, Stephanie Druziako, Jimmy Ianni,
Alyssa Maurice, Michael Mazzochi, Frank Oertle,
Nicole Puesi, Marissa Raineer, Dominic Reale,
Jessica Talarico

This exercise was created by children and is 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.

FACTS

On August 8, 2007 Timothy Tickman attended a baseball game at Citizens Bank Park in Philadelphia, Pennsylvania with his friends, Matt and Danny, and his brother Thomas. It was his 21st birthday, and to celebrate he was going to watch the Phillies play the New York Mets.

Timothy Tickman had been diagnosed with Tourette syndrome at the age of seven and his case was considered severe. Tourette syndrome is a disease that causes its victims to involuntarily say and do inappropriate things. He also suffers from Attention Deficit Hyperactivity Disorder (ADHD) which is common for Tourette patients. During his childhood, Timothy was afflicted with both verbal and movement tics because of his disease.

At the same game, Phyllis Fan and her son Billy were also in attendance. Timothy's behavior was considered "unacceptable," according to Phyllis and her son who were seated in the row directly in front of Timothy. Phyllis claims several times she asked Timothy nicely if he could calm down and stay seated but he ignored the requests. Instead he continued to use foul language and move around during the game. Phyllis also claims that Timothy spilled beer on her and her son. Phyllis reported the

incident to park authorities. The State has charged Timothy with the crime of indecent behavior in a public place.

ISSUE

Did Timothy Tickman intentionally and willfully display inappropriate or indecent behavior at Citizens Bank Park on August 8, 2007?

WITNESSES

For the Prosecution

Phyllis Fan
Dr. Phillip Onjustice

For the Defense

Father Thomas Tickman
Dr. Hector Ettes

WITNESS STATEMENTS

Testimony of Phyllis Fan

On August 8, 2007 my son Billy and I were trying to enjoy a Phillies baseball game at Citizens Bank Park in Philadelphia, Pennsylvania. A young man seated behind me began yelling out inappropriate language throughout the whole game. My son overheard these words, began to question the meaning of these words, and kept repeating them.

In the middle of all of this, the young man spilled his beer on both my son and me. He seemed a little shaky on his feet and reeked of beer. I immediately notified the closest park attendant of the young man's behavior after seeing a sign that said:

"Whoever intentionally and willfully uses profane and vulgar language, insulting remarks or comments, and rude or offensive behavior in a public place is guilty of a misdemeanor and will be sentenced to imprisonment for not more than five days or payment of a fine of not more than \$200, or both."

Regardless of what happened after that, our day at the park was ruined. The best that we could hope for was that justice would be done. We filed a private criminal complaint against the young man and look forward to our day in court.

Testimony of Dr. Phillip Onjustice

I have been a specialist in Tourette syndrome for over thirty years. I graduated from Villanova University with a bachelor of science degree in Neurosciences and I am a doctor. Tourette syndrome is a neurological disease and can be controlled by medication. An individual with Tourette should not be drinking alcohol. According to studies, the symptoms can be worsened with the consumption of alcohol, which in turn could lead to uncalled for outbreaks or episodes.

Timothy Tickman should know by now, after ten years of taking the same medication, that he should not have consumed alcohol with his condition, let alone with his medication. He also should have known that combining his medication with alcohol could lead to a more severe outbreak of Tourette.

Testimony of Father Thomas Tickman

My name is Reverend Thomas Tickman. I have been an ordained priest for the last five years. I am 32 years old and Timothy Tickman is my younger brother. I attended the game with Timmy, and as a devout follower of Christ I can honestly say what happened that day.

I was seated next to my brother, who suffers from Tourette syndrome. Throughout the game he did suffer from spontaneous outbursts. Those verbal tics caused him to say inappropriate things around Mrs. Fan and her son. About halfway through the game, Timmy went to go get alcoholic beverages for his two friends. He did not drink one himself because he knew it would affect his medication and cause his tics to be more frequent.

He was constantly passing alcoholic beverages from the concessionaire to others in our row and that is when the spill occurred. Timmy was passing a drink down and he accidentally spilled it on Mrs. Fan, who was sitting right in front of him. This very well could have been because of a movement tic. I can honestly say as a priest, Timmy never did anything that could affect his medication along with his behavior. Overall, everything that occurred at the Phillies game was beyond my brother's control.

Testimony of Dr. Hector Ettes

My name is Hector Ettes, M.D. I am 49 years old and have been working in the medical field for over 20 years. I have a degree from John Hopkins Medical School and received a Ph.D. in Neuroscience.

Timothy's parents brought him to me when he was seven years old. After a battery of tests, I diagnosed him with Tourette syndrome. He has suffered from both movement tics and verbal tics. Although there is no medication that efficiently treats and stops tics from occurring, I prescribed medicine for Timothy to make the tics less frequent.

Timothy has been taking Tourettacontrol™ for ten years now. He is well aware of the side effects that may occur when combining alcohol with his medication. Timothy understands that he cannot drink alcoholic beverages. Based on experiences with Timothy and other Tourette syndrome patients, and knowing the aggravation and suffering that goes along with Tourette tics, I highly doubt Timothy would want to bring on an outburst by drinking.

LAW

Whoever intentionally and willfully uses profane and vulgar language, insulting remarks or comments, and rude or offensive behavior in a public place is guilty of a misdemeanor and will be sentenced to imprisonment for not more than five days or payment of a fine of not more than \$200, or both.

INSTRUCTIONS

The prosecution must prove beyond a reasonable doubt that Timothy Tickman intentionally and willfully used profane and/or vulgar language, insulting remarks or comments, and rude or offensive behavior in a public place. Additionally, the prosecution must prove that, despite warnings from his personal physician, Timothy Tickman consumed alcohol on the day in question, thereby aggravating the severity of his Tourette outbreak.

SUB-ISSUES

1. Was Timmy's behavior intentional?
2. Was Timothy Tickman drinking alcohol with his medication?
3. Was Timothy aware that he yelled indecencies?
4. Did Billy learn to say obscenities from the game or did he learn them from someone else?
5. Does being a priest make a witness more reliable?

CONCEPTS

1. Circumstantial evidence vs. direct proof.
2. Credibility of witnesses.
3. Burden of proof – beyond a reasonable doubt.
4. Disability excuse – involuntary conduct.

Picking the Pockets of Johnny Docket's

SCHOOL

Jefferson Township Middle
Oak Ridge
Grade 8, Honorable Mention

TEACHER

Kathleen D'Ambrosio

STUDENTS

Daniel Cassara, Stephen Cuccio, Sean Grealy,
Rosie Lynch, Brittany Miller, Shannon Muller,
Joseph Paterno, Jennifer Wendt, Daniel Whitehead,
Callie Wycha

FACTS

Johnny Docket's and Slip 'N Sip are restaurants located on Hard Break Court. Johnny Docket's owns a floating dock on Lake Gavel and pays taxes for the dock. The property belonging to Slip 'N Sip does not include a floating dock, just parking for cars outside the business. Johnny Docket's posts a sign in clear sight of all boats approaching that reads "Docking for Johnny Docket's Customers Only." The owner of Slip 'N Sip has been telling its customers for years that it is okay to dock their boat on one of the boat slips that is owned by Johnny Docket's.

One day, Miss D'Boat and R. U. Drowning wanted to get some ice cream from Slip 'N Sip. They took R.U. Drowning's boat, the Fallen Maiden, out on Lake Gavel to get the ice cream. It rained the night before and the docks were wet. Miss D'Boat and R.U. Drowning pulled the Fallen Maiden up to the slip that belongs to Johnny Docket's.

After having their treats, they walked back out to their boat. As they were getting back into the boat, Miss D'Boat fell off the dock and broke her knee. At the same moment, Mr. Ben Eaton, a regular customer of Johnny Docket's, was docking his boat in the same area. R. U. Drowning yelled to Mr. Eaton for help. The owner of Johnny Docket's, Y. Mee, and the owner of Slip 'N Sip, Doc A. Buser, also came out to help. They helped Miss D'Boat inside and called an ambulance. Before she got into the ambulance, Miss D'Boat and R. U. Drowning threatened to sue Mr. and Mrs. Y. Mee.

ISSUE

Is Johnny Docket's responsible for Miss D'Boat's injury?

WITNESSES

For the Plaintiff

Miss D'Boat

Doc A. Buser

For the Defense

Ben Eaton

Y. Mee

WITNESS STATEMENTS

Testimony of Miss D'Boat

I have lived in this town, Baddock Falls, for ten years. The owner of Slip 'N Sip, Doc A. Buser, for years told me to dock my boat at the slip that is opposite his business. I thought it was alright, because I didn't think Y. Mee would care. I've seen many boats park at these docks and the people go into Slip 'N Sip.

On Friday evening, July 13 my friend R.U. Drowning docked his boat at the same slip we have used for years. It is located in front of Slip 'N Sip. We went inside to have some ice cream.

On our return, as I got into the boat, I slipped between the dock and the boat. I went to grab the side of the post on the dock and my hand slipped because it was wet. I fell back against the dock. I landed on my knee and not only did I feel it, but I heard it pop. I was very upset. I could not put pressure on my leg; there was too much pain.

When R. U. Drowning, Ben Eaton, and Y. Mee came to help me up and brought me inside to Johnny Docket's, R.U. Drowning and I agreed to sue Y. Mee for not managing his docks correctly.

Testimony of Doc A. Buser

My name is Doc A. Buser. I have been the owner of Slip 'N Sip for the last 15 years. My customers have been using the slips on those docks for years. It is just within the last year that Johnny Docket's put up the sign.

They are new owners! When Mr. and Mrs. Y. Mee first bought the business next door, they asked me a lot of questions. I helped them with whatever they needed. I even helped them set up a new "Grand Opening" sign for their business. They opened in May.

I had encouraged customers to use the docks because the previous owner of Johnny Docket's allowed my customers to use their slips. I noticed that when I went down to the dock to help Miss D'Boat, the boards were a bit slippery, probably from the

rain the night before. Miss D'Boat was in awful pain. I felt so sorry for her. Y. Mee should take better care of his docks, to insure the safety of his customers. If they were maintained meticulously, this injury could have been avoided.

Testimony of Ben Eaton

My name is Ben Eaton. I am a regular customer at Johnny Docket's. I moved to this town before Y. Mee was the owner. On Friday, July 13, I went to Johnny Docket's for dinner. I was just pulling up to the docks when I saw Miss D'Boat fall. I rushed over to help her. Y. Mee and R. U. Drowning helped me bring her inside.

I heard Miss D'Boat and R.U. Drowning talking about suing. I don't think that Y. Mee should pay one cent because he checks the docks regularly. Since Miss D'Boat slipped on her way back from getting ice cream, she must have known that the docks were slippery and should have been more careful since it rained the night before. Also, it was all her fault because she was clumsy and she was trespassing.

Testimony of Y. Mee

My name is Y. Mee and I recently bought the restaurant Johnny Docket's, located on Lake Gavel. Besides parking for cars, this property also has a dock located across the walkway right on the lake. I have told Doc A. Buser that his customers are not allowed to dock their boats on my property. I went so



far as to pay for and post a sign that reads, “Docking for Johnny Docket’s Customers Only.”

On Friday, July 13, I was talking to a customer, when I heard a scream. I ran out to see Miss D’Boat in the water, with Ben Eaton, Doc A. Buser and R. U. Drowning trying to get her out. I ran over to help and we brought her inside.

After we called an ambulance, Miss D’Boat and R. U. told me that they were going to sue. I argued that they ignored the sign. I purchased and acquired the proper permits from the town of Baddock Falls to post the sign. The paperwork went through the state certification process as well. The sign said, “Docking for Johnny Docket’s Only”! They did not listen to me and are trying to sue anyway.

INSTRUCTIONS

The plaintiff must present a convincing case against Johnny Docket’s that the jury believes there is a preponderance of evidence that Johnny Docket’s is responsible for the injury that Miss D’Boat incurred.

SUB-ISSUES

1. Does Doc A. Buser, owner of Slip ’N Sip, have the right to tell his customers they can dock their boats on property owned by Johnny Docket’s?
2. Is Doc A. Buser, owner of Slip ’N Sip, liable since he told his customers they could dock their boat on Johnny Docket’s property?
3. Should Y. Mee have taken further action to prevent his docks from being used by the customers of Slip ’N Sip?
4. Did Y. Mee neglect his obligation to maintain safe docks for his customers?
5. Was it Miss D’Boat’s lack of coordination and own fault that caused her to fall getting into the boat?
6. Was Miss D’Boat on the dock or on the boat at the time of the fall?
7. Since Miss D’Boat and R.U. Drowning were trespassing, who is liable?

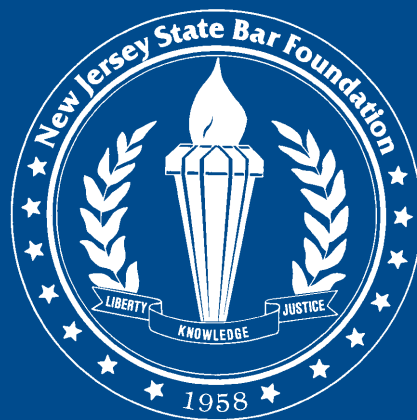
CONCEPTS

1. Credibility of witnesses.
2. Preponderance of evidence.
3. Trespassing and property laws.
4. Insurance, liability and injury.
5. Intentional and negligent torts.
6. Business invitee vs. trespasser.

LAWS

1. Property owners are responsible for injuries that occur as a result of a dangerous or hazardous condition on their property, which the owner knew about, or should have known about.
2. Trespassing is a private nuisance and may be defined as an “unreasonable interference” with the use or enjoyment of the owner or possessor’s use or enjoyment of a property interest.

Note: The laws of nuisance and of trespass distinguish between “continuing” and “permanent” nuisance and trespass. A nuisance or trespass is “continuing” (or “temporary”) if it could be discontinued or abated at any time, such as an industrial activity that causes airborne pollution.



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