

A close-up, diagonal view of the American flag, showing the blue field with white stars and the red and white stripes. The flag is draped and folded, creating a sense of movement and texture.

# MOCK TRIAL EXERCISES

## FOR GRADES 3–6

Featuring winning cases from the  
New Jersey State Bar Foundation's  
Law Fair 2016 Competition



# PREFACE

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

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

Following are the winning students' cases from the Law Fair 2016 Competition. They may be used as a guide to prepare a submission to the Law Fair Competition or as a classroom exercise. Please note that some of the cases may contain "laws" created by the students for the purposes of this competition, which may not necessarily be actual laws. Since these mock trials were written by children, the content should not be considered technically accurate.

These exercises were created by children and are intended for school use only. Any resemblances to characters, names, events and

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

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

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

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

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

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

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# THE CASE OF THE COOKING CATASTROPHE

## THE SIZZLE FAMILY V. THE HIBACHI STEAK HOUSE

### SCHOOL

Mill Lake  
Monroe Township  
Grade 3, First Place

### TEACHER

Bethanne Augsbach

### STUDENTS

Matthew Bassily  
Logan Fotiadis  
Katilyn McGuire  
Alexa Paff  
Joey Seylaz  
Manika Vaidya  
Christian Vega  
Justin Windrem

### FACTS

On Friday, January 15, 2015, Sally Sizzle was going to celebrate her 8th birthday at Hibachi Steak House. Her parents, two elderly grandparents, three siblings and four of her friends were on their way to the hibachi restaurant for dinner. They were laughing and talking while sitting in traffic. They were in the car for about 45 minutes.

They arrived at the restaurant at 6:15 p.m., 15 minutes late due to the traffic. Their reservation had been given away to another party and now they had to wait an additional half hour for a table to become available. The kids were getting restless and bored when they spotted a koi fish pond in the corner of the waiting room. There was a sign over the window that said: "Please do not throw objects into the pond." Upon seeing coins in the pond, Sally started making birthday wishes while tossing coins in the pond. Her friends then joined in on the action. The manager came over and asked Sally and her friends to stop.

The children then noticed the jar of complimentary peppermints on the hostess stand. Each child took a few peppermints. Thirty minutes later, they were directed to a room that contained two hibachi tables. The tables had a large grill in the center where the chef prepared the food. The grill was encased in a foot and a half wide counter top. The customers sat on the outside facing the grill. The Sizzles' group sat with one adult between every other child, with Sally in the center. The family could feel the heat from the grill while they were waiting for the server to take their order.

The server came over and took their drink orders. Approximately 10 minutes later they received their drinks. The waiter then began to take their appetizer and dinner orders. The restaurant was crowded so they had to wait about 20 minutes until the chef, Terry Aki, was done cooking for the other table. At this time, the chef arrived with a cart loaded with the necessary supplies needed for their meals.

Once the chef was ready, he invited Sally to stand beside him since it was her birthday. She was excited and said, “Sure, yippy!” The chef began by drawing a smiley face in oil on the grill. The oil heated up and started to pop and sizzle, amusing the children. Once the hot oil cooled and fizzled out, the chef placed Sally’s hand on his hand and then made a second smiley face on the grill. Next, the chef lit the smiley face on fire which entertained the party!

Sally then tried to imitate Terry Aki, by grabbing the oil and squeezing it on the grill just like the chef did. More than four tablespoons of oil flowed onto the grill directly in front of Sally and the chef. The oil began to pop and sizzle, splattering onto Sally’s arm and right hand. Sally screamed as the hot oil scorched her. Her parents jumped up and went over to help while the grandparents comforted the frightened children. Her parents asked for a first-aid kit, but the chef said he did not have one on his cart. The manager of the hibachi restaurant called 911.

The paramedics came and performed first-aid procedures. The ambulance then took the girl to the ER for further treatment.

At the hospital, the doctor diagnosed Sally with second and third degree burns on her

right hand and arm. The resulting injury would take approximately a year to fully heal. Sally needed surgery for a minor skin graft.

Sally Sizzle and her family are suing the Hibachi Steak House for \$750,000 for medical expenses and all related costs, pain and suffering, physical therapy and tutoring expenses.

## ISSUE

Is Hibachi Steak House liable for Sally Sizzle’s injuries due to their negligence for not providing a high degree of care, protection and safety for the customers?

## WITNESSES

### FOR THE PLAINTIFF

Mary Sizzle  
Jeff Watchit

### FOR THE DEFENSE

Hugh Bachi  
Terry Aki

## WITNESS STATEMENTS

### TESTIMONY OF MARY SIZZLE

My name is Mary Sizzle and I am Sally Sizzle’s mother. As a result of heavy traffic due to an accident on the highway leading to the Hibachi Steak House, our 6 p.m. reservation was unfairly given away just because we arrived 15 minutes late. The hostess abruptly told us that we would have to wait an additional 30 minutes for the next available table.

The children were very excited to celebrate my daughter’s birthday and were disappointed when we were told that we had to wait. While



we waited, the children came across the koi fish pond in the corner of the dreary waiting room. We all noticed coins covering the bottom of the cluttered pond. My daughter joyfully began tossing pennies in the pond, making her birthday wishes. Two of her friends joined her in gently tossing coins in the pond.

Suddenly, the manager stormed over and pointed out an old faded sign posted high above the window, which was impossible to see. Nobody knew it was there but the manager. The sign stated the one rule of the koi pond, which was do not throw objects into the pond. It didn't say no coins, and there were already coins in the pond, so how were we supposed to know not to throw coins?

The manager, Hugh Bachi, was rude and disrespectful and hurt the children's feelings. The children apologized politely, but the manager just stomped away. Why would the children ever think it was against the rules to toss pennies in the pond when the bottom was clearly covered with countless coins?

We had been waiting for approximately 20 more long minutes when the children noticed a bowl of complimentary peppermints on the hostess stand. Sally and her friends each took a couple of candy mints to satisfy their growing hunger. Again, the vulgar, angry manager rushed over to shriek at the children. The peppermints were there for the guests to take freely. It seemed to me that the manager just wanted to harass us.

When we were finally seated 10 minutes later, we had a parent sit near each child to supervise and to make sure that no child touched the grill. Once we were settled, we needed to wait an additional 30 minutes for

the chef to arrive. Considering how long we were waiting, Sally and the other children were amazingly patient. We were all starving by the time the chef, Terry Aki, asked, "Who is the birthday girl?" Sally happily raised her hand and smiled. The chef then invited my daughter to cook with him and said it was the restaurant's special birthday tradition. She calmly walked around the table to join him.

Terry Aki entertained us by performing tricks with his utensils. He then made a smiley face on the grill with the oil which he then lit on fire. This astonished the children and made them laugh! Next, the chef guided my daughter's hand, on the oil container, letting go as they made another smiley face on the grill. I was shocked that Terry Aki let go of my daughter's hand, allowing her to finish the smile on her own. He then put the oil bottle down and never told my daughter not to touch it or warned her that it could cause severe injuries.

My daughter assumed that since the chef put the bottle down, it was her turn to imitate him and amaze her friends by making a smiley face without any help. After she squeezed the cheap plastic container, the oil quickly gushed out. The oil erupted like a volcano and burned my poor daughter's right arm and hand horribly.

I was petrified watching as my daughter screamed in agony. I ran to my daughter's side and saw her hand turn red instantly while blisters popped up covering her hand and arm. We immediately asked the chef to grab the first-aid kit but he didn't know where to find one. Restaurants are required by law to have first-aid kits. This restaurant clearly violates the law and is poorly managed. The manager, Hugh Bachi, finally strolled in and called 911.

In my opinion, the restaurant should have had protective gear such as oven mitts, and splash guards, if their tradition is to ask young children, like my well-behaved daughter, behind the grill. I assumed he would have her toss out the raw vegetables that we could catch in our mouths. If I knew hot oil was involved, I would never have let Sally go behind the grill in the first place. Terry Aki knew full well that the grill was scorching hot and dangerous. He should never have asked Sally to help him with the oil. It was the chef's responsibility to warn and prevent Sally from touching anything on the cart, especially the oil. Obviously the oil squirts out quickly and causes severe injuries.

Sally suffered second and third degree burns on her right hand and arm and needed surgery for a minor skin graft that took a full year to heal. Manager Hugh Bachi, and the chef Terry Aki, were undoubtedly negligent; therefore, the Hibachi Steak House should be held liable for Sally's injuries. They failed in their duty to keep Sally safe because they did not have or follow proper safety procedures. They should get rid of their awful tradition!

#### **TESTIMONY OF JEFF WATCHIT**

My name is Jeff Watchit. I went to the Hibachi Steak House with my wife, Natalie Watchit, on the evening of Friday, January 15, 2015. Terry Aki had just finished cooking the meal for us when he moved over to the next table. I overheard the chef invite a girl, who was celebrating her birthday, over to help him cook. I thought it might be interesting and entertaining to observe the celebration. I watched as the family clapped and cheered when the chef guided Sally's hand in putting oil on the grill, creating a smiley face. I thought to myself, it was rather risky to have a child that young behind the grill.

I never heard the chef tell the girl not to touch anything on the cooking cart or the grill. I couldn't yell out fast enough as I saw Sally pick up the oil and squirt it onto the grill. I was not surprised to see the oil flood out and splatter out of control because it was in a cheap plastic squirt bottle, probably from a dollar store. The chef never did a single thing to stop her. The poor child started shrieking and crying in excruciating pain.

Her parents instantaneously ran beside her and asked the chef if he had a first-aid kit. I could not believe it when I heard that he did not have one handy. The manager entered the room with his cell phone in his hand and called 911. The young girl was still crying in pain, clearly in agony!

After witnessing this incident, I will never allow a family member of mine to go behind a hazardous grill in this hibachi restaurant. This incident could have been prevented if the chef, Terry Aki, had been in control of his grill, his supplies and the cooking area. He should not have asked the child behind the grill and absolutely should not have left anything within the reach of a child.

## TESTIMONY OF HUGH BACHI

My name is Hugh Bachi and I am the owner and manager of the Hibachi Steak House. On the evening of January 15, 2015, at 6:15 p.m., the Sizzle party entered the restaurant tardy for their 6 p.m. reservation. Their awful children were misbehaving from the very beginning. For example, Sally, the birthday girl, began throwing coins in the koi pond even though there is a sign clearly stating for patrons not to do so. I walked over to the children and very politely asked them to stop. They whined and complained when they couldn't have their way. I had to speak to them several times as they kept tossing coins in the pond, while their parents did nothing to stop them. The parents were irresponsible, they should never have given the children coins to throw into the koi pond in the first place.

Next, they spotted the jar of free peppermints on the hostess stand, meant for customers to take when they exit. The children grabbed handfuls of the peppermints and started gobbling them up. The excessive sugar sure made them hyper. They were wild, running around disturbing our customers! The parents were too preoccupied with their cell phones to take notice of the kids greedily grabbing up almost the entire jar of peppermints.

Shortly after wolfing down most of the peppermints, the hostess seated the Sizzle party at their table. It is my understanding that beverage and drink orders were taken in a timely manner. Our restaurant has a well-known tradition of inviting folks celebrating their birthdays to assist in making a happy face on the grill. In my 20 years of owning this restaurant, no one has ever gotten hurt while at the grill. All of our chefs, including Terry Aki, have received proper safety and equipment training.

Our chefs are trained and practice the cooking routine and performance they provide for our customers as part of preparing their meals. The chefs are professionals and always put safety first. On the day of the accident, Terry Aki first performed his usual tricks with his utensils. He then made a smiley face on the grill with the oil which he then lit on fire with no glitches. Next, as is our tradition, Chef Aki propped the birthday girl's hand on his hand as he made another smiley face on the grill. The server reported that Terry Aki never let go of the oil container or Sally Sizzle's hand. He would never have allowed her to finish the smile on her own.

After he finished with the happy face, he asked Sally to return to her seat as he put the oil bottle in his cart. She did not follow directions, once again, as she grabbed the oil. There is no way our chef could have anticipated that this reckless, disobedient child would grab the oil and spill it all over the sizzling hot grill. Her irresponsible behavior was the cause of her injuries.

In addition, Sally's parents should have taken control of all of the children in attendance, especially their own daughter. The unruly behavior in the waiting room was allowed to carry over into the dining room. Her parents were so distracted cleaning a spilled soda from another child's foolish behavior, that they did not even notice Sally's defiant and risky actions. The girl's parents should have been much more responsible and should have better monitored Sally's impulsive behavior.

My restaurant does indeed have a first-aid kit on the premises; however, it was not on Chef Aki's cart at the time. Upon hearing Sally's screams, I ran into the dining room and called 911 immediately. The ambulance arrived



speedily and the paramedics treated her wounds skillfully before putting her on the stretcher.

### TESTIMONY OF CHEF TERRY AKI

Konnichiwa! My name is Terry Aki and I have been a chef at the Hibachi Steak House restaurant for four years. On the night of January 15, 2015, I was working the dinner shift and was responsible for the two tables. I had just finished cooking the meals for the Watchit family and then moved over to the Sizzle party where they were celebrating their eight-year-old daughter's birthday. The waiter had already brought out my cart loaded with all of the food and supplies that I would need for their dinners.

Since it was a birthday celebration, our restaurant has a tradition that we call up the birthday person to assist in making a smiley face. I invited Sally, the birthday girl, to come around the table to stand beside me. I was careful and made sure Sally was standing away from the hot grill. I have made birthday smiley faces at least a thousand times; I know my routine and I keep my customers safe. I had my hand on the oil bottle and then placed Sally's hand on top of mine. At no time did I let go of the bottle and allow the girl to do this independently.

However, after I set the bottle back safely in my cart, and asked Sally to return to her seat, the mischievous girl took it upon herself to reach for the bottle, instead of going back to her seat. Before I could grab the oil out of her hand, she had sprayed a massive amount of oil all over the grill. Her rambunctious behavior and carelessness caused the accident. The oil quickly began to pop and sizzle out of control, splattering onto her hand and arm that she had

too close to the grill.

At the time of the incident, the adults at the table were preoccupied with the other hyper children and were cleaning up a sticky spilled beverage. None of the adults were paying attention to the birthday girl or supervising her willful and uncontrolled actions. At no time did I give her permission or instruction to touch anything on my cart.

When the hot oil splattered onto the girl's arm, she began to scream out in pain, which finally caught her parents' attention. They ran around the table and grill to attend to their daughter. My manager quickly responded to the commotion and came running into the room. He promptly called 911.

We are not liable for Sally Sizzle's injuries. Sally acted out impulsively and did not listen to or follow my directions. Her parents even had difficulty keeping her calm and in control. I feel badly that Sally was injured, but we are not responsible. Sally and her parents are at fault.

### INSTRUCTIONS

The Sizzle family must prove by a preponderance of the evidence that the defendant, the Hibachi Steak House Restaurant, was negligent and caused Sally Sizzle's injuries because they did not provide an adequate level of care and safety.

### SUB-ISSUES

1. What are the parent's obligations for supervising their child while behind the grill at the hibachi restaurant?
2. Does the restaurant have and follow

- proper safety procedures?
3. Should patrons, especially children, be allowed to assist the chef?
  4. Should the Hibachi Steak House have a first-aid kit on every food cart?
  5. Should the adults in the Sizzle party have monitored the children's behavior right from the beginning?
  6. Is Hibachi Steak House's birthday tradition dangerous?

## CONCEPTS

1. Negligence.
2. Duty.
3. Parental responsibility.
4. Preponderance of the evidence.
5. Comparative negligence.
6. Foreseeability.

## LAWS

Negligence refers to the failure to exercise an expected degree of care in order to minimize the risk of injury to another. To be "negligent," then, is to be the cause of an injury to another for failing to act as a reasonable person should. According to New Jersey negligence law, contributory negligence must be less than the defendant's negligence in order to collect damages.

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

Burden of proof is when the defendant has to prove the negligence of a plaintiff or claimant; the burden of proof is on a plaintiff to disprove his or her own negligence. Even if the plaintiff was negligent, the wrongdoer may still be held

liable, if he or she had the last clear chance to prevent the injury.

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

Foreseeability aspect of proximate cause – the event which is the primary cause of the injury is established by proof that the person of ordinary intelligence and circumstances, should reasonably have foreseen that his or her negligent act would imperil others.



# THE CASE OF THE BUCKING HORSE

## THE VACAY FAMILY V. LAKE OF FUN RESORT

### FACTS

In July of 2015, the Vacay family, mom, dad and their children, Sarah age 9, Brooke age 8, and Michael age 7, went on their annual outdoorsy vacation to Lake of Fun. The Vacays were on cloud nine as first-time visitors to the all-inclusive lake resort and were excited they got reservations for July 4th, a popular vacation week. They were excited that the resort offered many physical activities to participate in such as kayaking, swimming, boating, mini golf, horseback riding, fishing, tubing, water skiing, zip lining, and so much more. Guests are able to plan all their activities for the week online and create their own schedule. The Vacay family worked together to create a jam-packed, fun-filled schedule of activities for their vacation week.

The Vacay family woke up bright and early on their first day, July 4, 2015, looked at their activity schedule, and headed for the lake to go kayaking. The Vacays are experienced kayakers and were at the dock ready to go at 7 a.m. There were no employees on the dock to assist them with the kayaks. The Vacay family untied the kayaks from the dock and headed out onto the lake. At 8 a.m. Mr. Vacay saw Sky Walker, activities manager, waving the family onto the dock. They were told the dock did not open until 8 a.m. and that they should have checked their schedule with the activities desk at the main lodge.

The following day, on July 5, 2015, the Vacays were playing mini golf when Michael hit a ball that bounced off the windmill on the 7th hole. His ball soared through the air, hitting a child on the zip line above the golf course. After the Vacay Family finished playing mini golf, the weather began

### SCHOOL

Mill Lake  
Monroe Township  
Grade 3, Second Place

### TEACHER

Bethanne Augsbach

### STUDENTS

Sean Alvarenga  
Celine Diaz  
Taylor Mendoker  
Aarav Modi  
Connor Pawliczak  
Aarya Raval  
Daniella Rubino  
Trishana Wilson

to change; it started raining cats and dogs.

Although day three, July 6, 2015, was wet and rainy, the skies cleared around 4 p.m. Sarah had always aspired to be an equestrian so the family decided to try horseback riding for the first time. They scheduled a 5 p.m. nighttime horse ride. The ride included an hour-and-a-half trail ride up to the top of a mini mountain range and back, a two hour BBQ with live entertainment at the top of the mini mountain, and an old-fashioned hayride at the end of the evening.

After the Vacays arrived promptly at the stables, the horse hand instructed the family on the basics of riding a horse and safety procedures. It was recommended that pictures be taken at the stables before the ride, during daylight when a flash is not needed. The horse hand then assigned each family a guide and gave each person a helmet and a horse. Sarah needed assistance with her horse.

The Vacays riding group included the Ryder family of three. Their guide, Sky Walker, led the whole group up the trail to the top of a mini mountain to enjoy a spectacular view of the entire lake resort and have their BBQ while enjoying the entertainment.

After dinner, everyone rushed to make sure they captured pictures of the lake lit up by the full moon. Sarah mounted her horse to take a selfie with her selfie stick. She wanted pictures of herself on her horse to post on Instagram for all her followers. Sarah used her stick to hold her iPhone 6 Plus high in the air, pointed it at herself away from the horse's head, and snapped several pictures rapidly, causing her auto flash to go off. Suddenly, her horse Maximus began to whine while leaning back on his hind legs. He then quickly and

unexpectedly raised up his front legs and bucked Sarah, throwing her to the ground. She rolled 50 feet down an incline and was finally stopped by a fallen tree.

Sarah broke her leg in two places, fractured her wrist, suffered a concussion and had major facial scarring. She needed two plastic surgeries to mend some of the scars on her face. Sarah still suffers from chronic migraines as a result of her fall. Her injuries prevented her from living her normal day-to-day life. She was homeschooled for six months and was unable to participate in any extracurricular activities.

The Vacay family is suing Lake of Fun for \$2 million for all of Sarah's medical expenses, the cost of their vacation, the expense of homeschooling and for pain and suffering.

## ISSUE

Is Lake of Fun resort liable for Sarah Vacay's injuries due to their negligence, inadequate supervision, and not having proper safety rules and procedures?

## WITNESSES

### FOR THE PLAINTIFF

Layla Vacay  
Lika Ryder

### FOR THE DEFENSE

Zee Owna  
Sky Walker

## WITNESSES STATEMENTS

### TESTIMONY OF LAYLA VACAY

My name is Layla Vacay. In July of 2015, my family arrived at Lake of Fun for a week-long

vacation filled with what we thought would be fun and exciting outdoor adventures. Boy, were we wrong!

One of the major reasons that we decided to go to Lake of Fun for the first time was because they have an online activity planner and sign-up page on their website. My family and I put our heads together and over the course of two weeks we chose all of our recreation activities for the week. Once we had the schedule completed, we hit enter and submitted our schedule to Lake of Fun. We received a confirmation email stating they had received our schedule so we thought we were all done and our schedule was set.

On July 4th we went to the docks at 7 a.m. sharp for our scheduled activity, kayaking. Much to our surprise, no one was there to assist us and there were no signs posted mentioning opening times or rules. We knew we were the first family of the day so we untied the kayaks and headed out onto the lake. We assumed it was okay because the kayaks were there ready to go. If they didn't want us to have access to the kayaks, they should have been locked up. The gates of the docks were not even locked, poor management if you ask me. Clearly someone overslept. We did nothing wrong, we were following our approved schedule.

The next day, after establishing with the activities desk that our schedule was confirmed, for the second time, we went to play mini golf. Michael, our wonderful, seven-year-old son, was having the time of his life. After lifting his golf club, he swung the iron through the air, sending the ball flying, causing it to accidentally hit the windmill in the center of the hole. His golf ball hit the windmill and

ricocheted straight up into the air, accidentally hitting the person zip lining above the course.

In my opinion, zip lining should not be above the mini golf course, or it should be placed much higher up in the air so there is no chance that a stray ball can hit a rider. There were no signs cautioning golfers to be aware of the zip line above. In addition, the windmill was a huge obstacle in the middle of the hole, and believe me, it was nearly impossible not to hit it. Again, the management had poorly planned these activities and should have done a better job of ensuring the safety of their guests.

On the 6th of July 2015, when it finally stopped raining, we were excited our nighttime horseback riding BBQ had not been cancelled. When we arrived at 5 p.m., the horse hands were just taking the horses out of the stables. Did you know that horses can see better than humans at night? Well, they can.

The hands gathered all the riders together, experienced and beginners alike, and explained the basics of horse riding and the rules. It was "suggested" that we take pictures on our horses before we left the stables. I never heard anyone tell us definitely not to take pictures on the trail or at the BBQ. The rules included following and listening to your guide and also to wear your helmet when on your horse.

Before heading out to the trail, we were assigned our horses and our group. Our group included the Ryder family, experienced riders, and my family. Mr. Ryder warned us that Sarah's horse Maximus seemed to be restless. I asked the horse handler if Sarah should get a new horse and he said, "No!" I was told he just needed to stretch his legs after a long, rainy

day. I found too late that when horses are cooped up inside of their stables for two rainy days, like Maximus was, they can have behavior problems. The handler should have switched horses when we told him Maximus' behavior was restless.

During the ride, Sarah's horse continued to act out and misbehave by going too fast and not listening to Sarah's commands. Our guide, Sky Walker, told Sarah, "Hold on and show your horse who is in charge." Sarah tried but she was still struggling to keep control. The guide then tried to calm the horse as she briefly rode alongside Sarah. I was worried even more since the horse was not taking directions from Sky Walker either. My daughter looked very intimidated so again I asked if it was safe for her to ride Maximus and Sky impatiently told me, "Yes, please stop worrying. I have it under control." No, she did not!

When we reached the top of the mountain, at 8:30, the BBQ and country band were set up and ready for us. We ate and danced while many guests took pictures of the moonlit lake. Sarah decided to take a selfie of herself on Maximus, with the view of the resort behind her, to post on Instagram. She put on her helmet, climbed up on Maximus' back and asked her brother to hand her the phone attached to her selfie stick. Sarah used her stick to hold her iPhone 6 high in the air, pointed it at herself away from the horse's head, and snapped several pictures rapidly.

Her auto flash did go on but she had purposefully pointed the camera high up and away from the horse's head so he would not see the flash. Well, out of nowhere, Maximus reared up and bucked Sarah, throwing her to the ground and sending her 50 feet down the

slope of the mountain. The flash went off by accident, Sarah didn't know the horse would see it and get scared. No one told us that horses have a panoramic field of view allowing them to see behind their heads. But they should have.

I knew this ill-behaved horse was going to be trouble. He was misbehaving the entire ride. I kept telling the horse hands and Sky Walker, I was worried but they just didn't care or listen. My poor Sarah could have been saved from her injuries if they had just done what any reasonable person would have done and changed her horse in the first place.

Sky Walker should have been with Sarah, holding the horse and reminding her to avoid using flash. She was too busy talking to the other guests at the party. One guide was not enough supervision for two families. During our entire vacation, there was a lack of supervision. Lake of Fun should have had more staff available to supervise all of the activities and ensure our family's safety.

When Sarah plummeted down the mountain, she broke her leg in two places, fractured her wrist, suffered a concussion and had major facial scarring. Rescue and recovery had to come up the trail to bring Sarah to the hospital. I would never recommend Lake of Fun, I mean horrors, to anyone. The management clearly did not live up to its responsibility to ensure the safety of all its guests.

#### **TESTIMONY OF LIKA RYDER**

My name is Lika Ryder. We were part of Sarah Vacay's group on the BBQ night horse ride. The Vacay family and my family began the night by listening carefully as the horse hands talked



about the safety rules and the basics of riding. Sarah and her family were paying attention and also asked questions about the basics of riding. They were a nice, friendly family and their children were well-behaved.

I noticed that the horses were only taken out of the stables right before we were ready to ride them, due to the wet weather earlier in the day. Knowing that the horses had been in their stalls for the past two rainy days, I was making sure the horses my family were given were not restless and disrespectful, just to be safe.

I warned the Vacay family that Sarah's horse seemed restless and that this was probably because none of the horses were taken out at least an hour before the ride to exercise. Horses need to run and gallop after being cooped up over a long period of time or their behavior can be unpredictable. The handlers should not have allowed Sarah to ride Maximus because he clearly appeared to be restless and would probably be disrespectful, meaning he would not take commands from his rider.

I saw Sarah struggle with Maximus riding up the trail and I understood her mother's concern. I was taking pictures myself after the BBQ when I saw Sarah put on her helmet and jump up on Maximus to take selfies with her phone. I called Sky over to assist with our horses so we could take pictures too. Sky Walker was complaining to me that she needed more help over the holiday weekend just as Sarah snapped her pictures and the flash went off.

It was recommended that we take pictures at the stables, but no one said absolutely no pictures with the horses at the BBQ. Sarah is a

child, the guide should have stayed by her side to remind her to turn off her auto flash before heading over to help us. Sarah didn't know the flash would spook the horse; kids these days take selfies everywhere! There was no rule about selfies!

I saw the flash and then I saw Sarah's horse buck out of control, throwing her off. It was awful, I couldn't believe how far down the hill she fell. Her parents were screaming her name but we couldn't hear her respond. Since we were in a remote area, it took a while for the rescue response team to arrive. As soon as we saw her, we knew her injuries were bad. She was taken to the hospital. I told the family to contact us if they needed anything since I witnessed the entire incident.

#### **TESTIMONY OF ZEE OWNA**

I am Zee Owna, the owner and operator of Lake of Fun resort. I take pride in having the safest, well-managed and well-maintained lake resort in New Jersey. From the first day of their visit, the Vacays, an odd family, did not follow the resort rules and in fact made up their own rules and schedule.

All guests are required to check in at the activities desk to finalize their schedules planned online. We ask our guests to do this as activities may need to be closed for maintenance or weather. The Vacay family obviously did not take the time to read all of the information posted on our webpage or did not bother to check in at the activity desk.

Our online activity schedule clearly states that kayaking opens at 8 a.m. and not at 7, the time the Vacays picked to be there. Our brochure and webpage state that our activity equipment should not be used without our proper

supervision. When there was no employee at the dock, the Vacays should have checked with the activity desk or resort manager prior to taking our kayaks out on the lake.

The following day the Vacays caused mayhem at the mini golf course. The attendant saw the three children play recklessly. They were actually trying to hit the attractions on the course with their balls. The Vacays ignored the attendant's warnings. They were given clear instructions not to hit the ball too hard and not to aim at the attractions at each hole.

The parents of the child that was struck by Michael Vacay's stray ball reported that they saw Michael aim for the windmill on hole 7, hitting the ball as hard as he could. No one was surprised that the ball bounced off the windmill hard enough to fly straight up and injure the poor child on the zip line. The Vacay children were reckless and the parents should have done a better job controlling their children.

When I was informed that Sarah Vacay was hurt on the night horseback ride, I was concerned but not surprised. The family are all rule-breakers. We specifically instruct all riders to take pictures on the horses at the stables during daylight when flash is not needed. Camera flashes spook horses. It is just like when a human flashes a light in your eyes in the dark, it would startle you. It is the same with horses, and this should be common sense.

Horses have unique vision, allowing them to see virtually 350 degrees. The flash of the camera frightened the horse, which caused him to buck. If Sarah had followed the rules and had taken the picture of herself with Maximus at the stables, she would never have fallen off

the horse. I was also told that Sarah did not fasten and secure her helmet while taking the picture, causing it to fall off during the fall. Once again, the rules were being broken, all guests are required to securely fasten their helmets before mounting their horses.

We are not responsible for Sarah's injuries. Had she and her family followed our rules, Sarah would not have been bucked and would have enjoyed the rest of her vacation at our safe, well-managed, five-star resort.

### TESTIMONY OF SKY WALKER

My name is Sky Walker. I have been the activity manager at Lake of Fun for the past 10 years. Right away I knew the Vacays were going to be troublemakers. When I arrived at the docks on July 4th, they were already kayaking without any supervision. When I waved them back to the shore, they hesitated and then were annoyed when I told them they had to have their schedule approved by the activities desk. There was no 7 a.m. time slot, they created that slot for themselves.

The next day at mini golf, the attendants called me over to help them with the Vacays. They were once again ignoring the rules and the children were out of control. I saw them hitting balls at the windmill. I told them not to swing so hard as this is a mini golf course and someone could get hurt. I was about to ask them to leave the course when Michael's ball hit the child on the zip line. In all the years the resort had been open, this has never happened. There have never been any injuries on the zip line. I believe Michael intended to hit a rider so I knew I had to keep a close eye on this family.

I make the decision to guide the Vacay family on the night horse ride BBQ to prevent any

trouble they may cause. I listened as the horse handler recommended to all the guests that they take pictures on the horses at the stables during daylight. It was made clear that flash photography should be avoided at night so the horses would not be startled.

The ride up the trail was easy, even with Mrs. Vacay's constant questions about our kind and gentle horse Maximus. Nothing bad happened on the trail. I am not sure why she thought Maximus was going to misbehave but she was wrong. I checked his behavior before we left the stables and he appeared to be a little fidgety and excited to be going on the trail, but that was normal for him.

After dinner, as I was helping the Ryder family mount their horses, I saw Sarah on Maximus with her helmet unfastened. I could see the straps hanging down her neck and I was concerned. I started to head over to help her when I saw her phone at the end of a selfie stick behind Maximus' head. I started to run to stop her from taking the picture when in the blink of an eye, her camera flash went off.

The flash spooked the horse, causing him to buck, which resulted in Sarah falling off the horse. As she fell, her helmet fell off, leaving her head unprotected. Her parents knew better and should have made sure her helmet was securely fastened before getting on the horse. They were two feet away, they had a responsibility to make sure Sarah was following the rules and had on her safety gear.

I am truly sorry that Sarah was hurt, but it was not Maximus' fault. He was scared and reacted naturally. The Vacays were riding at their own risk and would have had less risk if they had just followed the rules. I couldn't watch Sarah

every minute since I was responsible for two families and I was not a personal guide for Sarah. The Vacays should have properly supervised Sarah instead of conversing with the other families.

## INSTRUCTIONS

The plaintiffs, the Vacay family, must prove by a preponderance of the evidence that the defendant, Lake of Fun, was negligent and that the defendant's negligence caused Sarah's injuries, and that the resort must pay for all medical expenses related to her injuries and for pain and suffering

## SUB-ISSUES

1. Did Sarah's flash startle Maximus, causing her fall and resulting injuries?
2. Should Lake of Fun have provided more guides on the horseback ride?
3. Was Lake of Fun understaffed for all their activities on this popular holiday week?
4. Should the zip line have been built over the mini golf course?
5. Should the kayaks and the gates to the dock have been better secured?
6. Did Michael intentionally hit the child on the zip line?
7. Should Lake of Fun have exercised the horses before taking them out for the night ride?
8. Should the horse hand or Sky Walker have switched Sarah's horse prior to the ride?
9. Was Sarah's helmet loose or not fastened properly, contributing to her injuries?
10. Did the Vacay family's behavior contribute to Sarah's injuries?
11. What were Sarah's parent's responsibilities before, after and during the incident?

## CONCEPTS

1. Negligence.
2. Comparative negligence.
3. Breach of duty.
4. Preponderance of evidence
5. Parental responsibility.
6. Liability.
7. Proximate cause.
8. Foreseeability.

## LAWS

Negligence is the failure of an individual or agency charged with the duty of care to exercise the proper degree of care that a reasonable person would exercise under similar circumstances.

Comparative negligence considers if the plaintiff has contributed to cause the damages by his or her own negligence. If so, the plaintiff's recovery will be reduced by the percentage he or she contributed, so long as his or her negligence is less than 50%.

Preponderance of the evidence: If the defendant has to prove the negligence of a plaintiff or claimant; the burden of proof is on a plaintiff to disprove his or her own negligence. Even if the plaintiff was negligent, the wrongdoer may still be held liable, if he or she had the last clear chance to prevent the injury.

Proximate cause: The plaintiff must establish that his injury is connected to the defendant's negligent actions.

Foreseeability: The event which is the primary cause of the injury is established by proof that the person of ordinary intelligence and circumstances should reasonably have foreseen that his or her negligent act would imperil others.

Liability is the state of being responsible for something, especially by law.



## THE CASE OF THE BACKYARD POOL PARTY

### THE HERTZ FAMILY V. THE HOLMES FAMILY

#### FACTS

On the 5th day of June, 2015, at 5 Mill Roe Drive, Roemon, NJ, eight-year-old Skyler Holmes had a backyard birthday party. She invited 22 of her classmates, four cousins and 12 of her friends from cheer and the neighborhood along with their parents and siblings. The invitation letter stated that the celebration would be a pool party. In addition to the pool and diving board, the birthday girl's backyard has a trampoline and a swing set. On the day of the party, the Holmes also rented a bouncy house along with a blow-up water slide with a climbing wall. The invitation indicated that a lifeguard would be on duty.

All 38 invited children showed up, along with 10 parents, one nanny and four siblings. They were all welcomed by the hosts into the house where Mrs. and Mr. Holmes reviewed the rules for the pool, trampoline and inflatables before allowing the children into their fenced-in backyard. A lifeguard, Luke Saver, was hired to guard the guests in the pool and on the water slide.

The party started at 12:30 p.m., and after hearing the house rules, the children went out to the backyard to jump on the trampoline, swim in the pool, dive off the diving board, play on the swing set, and go on the blow-up water slide and bouncy house. The children were also able to do crafts and play sports.

Mrs. Holmes was tending to the snacks, condiments and beverages along with Mr. Holmes who was grilling hot dogs for lunch. Some of the parents were socializing while others were helping with the refreshments. The lifeguard sat on a

#### SCHOOL

Mill Lake  
Monroe Township  
Grade 3, Honorable  
Mention

#### TEACHER

Bethanne Augsbach

#### STUDENTS

Jaeden Aiello  
Erin Rizzo  
Liam Severson  
Radhika Sharma  
Claire Song  
Misan Uduaghan



stool by the center of the pool. Skylar's 15-year-old brother Tyler was assigned by his parents to supervise the bouncy house while his twin sister Piper was asked to oversee the trampoline.

On the day of the incident, Mrs. Hertz and her eight-year-old son Ben arrived at the party right on time as Ben was excited to play in the pool. He was amazed by all the fun things, in addition to the pool, that he could play on. After hearing the rules, he went first to the pool's blow-up water slide, climbed the rock wall to the slide, and then slid down into the pool's deep end. The lifeguard, Luke, blew his whistle and told Ben, "Feet First Please!"

Ben played in the pool and on the diving board until he began to shiver and then went to the bouncy house to dry off and get warm. He entered the bouncy house, which already had three five-year-olds and two eight-year-olds inside along with Tyler Holmes. Tyler told Ben he would have to wait outside until one child left the bouncy house.

Ben then sprinted to the swings. He dashed up the climbing rope onto the monkey bars and down onto a swing. He was quickly bored and decided to skip over to the trampoline.

The trampoline had two eight-year-olds on it when Ben hopped on causing one of the children to jump off. Ben began to jump and flip on the trampoline. After jumping and jumping, he suddenly flew out of the netting, into the air, arms outstretched, and then landed in the pool. He landed in the shallow end, hands and head first hitting the bottom of the pool. Mrs. Holmes called 911.

Luke lifted Ben from the pool and stayed with

him until the paramedics arrived. Ben was rushed to the emergency room and treated. He suffered a severe right wrist fracture, a left wrist sprain and a brain concussion. He was admitted to the hospital for two days to treat and monitor his concussion. He left the hospital with a cast on his fractured wrist and a splint on the sprain. After six weeks, his wrist bone had not been corrected by the cast, requiring surgery and a one-day hospital stay. His parents are suing the Holmes family for \$395,000 to cover all medical costs, and for pain and suffering.

## ISSUE

Is the Holmes Family liable for Ben Hertz's injuries due to their negligence; for failing to exercise reasonable care to protect and keep safe inquisitive, energetic, young children using their trampoline and pool?

## WITNESSES

### FOR THE PLAINTIFF

Sally Hertz

Molly Sitter

### FOR THE DEFENSE

Holly Holmes

Luke Saver

## WITNESS STATEMENTS

### TESTIMONY OF SALLY HERTZ

My name is Sally Hertz and I am the mother of Ben Hertz. My son Ben was invited to Skylar Holmes' 8th birthday party on June 5, 2015. At the birthday party, my son Ben was injured when he fell into the Holmes' pool from the dangerous, unsupervised trampoline.



Ben and I arrived at the party right on time. Ben, along with Skylar and an excited group of 42 other children, were asked to sit and listen to Mrs. and Mr. Holmes explain the brief house rules. I didn't hear the inadequate rules because some of the children were too noisy. They weren't listening! My son and a few others were trying to listen but it was very difficult. Some of the children, especially the young ones, were squirming and squealing impatiently because they could see the pool, trampoline and all the fun and fabulous inflatables through the big picture windows. Mrs. and Mr. Holmes should have pulled down the shades or moved to a different room. They absolutely should have made the youngsters calm down and should not have let them in the backyard until they listened to them. My poor son listened as best he could considering the chaos.

As we entered the backyard, Ben walked to the pool's blow-up water slide. He climbed the rock wall to the slippery slide, and then slid down into the pool's deep end. The lifeguard, Luke, blew his whistle and told Ben, "Feet first please!" I was shocked! I never saw my son go down head first and furthermore, even if he did, he didn't know it was against the rules.

I was keeping a close eye on my son when Mrs. Holmes needed help carrying out the food that she was rushing to put out for the children. She should have had the snacks and drinks out before the party if you ask me. I did my best to do both, watch my son and help her with the food. Mrs. Holmes assured me that I could help because they had a lifeguard and all of the activities were being supervised. Well, that was just not true!

Ben played nicely in the pool until his teeth started chattering like a windup toy. He got out

of the pool and decided to go to the bouncy house to dry off and get warm. When he entered the bouncy house, there were already three kindergarteners and two third-graders inside along with Tyler, the Holmes' 15-year-old son. What was the "supervisor" Tyler doing playing inside the bouncy house? I have rented a bouncy castle before and I know the rules. He should have been outside watching the children. Only four children of mixed ages should be bouncing at the same time, and they had five. Tyler and the bigger kids should never have been allowed to jump with the smaller children. The big kids were roughhousing and could have easily injured the younger kids or even my Ben. Just why would any reasonable adult allow a 15-year-old child to "supervise" small children in a giant blow-up? Tyler wasn't doing his job, he was playing around with the jumpers. My Ben did the smart thing and left the unsafe bouncy house.

Ben asked me if he could go on the swing set, until the trampoline was not so crowded with kids. I said yes so he headed over there until he saw that the mob had cleared out.

The trampoline had two of Ben's friends on it when Ben hopped on. Tyler's twin, Piper, was sitting on the trampoline Facetiming on her iPhone 6S, not "supervising" the kids. One of the boys jumped off to let Ben on. Ben was jumping when suddenly the other boy on the trampoline purposely jumped too close to him, causing poor Ben to lose his balance and then jump to regain his footing. Before I could scream out to Ben, I saw him fly out of the netting and then land in the shallow end of the pool.

The trampoline was very wet from all of the splashing from the pool and the wet kids not

drying off before they jumped. And, as hard as it is to believe, the netting was not Velcroed shut properly. If it had been secured correctly, Ben would have landed back on the trampoline and not in the pool. Ben landed in the shallow end of the pool, hands and then head first. He was in crazy bad pain as he fractured one wrist, requiring surgery, and sprained the other. He also suffered a serious concussion. He is still in physical therapy!

There is no doubt that there were too many activities and equipment and not enough lifeguards and qualified “supervisors” to keep all 43 children safe! The Holmes should of had at least two lifeguards—one watching the blow-up water slide, and the second watching the actual pool and diving board. Finally, any reasonable person would not use children to supervise a trampoline and bouncy house; that responsibility should have been given to adults.

#### **TESTIMONY OF MOLLY SITTER**

My name is Molly Sitter and I am the nanny for Ben’s classmate Lily. On the day in question, I brought Lily to the party and I couldn’t believe my eyes when I saw all the attractions and activities set up in the backyard. During the party, I became concerned because of the poor supervision of the inflatables and trampoline. Most of the children did not follow the rules and no one seemed to care. I stayed by Lily all day to be sure she was safe.

Luke Saver, the lifeguard on duty, could not possibly, in my opinion, oversee all of the children in the pool and on all of the equipment. While sitting on his chair at the center of the pool, he could not possibly see what was happening at the far end of either

side of the pool. And that is important because on one end of the pool there was the inflatable slide and the diving board, and at the other end was the trampoline.

As hard as it is to believe, I saw Luke was on his phone, and he appeared to be taking “selfies” while he was watching the kids. I saw the posted pictures from the party on Snapchat and Instagram and I saw that he even took the time to include emojis on his Snapchat pictures. If he was taking a break from watching the children in the pool, to take pictures, he should have called all the children out of the pool and off the water slide and trampoline.

Lily and I were on the swing set when I saw Ben jumping on the trampoline. I noticed him when his friend jumped too close to him, causing him to slip and then jump to get his balance. I looked over and saw Piper sitting on the trampoline with her phone next to her; I am not sure she even realized what was happening. At times, during the day, I also saw her jumping with the kids on the trampoline.

I instantly knew Ben was in trouble as I watched him fly out of the netting into the pool. The party was an accident waiting to happen!

#### **TESTIMONY OF HOLLY HOLMES**

My name is Holly Holmes and I am the mother of Skylar Holmes. We had a birthday pool party for our daughter Skylar at our house on June 5, 2015. In addition to the pool, trampoline and swing set in our yard, we rented a bouncy house and blow-up water slide. My daughter was so excited for her 8th birthday party!!

The kids started arriving for the party at 12:30 p.m. The children and adults were all asked to stay in the house and were not allowed out back until Mr. Holmes and I explained the rules for the pool and all of the equipment. Mr. Holmes and I split the children into two groups of 22 children. The rules were explained out loud to the children and were also written down on posters that were posted inside the house and outside in front of each activity.

I am a third-grade teacher and my husband is a middle-school principal so we know how to handle large groups of children. I understand, through my years of teaching, how to gain children's attention and ensure they understand my directions and rules. My husband and I did not allow the children to misbehave and fool around during rule time. The children were focused on us, not on the windows. We take children's safety seriously and that is why we not only explained the rules out loud, we also put them outside on signs for all to see. In addition, we hired a lifeguard and paid our 15-year-old twins to supervise the bouncy house and trampoline.

Once the rules were explained, most of the children walked outside, but a few ran out like animals. Ben was the craziest of all! He ran outside like a cheetah running full speed after its prey. As I hurried outside to remind all the children including Ben to walk, not run, I saw Ben scurrying up the climbing wall and then come down the slide head first, which was absolutely against the rules. I immediately heard our lifeguard, Luke Saver, blow his whistle and then discipline Ben, warning him that if he did it again he would be banned from the slide for the day. He wasn't even outside three minutes and he was already getting into trouble.

I politely walked over and asked Mrs. Hertz if she would keep an eye on her son as he seemed to be overly excited. She told me she stayed at the party so that she could keep an eye on him. Mrs. Hertz then asked if I needed any help. I wasn't able to finish getting all of the snacks and beverages out before the guests arrived due to the early arrival of some families. Once the children were all at my house, explaining the rules to everyone was far more important than getting the food outside. I gladly accepted the help of several parents, but avoided giving Mrs. Hertz a job because I wanted her to focus on Ben. The lifeguard and all of the supervisors were focused and doing their jobs so I was able to get the food and drinks out without any trouble.

The lifeguard, Luke Saver, spoke to Ben several times as he was playing too roughly in the pool. When he started to shiver, Luke suggested he take a break from the pool and warm up. I then saw him push other children out of his way to get to the bouncy house, which was on the other side of the backyard. He was galloping around the yard like a racehorse trying to get to the bouncy house. Ben hopped into the bouncy house that already had five children of mixed ages in it. Tyler asked Ben to wait outside for his turn as our rule was five children bouncing at a time. Ben heatedly jumped up and down three times, knocking over the younger children and then flew out before Tyler could stop him.

Tyler, my son, was sitting in the bouncy house because he could see and control the kids better from inside. The rental company suggested he do this. My son wasn't jumping with the children on the bouncy house, he was watching the kids. The rental company rules stated eight children could be inside the

bouncy house at once so we were way under the maximum limit. I was never told that children should only be allowed on with kids of their own age. Mrs. Hertz says she has rented a bouncy castle before and knows the rules. I am certain it was not the same size as mine so it probably had different rules. Not all bouncy attractions are the same. We followed the rules that came with our bouncy house.

Tyler and Piper, our 15-year-old twins, are both responsible young people. They are both camp counselors' helpers at our town's recreation center. They have watched over small children at the camp, which includes a pool, jungle gym and water slides. They did an awesome job watching the bouncy house and trampoline.

The trampoline had two of Ben's friends on it when Ben hopped on. Tyler's twin Piper was sitting on the trampoline and kindly asked one of the boys to jump off to make room for Ben. I saw Piper make sure the safety net was fastened after each child got on or off the trampoline. Furthermore, the trampoline was not sopping wet from all of the splashing from the pool. The children dried off before they jumped.

Piper had her phone so that she was able to call me or Mr. Holmes if she had a problem with any of the children. She told me that she had to repeatedly ask Ben to stop jumping out of control. She called me to ask that I take Ben off the trampoline because he was not listening to her directions. At that exact moment, Ben jumped up high into the air to gain momentum and then dove right into the pool. There was nothing Piper could do as Ben flew with his hands straight out in front of him from the trampoline head first into the pool. He screamed "I'm Superman" as he dove straight

through the Velcroed, secured flap into the pool.

I called 911 as Luke Saver rescued Ben. He lifted Ben onto our backboard and tried to keep him calm until the paramedics arrived. Mrs. Hertz finally figured out what was happening and ran screaming to Ben. Ben was crying out in pain and I was sincerely sorry he hurt himself. But he did this to himself. He knew better than to dive into a shallow end of a pool off a trampoline.

There were not too many activities in our large fenced-in backyard. We had an experienced lifeguard, two supervisors, my husband and I, and the other parents at the party overseeing the yard activities. I have 27 children in my class that I oversee all by myself every day and my husband runs a school full of children! Keeping 44 children safe was not unreasonable! Ben did not follow the rules and made poor choices. His mother did not have her eyes on him as she allowed him to make poor choices all day. She spent far too much time socializing with the other adults and eating. She should have focused on her child and provided some kind of discipline for his outrageous behavior.

## TESTIMONY OF LUKE SAVER

My name is Luke Saver and I am a certified lifeguard. I was hired by Mrs. Holmes to guard her pool and water slide at Skylar's birthday party. I work at the town swim club so I could easily handle the job.

During the party, I sat on a high stool at the center of the pool from where I could see what was happening in the pool and at either side of pool where the inflatable water slide and

trampoline were. Almost all of the children were following the rules so my job was pretty easy. All that is except Ben!

From the moment Ben entered the yard, I saw him breaking rules. I am sure he is always in trouble at school. I had to ask him not to slide head down on the slide two minutes into the party. I wasn't surprised he dove head first into the pool because going head first seems to be his thing.

As for being on my phone and posting pictures, I would like to clear up the record. I was not taking "selfies" while I was on duty watching the kids. I took my pictures after all the guests left and then posted the pictures on Snapchat from home. I never took a break from watching the children in the pool to take pictures.

I saw Ben jumping out of control on the trampoline. I blew my whistle at him to try and signal him to stop but he ignored me. I didn't see him lose his balance, but I saw him fly out of the netting into the pool. He was clearly trying to be a superhero which was ridiculous if you ask me. He is lucky he didn't break his neck. The Holmes and I were not negligent. The Holmes should not be held liable for the poor choices made by a mischievous boy whose mother does not provide him with proper discipline or attention.

## INSTRUCTIONS

The plaintiff, the Hertz family, must prove by a preponderance of the evidence that the defendant, the Holmes family, was negligent and that the defendant's negligence caused Ben's injuries.

## SUB-ISSUES

1. Did the Holmes have a duty to ensure the safety of all the children in light of all the fun and exciting attractions they had for the party?
2. Were the pool and diving board, inflatables, trampoline, swing set and bouncy house too many attractions to properly supervise?
3. Were the Holmes' rules adequate and did they exercise reasonable care to eliminate any danger to protect the children and keep them safe?
4. Did the children pay attention to Mr. and Mrs. Holmes' rule presentation so that they fully understood them?
5. Were the children made to follow the rules?
6. Was Luke Saver taking pictures that may have left the pool area unsupervised?
7. Should there have been more than one lifeguard?
8. Should Piper have been supervising the trampoline without an adult?
9. Was Piper preoccupied with her cell phone?
10. Should Tyler have been supervising the bouncy house, without an adult, while sitting inside?
11. Were too many children on the attractions?
12. What role did Ben's choices make in his resulting injuries?
13. What were Mrs. Hertz's parental obligations in this situation?

## CONCEPTS

1. Negligence.
2. Comparative negligence.
3. Burden of proof—preponderance of evidence.
4. Attractive nuisance.
5. Parental responsibility.

6. Proximate cause.
7. Foreseeability.

## LAWS

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

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

**Burden of Proof**—the defendant has to prove the negligence of a plaintiff or claimant; the burden of proof is on a plaintiff to disprove his or her own negligence. Even if the plaintiff was negligent, the wrongdoer may still be held liable, if he or she had the last clear chance to prevent the injury.

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

**Attractive Nuisance**—a possessor of property is subject to liability for physical harm to children on their property caused by an artificial condition upon the property if: (a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass; (b) the condition is one of which the possessor knows or has reason to know and which he or she realizes or should realize will involve an unreasonable risk of serious bodily harm to such children; (c) the children because of their youth do not discover the condition or realize the risk involved in coming within the area made dangerous by it; (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved; and (e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

**Foreseeability**—in the law of negligence, the foreseeability aspect of proximate cause—the event which is the primary cause of the injury is established by proof that the person of ordinary intelligence and circumstances, should reasonably have foreseen that his or her negligent act would imperil others.

**Parental Obligation**—Parents have an obligation to properly supervise the activities of their minor children.





# THE CASE OF THE SOARING CHEERLEADER

## CONNIE USSION V. MISSING

### FACTS

Every year in November, the rival high school football teams from two neighboring towns play a very important game. The winning team receives a trophy and a scholarship is awarded to one football player and one cheerleader. In years past, a significant scholarship has been awarded to the captain of the football team and the head cheerleader based on performance. This rival game is the highlight and focal point of every senior in the two rival high schools. Many fans come to support their town's high school team, and even more importantly, college scouts come to scout out prospective athletes for their colleges. The state college scouts come to award one football player and one cheerleader a full scholarship to their institution.

The football players and cheerleaders were very excited and determined to do their best to win the trophy. Both sets of athletes were ready to do what was needed to help their teams achieve this goal. The football players were ready to go. They had their coaches, all players, and their minds set to win. The cheerleaders had a bit of a pre-game challenge. Their head coach had a sudden bout of food poisoning and could not make the game, and they were missing a few cheerleaders. Their assistant coach Miss Ing was there and prepped the girls. She pumped up the girls, and they excitedly entered the field with the confidence to succeed!

However, that is not what happened. There was an incident on the field involving a group of cheerleaders and football players. Connie Ussion, the head cheerleader, had just performed her cheer stunt, with a missing front spotter. To make matters worse, as she was released for the dismount

### SCHOOL

Lincoln  
Nutley  
Grade 4, First Place

### TEACHER

Kim Algieri

### STUDENTS

Isabella Bobadilla  
Madison Egues  
Claudia Follet  
Taylor Fox  
Lindsey Guzman  
Isabella Kelly  
Gianna Mauriello  
Ava Oliver  
Damian Rodriguez  
Hailey Romano  
Liliana Rubino  
Victoria Rudish  
Allison Slane  
Isabella Torres

cradle, the football player came out of bounds and knocked over Connie's base. So, Connie Ussion came crashing down onto a pile of football players and cheerleaders. She had hit her head on #24 Tim Burr's helmet. She was not properly examined, and she ended up having a severe concussion.

## ISSUE

The head cheerleader was not visibly injured, but with the possibility of a concussion and the importance of early detection, was the assistant coach negligent in allowing her to continue to cheer?

## WITNESSES

### FOR THE PLAINTIFF

Connie Ussion  
Connor Ussion

### FOR THE DEFENDANT

Coach Miss Ing  
Tim Burr

## WITNESS STATEMENTS

### TESTIMONY OF CONNIE USSION

I am a dedicated, academically strong, and very athletic 17-year-old. I've been a cheerleader since I was in third grade. I am a hard worker and take cheering very seriously. During my younger years, I had gone to many summer camps that focus on cheerleading routine, gymnastics, and, most importantly, safety. I have always shared my knowledge of safety procedures with my squad mates. As I entered the high school level, my leadership skills helped me earn the respect of my squad and the head coach. I eventually became the head cheerleader, and whenever we did a

stunt, we always had a back spot, two bases, and a front spot.

In November, our big rival game was being played. I was so excited because the college scouts were watching and they were going to give a scholarship to a cheerleader and a football player to the college of their choice. I knew the scholarship usually went to the head cheerleader, and that was me. I knew my hard work and drive would help my dreams come true. I ran with excitement to our cheer squad, and I noticed that we were missing some girls, which included my front spot!

I told my assistant cheerleading coach Miss Ing the problem, and she just said to do the stunt without a front spot. So, I told my stunt group, and we practiced it a few times without the front spot. We did our stunt, a flip in mid air well and with success. The stunt went well during the game also. Feeling successful, we did the dismount cradle and, as I was in the air, a football player hit our stunt group! Then, as I landed, I hit my head on the football player's helmet. The cheerleading coach asked if I was okay. I said yes because I felt fine, just a little bit dizzy, but I just did a flip so it was normal for me to feel that way after a flip.

I watched assistant coach Ing wave off the athletic trainer, who was running across the field. Everyone gathered themselves up and recouped. The game was a success! We won, and I won the scholarship! All I had to do was take the entrance exam, and I was set with my dream. Since I was a straight A student, I knew I was on my way to future success.

That night, I went to bed feeling drained from the excitement. The next morning, my head hurt really badly. I told my dad and he rushed

me to the emergency room. I found out I had a concussion. Dr. Brian Swellington said that my brain was swelling. After a while, the swelling went down a little but not completely. Now, my dad is suing the assistant cheerleading coach for medical expenses and college expenses, since I lost the scholarship due to my incompetence on the entrance exam.

### TESTIMONY OF CONNOR USSION

I am the father of Connie Ussion. I am here to share how my daughter had her dreams ended by the neglect of the assistant coach, Miss Ing.

My daughter received a mild traumatic brain injury from a fall of an unsafe stunt at a football game. I would like to sue for the hospital bills due to the suffering of my poor daughter, and college expenses. Her reputation as an honor student was destroyed that day, and was validated when she did not pass the college entrance exam. Therefore, she lost the scholarship.

It all happened in November at the rival football game. I was in the stands cheering for Connie and her team. My excitement for the game was growing. I noticed the head coach was not giving the cheerleaders their pre-game talk; it was the assistant coach Miss Ing. I was surprised but not too concerned because the head and the assistant coach work together all the time. Plus, my daughter has been going to cheer camps and cheering since she was in third grade.

This game was a very special game because the college scouts were there looking for prospective well-rounded students. The winning team would receive a trophy, and one football player and one cheerleader will receive a scholarship to the State College. This institution is the college Connie wants to

attend. I would love to pay for her to go there, but there is one problem. Connie's mom passed away when she was four, and since her passing I have been a single parent. I cannot pay for her to go to college, since my job doesn't pay a whole lot of money. It has been a real challenge keeping control of my emotions and staying happy for Connie.

Going to watch her cheer makes me forget about my sadness. I especially love listening to the pre-game pep talks. I heard the assistant coach tell the cheerleaders, "We are a few girls short, and one happens to be a front spot, but you guys are strong. You can do it anyway. Let's show these college scouts who is the best!! Connie, lead the girls with our opening stretches!" I felt so proud of my daughter. I was beaming.

I then heard the football coach giving his pep talk to his players. "Alright, this team is fierce, but so are we. Okay, here is our plan: Tim Burr, you are going to go right and I want you to hit them like you mean it! Okay? Listen, boys, do anything it takes to win." I was so excited for the rival game.

Then the ref blew his whistle, the boys hustled onto the field, the cheerleaders took their positions, and the game began. It was a very close game; both teams really wanted the trophy and a shot at their future dreams.

Then I heard, "Let's impress them with our stunts!" ordered the assistant coach. Stunts are my favorite time of the cheerleading routine. I watched carefully as the cheerleaders took their spots. I noticed my daughter Connie was the flyer of the stunt group that was missing a front spot. So, as per the assistant coach's orders, Connie went up without a front spot.

Deep down, I was a tiny bit worried, but I trusted her coach even though she was the assistant. Miss Ing has been coaching my daughter since freshman year. The crowd erupted into a loud roar; I then returned my focus back to the game.

Then #24 Tim Burr tackled one of the other players so hard he pushed him out of bounds and into the stunt group without the front spot. The one my daughter was in! Her bases lost their balance and fell. Connie was in the air doing a flip into the dismount cradle, which wasn't there. Much to everyone's surprise, she fell onto the pile of cheerleaders and football players. She hit her head on Tim's helmet.

I rushed to the fence trying to get her attention, asking, "Are you okay?" She did not respond. I saw the assistant coach rush over to her. They spoke for a bit, and she helped my daughter up. I noticed the athletic trainer heading over. However, when the assistant coach stood up, I watched her wave off the athletic trainer. I felt relieved everything was Ok. I trusted my daughter's coaches. My daughter continued to cheer. The football team continued to play hard, and their team won the rival football game. Thankfully, Connie won the scholarship. We celebrated by going out to dinner.

Once the excitement died down from the day, my daughter felt very tired and went to bed. She woke up saying her head was hurting badly. I had to rush her to the hospital. When they did the brain scan, they found her brain had swelled. They could not tell us when the swelling would go down. It was a waiting game.

Dr. Brian Swellington delivered the fretful news a week later. The swelling is reducing very, very

slowly and Connie may struggle with certain tasks, especially academics. You could imagine our disappointment when Connie did not pass her college entrance exam and lost her scholarship. I told Connie not to worry, hopefully the swelling will continue to go down and you will pass the entrance exam then. I will help pay for college the best I can. But then the hospital bill came. I cannot afford to pay both, and since the hospital bill has to be paid, my daughter's dream cannot come true.

### TESTIMONY OF MISS ING

My name is Melissa Ing; my cheerleaders call me Miss Ing. I have been the assistant cheerleading coach for many years. I am trained in stunts, tumbling and first aid.

My squad impresses me this year because they are all very talented, flexible and rarely make mistakes. We were all so excited and eager to win the Rival Trophy for our school. We had been talking about it for weeks. College scouts were coming to the game and one of our cheerleaders was going to be considered for a big scholarship. Unfortunately, the night before the game at the pep rally, the head coach, Annie Knottier, developed food poisoning. That morning, I was told I would have to coach alone.

Coach Knottier had every confidence in me because I received the same training that she did. I also never miss a game, and I have stood by her side every game for three years now. I know how she coaches, and what she expects from the squad. Just as the squad knows what is expected of them. I shared with the girls Coach Knottier's unfortunate illness, and quickly jumped into the pre-game speech. I wanted to keep the girls' eyes on the prize.

We were missing a few cheerleaders also. This

concerned some girls more than the absent coach. I reassured them that they are a great group and could achieve anything they set their mind to. With that, we ran over to our places.

The girls were cheering loudly and performing well. The game was close. We needed to amp up our support, so we decided to do the stunts. I watched with awe as they performed beautifully, when all of a sudden my cheerleaders were on the ground. The play from the field hit right into the base of my head cheerleader's stunt group. She had been airborne when the players ran into the base, so she came down hard. I couldn't see what she hit, but when I got to the pile of players and cheerleaders, she was laying on top of #24 Tim Burr.

I helped them up and asked if they were Ok. They all said yes, except for Connie. She said she felt dizzy. I wanted to get her checked, abiding by the signed contract we have because of the concussion testing law, but she adamantly said she was Ok. I trusted her since she also signed the contract as well, which states the athlete will honestly report concussion symptoms to their coach.

I waved off the athletic trainer, and Connie continued to cheer with the same energy she had before.

#### **TESTIMONY OF TIM BURR**

I am Tim Burr. I am a senior football player and the captain of the team. I was one of the players that knocked into the cheerleader's base. The day was a very exciting day for all senior athletes. We all wanted to win the Rival Trophy to honor our school, and hopefully win the scholarship to help us.

I have known of Connie Ussion for four years, but only truly got to know her this year. Since we were both captains, we have to work closely together. I know how dedicated she is to cheering. She is a very strong person, and usually achieves what she sets her mind to.

She and I discussed how important this game is to us at the pep rally the night before. The pep rally was very exciting and the coaches were getting us all amped up.

On the day of the rival game, everyone continued to be excited. We all wanted this win for so many reasons. The crowd was loud, the cheerleaders were cheering, and we were playing hard. The game was close. Our coach called a time-out, and told us to fight hard and do what it takes to win.

So I was all set in position when the Rival QB said, "HIKE." I ran and he threw the ball to the player I was blocking. I had to catch him. He was out of reach, so I dove at him. I was so focused. I didn't realize how close to our town's cheerleaders I was when I dove. BOOM! I tackled him right into the cheerleaders. The force of our tackle knocked over their base and the head cheerleader who was in the air came crashing down on my helmet. Her head hit my helmet so hard.

The assistant coach ran over and helped us all up. She repeatedly asked us all if we were Ok. Connie got up and she said she felt dizzy. The coach wanted to have her checked, but Connie told her coach she was always dizzy after a basket toss and flip dismount. The coach then turned around and waved off the athletic trainer, which was good because then my coach called her over. When I got back to my bench, my coach had me checked. He was so

glad that there was no concussion for me. I was able to continue to play, we won, and I won the scholarship. I am going to State College in the fall!

## INSTRUCTIONS

The plaintiff, Connie Ussion, must prove by a preponderance of the evidence that Coach Miss Ing acted in a negligent manner by not removing Connie Ussion from the routine after she suffered the fall.

## SUB-ISSUES

1. Should the assistant coach have removed the stunt from the cheer routine when there were missing cheerleaders?
2. Does the head cheerleader, Connie Ussion, have any responsibility to request removing the stunt if she did not feel safe?
3. What liability is attributed to the assistant coach in the failure to seek assistance in examining Connie?
4. Should Connie Ussion have been removed from the routine? Why was Connie Ussion not pulled from the rest of the stunts?
5. Is there any liability on the part of the athletic trainer for not insisting he be able to check on Connie?
6. Should students under the age of 18 be allowed to make medical decisions about themselves?
7. Why wasn't the parent consulted on whether or not Connie should stay in the routine?
8. Did Tim Burr's coach have any liability in telling his players to do anything they needed to win the game?

## CONCEPTS

1. Negligence.
2. Contributory negligence.
3. Personal damage.
4. Comparative negligence.
5. Concussion State Law.

## LAW

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

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

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

**Personal and Property Damages:** Damage is a loss or harm resulting from injury to a person or property. Damage refers to compensation, such as a money judgment, provided to a person who has suffered a loss or harm due to



an unlawful act or negligence. The person at fault must compensate the injured party.

**Comparative Negligence:** If the plaintiff is also negligent but his negligence is not greater than that of the defendant, the plaintiff may recover damages but the amount will be reduced by the percentage of the plaintiff's negligence.

**Contributory Negligence:** If the plaintiff's negligence contributed to his or her injury and he or she failed to act responsibly for his/her age, then his/her carelessness may reduce the responsibility of other parties.

**Concussion Testing Law:** The key provisions of the New Jersey law:

**Education and mandatory training:** The State Department of Education must work to develop and implement by the 2011–2012 school year an interscholastic athletic head injury training program which must be completed by school physicians, all those who coach a public or private school interscholastic sport, and athletic trainers involved in a public or private interscholastic school program, and update the program as necessary to ensure that it reflects the most current information available on the nature, risk and treatment of sports-related concussion and other head injuries. The program must include, at minimum, education on recognition of symptoms of head and neck injuries, concussions and injuries related to second-impact syndrome and the appropriate amount of time to delay the return to sports competition or practice after concussion.

**Informed consent to play:** requires the Department of Education to develop an

educational fact sheet about sports-related concussion and other head injuries to distribute to parents and/or guardians of student-athletes and obtain a signed acknowledgment of the receipt of such fact sheet by the student-athlete and his parent or guardian on a yearly basis;

**Immediate removal if concussion**

**suspected:** Youth athletes suspected of having sustained a concussion in a practice or game must be immediately removed from competition; and

**Return to play after medical clearance:**

Youth athletes who have been taken out of a game or practice because of a suspected concussion are not allowed to return to play until after the athlete has been evaluated by a physician or other licensed health care provider trained in the evaluation and management of concussions; and the athlete has received written clearance to return to practice and competition from a physician trained in the evaluation and management of concussions.

**Immunity from liability:** School districts and private schools will be immune from liability for injury or death of a person due to the action or inaction of persons employed by or under contract with a youth sports team organization that operates on school grounds if the youth sports team organization provides the district or private school with (a) proof of insurance in an amount not less than \$50,000 per person, per occurrence; and (b) a statement of compliance with the school district or private school's policies for management of concussions and other head injuries.



## **PENNY'S PENNY?**

### **STATE V. DIDDY STEAL**

#### **SCHOOL**

School Number Three  
Fort Lee  
Grade 4, Second Place

#### **TEACHER**

Elsa Osso

#### **STUDENTS**

Myles Beckerman  
Renee Chen  
Ryan Chen  
Yejun Choi  
Daniel Fu  
Daniel Lee  
Alex Seo  
Andy Zhao

#### **FACTS**

Penny Cole Lector, a 22-year-old college student accuses Diddy, a 21-year-old college student, of stealing a rare 1943 copper penny from right under her nose. Both students worked at the Amazon Café as a part-time job to earn extra money for life. On New Year's Eve, December 31, 2015, the café was packed. That night Penny received a tip which included the rare copper penny. Since Penny's dad is a coin collector, she always made it a habit to look at the dates on all of her coins. When she saw the 1943 date, Penny was very excited. At that moment, the alert sound on the POS (Point of Sales) device went off because it was time for her to serve food to one of her tables. Since the uniforms did not have any pockets, Penny told Diddy, who was a new friend and host, to hold the coin for her. At the end of the night, the penny was nowhere to be found. A series of events that Penny claims to have occurred lead her to accuse Diddy of theft.

#### **ISSUE**

Is Diddy Steal guilty of stealing the 1943 copper penny?

#### **WITNESSES**

##### **FOR THE PROSECUTION**

Penny Cole Lector  
Owen Er

##### **FOR THE DEFENDANT**

Diddy Steal  
Evi Dence

## WITNESS STATEMENTS

### TESTIMONY OF PENNY COLE LECTOR

My name is Penny Cole Lector. I am a 22-year-old student in dental school. I came to choose this profession because I think that dental health is important and fascinating. I've also been working at the Amazon Café on Friday and Saturday nights to earn extra money to pay for the very expensive medical books for my classes. I usually do not work on weekdays because I am too busy studying, but since I was on a break from school, the owner asked me to work on Thursday, December 31, because he knew it would be a busy night.

The owner was right. The café was packed on New Year's Eve. When I was cleaning one of my tables for the next family, I saw a \$20 bill with a penny on it that the people had left as a tip. I was happy because the owner had told me that some customers leave a penny on top of the tip when they receive excellent service. Since my dad is a coin collector, I make it a habit to always look at the dates on coins. I was shocked when I saw that the date was 1943. I knew right away that it was valuable.

While I was staring at the coin, the handheld POS system alerted me that the order for table 15 was ready. I knew I had to hop to it. I dropped the \$20 bill in my tip jar, but I didn't want to let go of the penny. Since the restaurant uses handheld computers to take orders, our uniforms don't have any pockets. This was a big problem. Diddy was hosting that night, and I decided it would be better to let him hold on to the penny. When I had spoken to Diddy about my dad's coin collection, he thought it was very interesting that I knew so much. I quickly told him that the penny was valuable, and he agreed to keep it safe. I intended to go back and get the penny

right after I served the table, but I was so busy that I didn't get a break until at least an hour later.

Every time I looked for Diddy, I never saw him. He seemed to disappear into thin air! I think he was avoiding me on purpose. When I finally did get a chance to talk to him, he said that he had to put the penny in my tip jar because he got too busy and didn't want to lose it. When I emptied my tip jar, a penny was there, but it was the wrong one. That penny had 1948 as the date!

I was devastated to learn from my dad that a rare 1943 coin can be worth as much as \$60,000. He told me that he has been trying to find one of those pennies for most of his life. My dad was disappointed that I didn't have the penny, but he didn't blame me. But when I realized that Diddy must have stolen the penny, I felt that I would burst into a rage.

Diddy had been working at the café for only three months, but we had become friends and I trusted him. Later, however, I learned that he had stolen money from a register in a diner. The owner, Owen Er, was not happy when he found out about this incident. He was thinking about firing him, but since Diddy had established some reliability, he didn't want to fire him during the holidays because he needed the extra help. My dad and I are hoping that Diddy will realize that he needs to tell the truth and give back the penny.

### TESTIMONY OF OWEN ER

I am Owen Er, the owner of Amazon Café. I inherited the restaurant when my father passed away. I am proud to say that we have been in business for a total of 37 years and that it has been very successful. In addition to

our delicious food, I think that the special atmosphere helps to attract customers. The dining room is set up to look like a rainforest. It has trees and fake animals, and its most famous feature is our talking military African Grey parrot. But running such a popular restaurant isn't always easy.

We are always very busy on all of the holidays. This New Year's Eve, I watched the waiters and waitresses buzzing back and forth from the kitchen to the dining room non-stop as they carried hundreds of delicious meals to the tables. Diddy wasn't supposed to work that night, but I needed him to be an extra host. During all of the commotion, from the corner of my eye, I noticed Penny hand Diddy a small round object, which I now believe to have been the missing 1943 copper penny.

I did think that Diddy was a good worker at first, which is why I hired him. Also, he had previous experience working in another restaurant, so he quickly learned how to work at the café. I didn't have time to call the previous restaurant to see what his other employer would say about Diddy, but I wasn't worried because he was doing a good job. When I called a couple of days before New Year's Eve, I was very surprised to hear that he was caught on the security camera stealing a \$50 bill. That's when I decided to fire him, but I couldn't do it until after December 31st because I needed him to work that night.

I hope that Diddy takes responsibility for the theft of the penny and that he won't get into any more trouble in the future.

#### TESTIMONY OF DIDDY STEAL

My name is Diddy Steal. I am a 21-year-old student. I attend MIA (Manhattan Institute of

Animals). I am studying to be a zoologist because of my great love for animals. My parents convinced me to get a part-time job in a restaurant so I could make a little extra money. Since I am such a fan of animals, I agreed to work as a host at the Amazon Café.

Before that I worked at a diner, but I quit when the boss falsely accused me of stealing a \$50 bill from the cash register. He said that I was caught by the video camera, so I asked to see the video. The video shows me at the cash register with a \$50 bill in my hand, but if you watch carefully you can see me bending down. That's because I picked the \$50 bill up from the floor. A man dropped it as he was paying. The security camera doesn't show that I followed the man to the front door to give the money back to him. The boss wouldn't listen to me. He says he fired me, but that's not true. I was so upset that I quit. My mom was happy that I quit.

I really liked working at the Amazon Café. Mr. Owen Er was impressed that I knew how to be a good waiter and a host and that I even knew all about African Greys. December 31st was the busiest night ever! While I was working, Penny ran over to me, handed me a penny and told me to please hold it because she thought that it was one of the valuable ones that she had told me about. When customers came in, I needed both hands to carry the menus. Since Penny didn't come back right away, I didn't want to lose the penny, so I put it in Penny's tip jar. The tip jar was by the African Grey parrot. As I dropped the penny in the jar, I said, "Penny in tip jar! Penny in tip jar!" The parrot heard me, and he repeated it!

The next day, I was called down to the police station. I was surprised to see Penny there, and

I was shocked when she accused me of stealing the penny. She said that when she looked in her tip jar at the end of the night she only found a 1948 penny. I'm sure that she made a mistake and read the wrong date. Penny is my friend and I like her. I would never steal, not even a penny, from her!

### TESTIMONY OF EVIDENCE

My name is Evi Dence. I am Owen Er's friend, and I eat at the Amazon Café at least once a week. I know that Owen means well, but he did not see everything that happened that night.

I love military African Grey parrots. I think they are intelligent and interesting creatures. I trained Fred to talk when he was only one month old. I trained him to have conversations with people and to give information. The military used him for a while and then I got him back. When Owen asked me if he could buy Fred for the restaurant, I agreed because I knew he would take good care of him and that I would still be able to see him. I was very busy with my job. I didn't want Fred to be alone.

I was at the Amazon Café on New Year's Eve. In fact, I was sitting at the table right by Fred like I always do when I heard Fred's voice. He spoke very clearly when he said, "Penny in tip jar! Penny in tip jar!" He was repeating what he heard Diddy say when he put the tip in the jar.

I believe that Diddy is being falsely accused for the theft of the valuable penny. If you think about it, there is plenty of reasonable doubt. Maybe the penny fell on the floor when Penny was counting her coins. Maybe another employee took it. Maybe Penny made a mistake and read the wrong date. Mostly, I believe that Diddy is innocent because I

trained my parrot and I trust him to tell the truth!

## INSTRUCTIONS

The prosecution has the burden of proof. The jury must analyze the evidence and decide whether the defendant, Diddy Steal, is guilty beyond a reasonable doubt.

## SUB-ISSUES

1. Which witness is most credible?
2. Could Penny have read the wrong date?
3. How strong is the customer's testimony?
4. What evidence is direct eyewitness evidence and what evidence is circumstantial?
5. Was there enough evidence to establish Diddy's guilt beyond a reasonable doubt?

## CONCEPTS

1. Reasonable doubt.
2. Credibility of witnesses.
3. Possession of stolen goods.
4. Innocent possession.
5. Direct evidence.
6. Circumstantial evidence.

## LAWS

**Theft:** the generic term for all crimes in which a person intentionally and fraudulently takes personal property of another without permission or consent and with the intent to convert it to the taker's use (including potential sale). In many states, if the value of the property taken is low (for example, less than \$500) the crime is "petty theft," but it is "grand theft" for larger amounts, designated misdemeanor or felony, respectively. *Source:* <http://dictionary.law.com/Default.aspx?selected=2119>

**Grand Theft/Grand Larceny:** the crime of theft of another's property (including money) over a certain value (for example, \$500), as distinguished from petty (or petit) larceny in which the value is below the grand larceny limit. Some states only recognize the crime of larceny, but draw the line between a felony (punishable by state prison time) and a misdemeanor (local jail and/or fine) based on the value of the loot. *Source: <http://dictionary.law.com/Default.aspx?selected=829>*

**Possession of stolen goods:** the crime of possession of goods which one knows or which any reasonable person would realize were stolen. It is generally a felony. Innocent possession is not a crime, but the goods are generally returned to the legal owner. *Source: <http://dictionary.law.com/Default.aspx?selected=1556>*

**Circumstantial evidence:** evidence in a trial which is not directly from an eyewitness or participant and requires some reasoning to prove a fact. There is a public perception that such evidence is weak (“all they have is circumstantial evidence”), but the probable conclusion from the circumstances may be so strong that there can be little doubt as to a vital fact (“beyond a reasonable doubt” in a criminal case, and “a preponderance of the evidence” in a civil case). Particularly in criminal cases, “eyewitness” (“I saw Frankie shoot Johnny”) type evidence is often lacking and may be unreliable, so circumstantial evidence becomes essential. Prior threats to the victim, fingerprints found at the scene of the crime, ownership of the murder weapon, and the accused being seen in the neighborhood, certainly point to the suspect as being the killer, but each bit of evidence is circumstantial. *Source: <http://dictionary.law.com/Default.aspx?selected=191>*



## THE CASE OF THE BITTEN BOY

### FACTS

One warm spring day a teacher named Emily Sheppard was getting ready for another school day. She said goodbye to her German shepherd named Buster, and off she went to River Run Elementary, where she taught fourth grade.

Ms. Sheppard just moved into the neighborhood where she teaches. The white picket fence in the backyard was perfect for her dog to exercise and play. In addition, Ms. Sheppard likes to be able to go home and let her dog out to exercise and go to the bathroom during her lunchtime. The fence surrounding her house has a faded sign indicating “Beware of Dog,” but it is covered by some overgrown shrubs.

On occasion Buster has escaped from his backyard fence and has run to the back door of River Run Elementary School, waiting for his owner to finish the school day and walk home with Ms. Sheppard.

On Tuesday, May 23rd, the bell rang and the students lined up to go home. After the dismissal bell, Buster saw the kids walking home from school and ran towards them. From a distance Charlie recognized Buster. Buster was excited to see the children coming and was running in circles trying to get their attention. Charlie recognized that it was his teacher’s pet because he knew where Ms. Sheppard lived. Charlie tried to run with Buster back to his fenced-in yard and that’s when Charlie put his leg out to shoo him through the gate, but instead Buster bit him.

The bite was so bad that Charlie had to get 22 stitches. Consequently, Charlie could not compete in his Little League

### SCHOOL

Bobby’s Run  
Lumberton  
Grade 4, Honorable  
Mention

### TEACHER

Sandra Carver

### STUDENTS

Annika Biggi  
Evan Boltnew  
Allison Bonaventura  
Kayla Bullock  
Jimmy Gallo  
Dillon MacDonald  
Brynn McGugan-Riches  
Lillian Schick  
Marley Stutzman



baseball championship game later that week. Charlie’s parents are suing Emily Sheppard for his medical expenses and counseling services due to the traumatic experience and not being able to play in the championship game later that week.

**ISSUE**

Is Ms. Shepard responsible for Charlie Bitten’s medical expenses and pain and suffering?

**WITNESSES**

**FOR THE PLAINTIFF**

Joe Buddy  
Charlie Bitten

**FOR THE DEFENDANT**

Emily Sheppard  
Jay Walker

**WITNESS STATEMENTS**

**TESTIMONY OF CHARLIE BITTEN**

I’m Charlie Bitten. I have no idea why Buster bit me! When I go to school I always pet him. Usually, I put a stick through the fence to get Buster’s attention, but I always take it away so he can’t get it.

One day my friend Joe and I were walking home from school. We saw that Buster was outside his gate. Joe and I wondered how he had gotten out. We didn’t know what we should do so we kept on walking. As we were walking, we heard noises in front of us. Joe and I looked ahead and saw Buster was coming towards us. So I started to run with him and tried to get him back home. I shoed him with my leg so he would get into his gate because I didn’t want him to follow us home

and get into trouble by Ms. Sheppard. But instead of backing away, he bit my leg really hard. I screamed in pain. Buster had bit me. I tried to push Buster away with my other leg, but then he bit my same leg again. Finally, after what seemed like hours, Ms. Sheppard arrived and got her dog.

I had to get 22 stitches and I couldn’t play in the Little League baseball championship game. I think Ms. Sheppard should pay for my medical bills and counseling services.

**TESTIMONY OF JOE BUDDY**

I am Joe Buddy. I am best friends with Charlie Bitten. We’ve been friends since kindergarten. Charlie Bitten and I are fourth-grade boys. Our school is River Run Elementary. I always walk to and from school with Charlie. While walking, Charlie will normally pet Buster. Sometimes Charlie Bitten would run a stick down the fence, or stick a stick through the fence and play tug of war with Buster.

However, one day we were going home from school and we saw Buster outside his gate. I think Buster recognized Charlie the same time we recognized him because Buster started running towards us. Charlie tried to get Buster back into his gate so he wouldn’t get into trouble by Ms. Sheppard. Charlie used his leg to shoo Buster back into his gate. I heard Buster growl and Charlie scream. That’s when Charlie Bitten got bitten.

**TESTIMONY OF EMILY SHEPPARD**

I am the owner of Buster. I adopted him four years ago at the local animal shelter, and I know Buster would never hurt a fly. I’m a fourth-grade teacher at River Run Elementary School. My student Charlie Bitten wasn’t a very good student. He doesn’t follow directions in

class and talks too much to his classmates. One day, when I was walking to my house, I saw Charlie Bitten tantalizing my dog. He was poking a stick through the fence at Buster and pretending that he had a treat in his hand but he actually didn't. And that made Buster agitated. I told him if he didn't stop teasing my dog that I was going to call his parents. I guess he didn't listen to my warning.

The next day I had an early staff meeting but I never heard my alarm go off. Buster licked my face to get his breakfast and I realized I was going to be late if I didn't hurry. I quickly got ready, got Buster food, let him outside, and then left for school. I think I locked the gate.

Buster always played well with other dogs at the dog park and almost never escaped out of the backyard. Sometimes he has met me after school to walk him home. Buster played with my nephews well and never bit anyone.

The day that I heard from the police that Charlie was bitten by Buster I was not surprised at all. Charlie never listened to my earlier warnings and he never listens in class to instructions. I knew that it was just a matter of time that Charlie was going to get hurt by Buster. I don't think that I should be responsible for Charlie's medical bills since he doesn't listen to me about my dog. Charlie was almost asking for Buster to bite him.

### TESTIMONY OF JAY WALKER

I live in the same neighborhood as Emily Sheppard. I always used to walk my dog with her and her dog or go to the dog park together. Buster always played well with my dog. Whenever I went by her house walking my dog, I saw the "Beware of Dog" sign hidden behind the bushes. Sometimes while walking

my dog I saw two boys who regularly tease Ms. Sheppard's dog either in the morning going to school or sometimes after school calling for Buster with a stick in their hand.

On the day in question, I saw that Emily's gate was partially left open. It looked ajar. I went over to shut the gate. It looked locked to me. Then I looked in and saw Buster, Emily Sheppard's dog playing happily with his big red ball. I left and walked back home. Later that day, when the kids at River Run Elementary were getting out of school, I happened to be walking my dog again. I saw two boys near Buster who was outside of his fence. I have never seen Buster outside of his fence. I heard screaming near the gate and turned to look back. That's when I saw one of the boys on the ground bleeding and hitting Buster with a stick.

## INSTRUCTIONS

The plaintiff must prove by a preponderance of the evidence that Emily Sheppard, the dog owner of Buster, is responsible for Charlie Bitten's medical bills.

## SUB-ISSUES

1. Does Ms. Sheppard's fence need repair since Buster has escaped several times before?
2. Should the "Beware of Dog" sign be more clearly visible or even removed from the fence?
3. Should Charlie not have been playing with Buster, the dog, to and from school?
4. Are Charlie's pain and suffering as serious as he and his parents state?

## CONCEPTS

1. Burden of proof.
2. Credibility of witnesses.
3. Negligence.

## LAW

Negligence is established when:

- a. The defendant had a duty to protect the plaintiff from harm,
- b. The defendant fails to fulfill that duty, even if unintentionally, and
- c. The defendant's failure causes injury to the plaintiff's person.

If the plaintiff's acts contribute to the injury, such acts may reduce, but not necessarily eliminate, the responsibility of the defendant.



# THE CASE OF THE INJURED BASKETBALL STAR

## VICTIM V. POLICE DEPARTMENT

### FACTS

Saturday, November 1, 2015 was a cold, foggy day. Victoria Victim, a 17-year-old girl, was walking across the street in the crosswalk to the mall. She had headphones on listening to music while texting her father about a family issue. At the same time, the police were driving to a crime scene. The police car lights and sirens were on, but Victoria couldn't hear or see them. She thought it was safe to cross the street because the streetlight was red. While Victoria was crossing the street, the streetlight changed to green. As the police car approached Victoria in the crosswalk, the officer slammed on the brakes, but it was too late and the car hit her.

Victoria was rushed to the hospital and was informed that she had a broken arm and leg. The doctor told Victoria the casts would last five weeks for the arm and seven weeks for the leg to heal. Victoria was the star of her basketball team and this injury put her out for the season of her senior year of high school. College scouts were scheduled to watch her games and she was looking to receive a scholarship at the college level.

Later on, Officer Dylan Driver learned that the brakes were in need of repair. He was new to the job and didn't know the brakes were defective until he tried to use them. The plaintiff claims that someone at the police department should've told the officer the brakes were in need of repair before he left. The police officer claims he couldn't see her due to the fog. He claims he had to get to the scene quickly because of a robbery.

Victoria's family is suing the Police Department for pain and suffering, medical bills, and partial college funds.

### SCHOOL

Valley Road  
Clark  
Grade 5, First Place

### TEACHER

Cindy Tarello

### STUDENTS

Timothy Ford  
Gina Galiszewski  
Mackenzie Nielsen

## ISSUE

Is the police department responsible for Victoria's injury since she was texting while crossing the street with headphones on while listening to music? Can the police department be held responsible to pay for potential scholarship money?

## WITNESSES

### FOR THE PLAINTIFF

Victoria Victim  
Corey Coach

### FOR THE DEFENDANT

Officer Dylan Driver  
Michael Man

## WITNESS STATEMENTS

### TESTIMONY OF VICTORIA VICTIM

I was heading for the mall, listening to music, and texting my dad while crossing the street after making sure the streetlight was red and I had the Ok signal to walk in the crosswalk. All of a sudden, while I was crossing the street, a police car flew in out of nowhere and whammed right into me! I broke my arm and leg, which put me out of the spotlight for my senior year of basketball.

My fans are really counting on me to bring home the team title for the season and win the state championship. College scouts have been reaching out and scouting me all season to see if I would play at one of the schools for a free scholarship. The schools that have been scouting me are UCONN, Notre Dame, University of Maryland and more!

Ever since the accident, the calls and scouting completely stopped! This accident has

completely ruined my season and my future! I am completely devastated. I also have to miss my band practices and spring concert of my senior year because of my injuries. The driver should have been more cautious and aware of his surroundings, regardless of how fast he had to be at a crime scene. He ended up causing more harm by acting so carelessly!

### TESTIMONY OF COREY COACH

Victoria Victim is a superb all-state basketball player of mine. A scout from the UCONN girls basketball team was going to attend next week's game against the Linden High School Tigers. A full scholarship was on the line and she was very excited for the game. Then she walked in with two casts and the team was astonished.

The team was worried about Victoria, but they were mostly worried about the upcoming games. They believe they have a small chance of winning the games in the championship. Since Victoria is the star, I was a bit worried myself. Her absence could result in a loss of the finals. During her absence, she will have to miss over 10 games and practices. Not only has this injury caused her trauma; it has also massively affected the team.

### TESTIMONY OF OFFICER DYLAN DRIVER

It was a foggy day at 2:00 in the afternoon. I was rushing to a crime scene when I saw something in the fog walking across the street. My sirens and lights were on and I was going about 40 miles an hour. Then I saw Victoria out of nowhere! I hit the brakes, but they didn't respond fast enough. The brakes finally responded and the car stopped, but it was too late. I had hit the figure. I got out of the car and saw it was a girl. I asked if she was okay and drove her to the hospital while she called

her father to tell him she was in the emergency room. Days later, I got a call telling me that the police department was being sued by the family of Victoria Victim.

### TESTIMONY OF MICHAEL MAN

I heard sirens while walking down the street. I saw a girl walking in the fog while texting. She wasn't paying attention to the car, so I tried to warn her. She didn't listen and she just kept looking at her phone. The sirens on the police car were turned on, but the girl didn't seem to care. I saw the policeman attempt to stop, but not in time. As soon as he stopped, it was too late. He had hit her, but he got out of the car and did what he could to help her. I feel that the girl should've paid more attention to her surroundings. Therefore, it was not Mr. Driver's fault and he should not be held responsible for this accident.

### INSTRUCTIONS

The jury must decide by a preponderance of the evidence whether Officer Dylan Driver should be held responsible for Victoria's injuries. If so, do Victoria's injuries affect her college scholarship possibilities?

### SUB-ISSUES

1. Did the fog impair Officer Driver's vision enough not to see Victoria?
2. Is Victoria responsible for her injuries because she was wearing headphones and texting while crossing the street?
3. Is the police department responsible for not providing Dylan Driver with a safe vehicle?
4. How much was the college scholarship worth?
5. Was the street signal working properly?

### CONCEPTS

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

### LAW

**Negligence:** Negligence is established when the defendant has a responsibility to protect the plaintiff. The defendant fails to protect the plaintiff, even unintentionally. This failure causes physical and/ or mental trauma to the plaintiff.



## ELECTRO EXPOSED

### AUDREY N. APPROPRIATE V. ELECTRO PREP AND A. HACKER

#### SCHOOL

Yavneh Academy  
Paramus  
Grade 5, Second Place

#### TEACHER

Cheryl Frankel

#### STUDENTS

Sienna Dube  
Sophia Esses  
Neima Herman  
Rebecca Kieffer  
Adelle Novoseller  
Paige Schwartz  
Natalie Wisotsky

#### FACTS

Electro Prep, a New Jersey public school, began a new program in the 2015–16 school year. They distributed iPads to all fourth- and fifth-grade students. Ownership of the iPads remained with the school, but they were given to the students to keep for the school year. The school installed special software on the iPads so they could monitor what the students did. Upon receipt of the iPads, students were required to sign a document acknowledging that everything they would do on the device could be reviewed by the school.

On February 5, Audrey N. Appropriate, a fourth-grade student, sent an email to her friend and classmate, Avery Innocent. She sent the email from her home on the school issued iPad. In the email, she made some insulting comments about their teacher, Emma Nosey, and called her some rude names. She also suggested some schemes for disrupting Ms. Nosey's class.

In monitoring Audrey's iPad, Ms. Nosey read the email. She reported it to Principal Hacker and Audrey was suspended from school for three days. Audrey is suing the school and Principal Hacker for wrongful suspension, claiming that they violated her right to privacy in reading her emails.

#### ISSUE

Is Electro Prep guilty of invading students' privacy by reading students' personal emails on school-issued iPads?



## WITNESSES

### FOR THE PLAINTIFF

Audrey N. Appropriate  
Avery Innocent

### FOR THE DEFENDANT

Emma Nosey  
Principal A. Hacker

## WITNESS STATEMENTS

### TESTIMONY OF AUDREY N. APPROPRIATE

My name is Audrey N. Appropriate. I am a fourth-grade student at the Electro Prep School. This year, for the first time, students in the fourth and fifth grades in Electro Prep were issued iPads to use during the school year. My friends and I were very excited by this innovation in our school and looked forward to using the iPads both in school and at home.

When we received the iPads, we were also given several documents to fill out. Our teacher told us we would not receive the iPads unless we completed the forms. We weren't given a choice, but were told the forms needed to be signed. I understand that Electro Prep and Principal Hacker say that I gave them the right to read my emails, but I certainly did not understand that that was what I was doing. I never intended to allow them to invade my privacy like that!

On February 5 I was working on a writing assignment at home and wanted to check something with my friend Avery. I emailed her "hello" and we were exchanging emails for a while. In one of the emails, I said some negative things about our teacher, Emma Nosey. Ms. Nosey doesn't like me very much, and I was sharing all my complaints about her with my friend. I suggested some schemes for

disrupting Ms. Nosey's class. I was using the email as an outlet for my frustrations. I never believed we would actually carry out any of my schemes.

When I arrived in school the next day, I was called to Principal Hacker's office. He told me he had read my emails and that I was suspended from school for three days. I couldn't believe it! I am a good student and I have never gotten in trouble before. Principal Hacker had no right to read my emails. I may have written something rude and disrespectful, but it was meant to be private! Kids sometimes write things for others' entertainment. I never intended to harm anyone and did not deserve to be suspended. I am so embarrassed. People think I did something terrible because I was suspended and they don't know the facts. My reputation is ruined!

### TESTIMONY OF AVERY INNOCENT

My name is Avery Innocent and I am a fourth-grade student at the Electro Prep School. I have been best friends with Audrey N. Appropriate since we met in kindergarten. She is a good student and well-liked by her peers and by most of her teachers.

We were very excited to receive iPads from school. We are able to use them for schoolwork and projects, but of course we use them for emailing our friends as well. Audrey and I emailed each other all the time from our home computers. Now, we are able to use our iPads. We aren't doing anything we weren't doing before, but now Ms. Nosey and Electro Prep are spying on our conversations. What an invasion of privacy!

On the night of February 5, Audrey emailed me like many nights in the past. She soon started

to complain about our teacher, Ms. Emma Nosey, who has really been picking on Audrey at school. While it's true that Audrey used some nasty words about Ms. Nosey, she was just venting. If she can't complain to me, who can she talk to? Isn't that what friends are for? While Audrey also made some suggestions about acting up in Ms. Nosey's class, I didn't take her seriously. We've made joking suggestions like that before when we've been annoyed with teachers, but we never acted on them. The email was intended for my eyes only and I knew that she didn't intend for us to carry out any of those schemes.

Reading our emails that we sent from home was an invasion of our privacy. While the school might have an interest in making sure we use the internet safely, that does not excuse their reading our personal mail. Audrey should not have been suspended.

#### **TESTIMONY OF PRINCIPAL A. HACKER**

My name is A. Hacker and I am the principal of Electro Prep School. I was excited when our school was asked to participate in a program where iPads would be issued to all fourth- and fifth-grade students at the school. Students use the iPads for work both at home and in school. We were able to implement the use of the iPads into our curriculum to the extent that without the iPads, students are unable to do some of the homework and in-class activities necessary to succeed academically. The school installed special software on the iPads so that we could monitor that the students were using the iPads safely. Responsible use of technology is a top priority for our school.

When the iPads were issued, students signed an agreement which made them aware that everything they did on the device could be

reviewed by the school. By signing the agreement, each student, including Audrey N. Appropriate, consented to allowing the school to monitor their use of the iPads. It was made clear to the students that the iPads belonged to the school and were only given to the students to use during the academic year.

As part of the iPad distribution program, teachers are required to randomly check on their students' iPad use. On February 6 in the morning, Ms. Nosey told me that she had randomly checked student emails the night before and that Audrey N. Appropriate had been sending unacceptable emails. She showed me the emails, which included rude and offensive language about Ms. Nosey, which language is expressly prohibited in our school. It also contained some specific plans for disrupting Ms. Nosey's class. I was shocked by these emails. As principal, I need to enforce the rules. When a student breaks the rules, she must face the consequences.

#### **TESTIMONY OF EMMA NOSEY**

My name is Emma Nosey and I am a fourth-grade teacher at Electro Prep. I, too, was very excited when our school was selected to participate in an iPad distribution program. The iPad has so many useful academic tools for students. I had concerns about students accessing harmful content online, but Principal Hacker assured me that the devices would include special software so the school could monitor what the students did and prevent any abuse.

In fact, Principal Hacker told me that it would be my responsibility to monitor my students. I was directed to randomly check what students did on their iPads, including checking their email. The students were told that their usage

would be monitored and that the school could read anything they did on their devices. They even signed agreements allowing the school to do this.

On February 5, I was reviewing student work online. I noticed that Audrey N. Appropriate had not completed as much of the assignment as she should have. I was looking through her other work to see if there was a pattern of incomplete work, when I saw an email she had written to her friend, Avery Innocent. In the email she said many disparaging things about me, and while I was offended, that was not what concerned me. I was disturbed by some plans she had suggested for disrupting class, and even suggested that the disruption could spread school wide. I was worried about the damage that could occur in our school, and felt it was my responsibility to bring the emails to the attention of Principal Hacker.

I know Audrey thinks I don't like her, but nothing could be further from the truth. I am, however, disappointed in her behavior and do not think it should be condoned by the school.

## INSTRUCTIONS

The plaintiff must prove, by a preponderance of the evidence, that the defendants violated

the students' right to privacy in reading their personal emails.

## SUB-ISSUES

1. Did the students waive their right to privacy when they signed the agreement provided by the school at the time the iPads were distributed?

## CONCEPTS

1. Right to privacy.
2. Waiver of rights.
3. Internet safety.
4. Burden of proof: preponderance of evidence.
5. Credibility of witnesses.

## LAW

**Child Internet Protection Act:** Schools must have measures in place to protect students from harmful online content.

**The Fourth Amendment of the U.S.**

**Constitution** protects all Americans, including minor students attending public schools, from unreasonable searches.

**The right to privacy** can be waived, but a waiver is only valid if it was voluntarily made.



## I NEED A RIDE!

### SCHOOL

Johnnie L. Cochran Jr.  
Academy  
East Orange  
Grade 5, Honorable  
Mention

### TEACHER

Patricia Hurt

### STUDENTS

Samuel Anetane  
Kaitlin Blount  
Amir Brown  
Brittany Casimir  
Courtney Crowder  
Nicholas DePass  
Joleen Eugene  
Nadine Gaita  
Valson Gardner  
King Hailey  
Imari Hamilton  
Sanai Hawkins  
Jayden Jenkins  
Trinity Johnson  
Xavier LaPorte  
Myracle Lockett  
Toneyah Lopez  
Anton Rudolph  
Jaiden Stokes  
Jibril Swint  
Emani Townes  
Auco Williams Jr.  
Tareak Williams  
Tianna Whitten

### FACTS

WeDrive, Inc. is a service which uses a mobile app allowing consumers with smartphones to submit a trip request which is then routed to WeDrive, Inc. drivers who use their own vehicles. These vehicles are not licensed as taxicabs.

WeDrive, Inc.'s pricing is similar to that of a metered taxi although all hiring and payment are handled exclusively through WeDrive, Inc. and not with the driver personally. Ms. I Nedaride picked up her six-year-old son Tommy from school around 3 p.m. In an effort to avoid walking during the impending snowstorm, Ms. Nedaride, using her smartphone, ordered the WeDrive, Inc. service. When the WeDrive, Inc. vehicle arrived, the driver, Mr. Gottago, questioned Ms. Nedaride if she had a booster seat, given the newly enacted law. The New Jersey car seat law mandates that babies and toddlers must remain in rear-facing car seats until two years old and 30 pounds. Older children must remain in the rear seat with booster seats until they are eight years old or 57 inches.

Ms. Nedaride was aware of the recently enacted law and suggested this was an emergency given the weather forecast. She begged the driver to accept the fare despite the fact she lacked a booster seat. Ms. Nedaride entered the vehicle and refused to leave when requested by driver I Gottago. In the spirit of cooperation, I Gottago reluctantly accepted the fare under one condition - that Ms. I. Nedaride hold Tommy in her lap with a firm grip. Driver I. Gottago noticed that her son appeared to be having a temper tantrum in the rear passenger seat.

While en route to her residence, Officer Nonsense was sitting in her patrol car when she observed a 2006 Honda Pilot with an adult and young child sitting in a private vehicle in the rear passenger seat without a booster seat. Officer Nonsense signaled the vehicle to pull over, and after

a brief conversation with the driver, issued a summons to both the driver and passenger for violating the booster law, in violation of NJSA 39:3-76A.

## ISSUE

Is WeDrive, Inc. responsible for providing its passengers with booster seats?

## WITNESSES

### FOR THE PLAINTIFF

I Nedaride

Tommy Tantrum Nedaride

### FOR THE DEFENDANT

I Gottago

Mr. WeDrive

## WITNESS STATEMENTS

### TESTIMONY OF I NEDARIDE

I am the mother of Tommy Tantrum Nedaride. On January 5, 2016, I picked up my son from school, and to avoid walking in the inclement weather, I ordered the WeDrive, Inc. service. I am aware that the law recently changed requiring all children under the age of eight years old to be in a booster seat. I understand that. It is the responsibility of the WeDrive, Inc. to provide the booster seat. Do they really expect prospective passengers to walk around with a booster seat in hand? The officer had no right to issue a summons to me. I was not driving the vehicle.

When I ordered the service, the app didn't ask me if a young child would be traveling with me. I have always been reluctant about some booster seats because children can be strangled by a strap or unable to get enough air due to

the way their bodies are positioned. This new law is unfair. At the very least, I believe I should be given some consideration due to the fact of the impending snowstorm.

### TESTIMONY OF TOMMY TANTRUM NEDARIDE

I am six years old. I am a well-behaved kid. I did not exhibit bad conduct in the WeDrive, Inc. vehicle. I had a toothache and I couldn't stop crying. At school, the nurse said she couldn't give me anything for the pain. My mother told me that once we were home, she would give me a baby Tylenol. I was suffering. I was not having a temper tantrum.

### TESTIMONY OF I GOTTAGO

My name is I Gottago. I am a driver with WeDrive, Inc. I received an electronic notification from corporate to pick up a passenger from a nearby school. I had no idea that the passenger had a child who required a booster seat. When I questioned Ms. I Nedaride about the booster seat, she gave me a hard time. Because of the inclement weather, she didn't think she could get another car service.

My corporate company, from what I understand, has no written policy regarding booster seats. I understand the New Jersey law seat belt requirements. I think parents should provide their own booster seats. There are so many booster seats on the market and many have been recalled because some are defective. Booster seats may slide, be a narrow fit or lack a lock system for extra security. Ms. Nedaride should pay for the ticket when we appear in court. It's her responsibility, not mine.

### TESTIMONY OF MR. WEDRIVE

My name is Mr. WeDrive and I am the president of WeDrive, Inc. I want to address

the issue of booster seats. My company has taken the position that passengers must supply their own booster seats. There is no one-size-fits-all booster seat. Because our drivers use their personal cars, the following problems can occur: children may not sit all the way in the seat because the seat may be too narrow or children may fail to stay in position for the entire trip.

Several car booster seats do a poor job in positioning children to fit properly. The seat belt is meant to be routed across a child's lower hip and mid shoulders instead of the stomach because the liver and spleen are more vulnerable to injuries in the case of an accident. If a WeDrive, Inc. driver provides the booster seat and an accident occurs, WeDrive, Inc. would be liable for the child's injuries. Parents know their children and should provide the booster seat that they deem appropriate.

## INSTRUCTIONS

The State must prove beyond a reasonable doubt that the driver, I Gottago, and/or passenger I Nedaride are liable to have a booster seat in the vehicle for any child up to the age of eight years old or 57 inches.

## SUB-ISSUES

Is WeDrive, Inc. held to the same standard as a taxicab given the fact that WeDrive, Inc. uses private vehicles?

## CONCEPTS

Traffic tickets are quasi-criminal in nature.

## LAW

All summons issued by police officers are quasi-criminal matters and are heard in the municipality where the offense occurred. All municipal courts have limited jurisdiction. The burden of proof is beyond a reasonable doubt. Upon a finding of guilt, the cost of such a summon ranges from \$50–\$75.



## SHOW AND TELL FAIRNESS?

### DIJUNO V. EVERGREEN ELEMENTARY SCHOOL

#### FACTS

On Friday, December 11, 2015, at Evergreen Elementary School, six-year-old Claire brought in dreidels and gelt (a chocolate coin) for show and tell and shared about Hanukkah. Claire taught her classmates the song, “I Have a Little Dreidel.”

Over the weekend, Mary Dijuno, a classmate of Claire, and her family made chocolate crosses and printed out nativity scene coloring pages for Mary to share with her class the following week. On Monday, Mary brought in her show-and-tell materials. When it was Mary’s turn to share, Ms. Holly Day, her teacher, stopped her. Mary continued to talk and her teacher became stern and demanded that Mary sit down. Mary started to cry and yell at Ms. Day. Ms. Day tried to calm Mary down but she began screaming and crying that she wanted to share her chocolate crosses and tell the story of baby Jesus. Ms. Day tried to send Mary to the principal’s office for being rude and disruptive. Mary refused to leave the room. Ms. Day called for assistance. The principal, Mr. Starr, had to physically carry Mary out of the classroom. Upon arrival at the principal’s office, Mary continued to cry, scream, and shout. As a result of being disrespectful to the two adults, Mary was suspended for two days.

Even after Mary’s suspension time was over, she refused to return to Evergreen Elementary School. Mary is currently seeing a therapist and is attending a private Christian school. The Dijuno family is suing the school board of Evergreen Elementary, Mr. Starr and Ms. Day for violation of Mary’s First Amendment right of freedom of religion. The Dijuno family is also asking the school district to pay for the cost of

#### SCHOOL

Round Valley  
Lebanon  
Grade 6, First Place

#### TEACHER

Renee Sielaff

#### STUDENTS

Alexis Boyd  
Isabella Cappuccio  
Alisa Kozhukhov  
Olivia LaBruno  
Olivia Malok  
Amelia McGreal  
Samantha Pawlowki  
Cassidy Shannon  
Imani Walker



Mary's emotional therapy sessions and tuition for her new private school, St. Lucia's Christian Academy.

## ISSUE

1. Do religious holiday celebrations belong in public schools?
2. Is it fair that Hanukkah is allowed to be discussed in public schools but not Christianity?
3. Was Mary's First Amendment right violated by Holly Day?

## WITNESSES

### FOR THE PLAINTIFF

Mary Dijuno

Angelica Dijuno

### FOR THE DEFENDANT

Holly Day

Dan Starr

## WITNESS STATEMENTS

### TESTIMONY OF MARY DIJUNO

My name is Mary Dijuno. I go to St. Lucia's Christian Academy. My old school was Evergreen Elementary School. I never want to go back to that school. It was Christmas time in first grade, and my best friend, Claire, shared a dreidel, and sang a song along with it. I was so excited to do that too, so my mom and I started making chocolate crosses, and a Christmas scene with baby Jesus. On Monday, when it was my turn to share about my chocolate crosses and the Christmas scene I brought in, Ms. Day kept interrupting me. So I started talking louder and so did Ms. Day. Then, Ms. Day yelled at me to sit down. I yelled too, to make her understand that I just wanted to share like Claire, but she didn't let

me. I screamed and Ms. Day yelled at me and told me to go to the principal's office. I was so upset and began crying. I just wanted to share like Claire did. I was so confused and angry that I could not calm down. Mr. Starr came running into the classroom. I tried to kick him away so I could share my chocolate crosses and scene.

He dragged me out of my classroom. When I got to the office, Mr. Starr gave me a stuffed animal and snacks. That helped but I still was so angry that Ms. Day would not let me take my turn for show and tell. Mr. Starr called my mom. She didn't look happy when she came to the school. She looked at me, then at Mr. Starr. My mom asked what happened. I told her that I was just trying to share my chocolate and Christmas scene and that Ms. Day stopped me. Mr. Starr took my mom into his office. When she came out, she looked madder than I have ever seen her before. She said we were going home.

Later I was told I wouldn't go back to school for a couple of days. When my mom said I had to go to school again, I said no! I don't want everyone to laugh and tease me. I never want to see Ms. Day again. She was so mean to me. All I wanted to do was share my show and tell. Now I go to a new school, St. Lucia's Christian Academy. I also have to see a doctor two times a week. We talk about my feelings and how school is going. At my new school, I can talk all I want about baby Jesus and nobody yells at me.

### TESTIMONY OF ANGELICA DIJUNO

My name is Angelica Dijuno. My daughter, Mary Dijuno, used to go to Evergreen Elementary School. On December 11, 2015, Mary came home from school very excited.

When I asked Mary why she was so happy, she said that her best friend, Claire, shared a dreidel in class for show and tell and shared about Hanukkah. Mary wanted to share something about her religion, so we both spent hours making chocolate crosses and printed out nativity scenes for Mary to share with her class.

On Monday, Mary went to school with her show and tell. She was so excited she could not sleep the night before. I was doing some housework when I received a call from the principal of the school. Mr. Starr explained that Mary was being very disrespectful to him as well as her teacher, Ms. Holly Day. I was shocked to hear this because Mary is very nice to everyone.

I quickly drove to the school and walked into the principal's office. I was surprised to see Mary sitting with a stuffed panda and a blanket eating fruit snacks. I asked Mary what happened and she burst into tears. She told me that Ms. Day told her to stop sharing and to sit down. She told me she got upset and couldn't calm herself down. I was angry because if Claire was able to share about Hanukkah, Mary should be allowed to share about the miracle birth of Jesus Christ.

Mr. Starr called me into his office. I tried to stay calm while Mr. Starr explained that Mary was being very disrespectful to him and to Ms. Day. As I was listening, I was beginning to get more and more irritated in how the staff handled the situation. My gosh, we are talking about show and tell! I told him it was not fair that Claire was able to share and Mary could not. Then Ms. Day came in and Mr. Starr excused himself and told Mary and me to wait in the lobby. Finally, after a while, Mr. Starr

told me that he was suspending Mary for two days. I was outraged and left the school with Mary in a huff.

After the suspension was over, Mary refused to go back to Evergreen. She would get hysterical every morning to the point where she could almost not breathe. I contacted a therapist to take Mary to counseling. It was suggested that Mary attend another school. Thank goodness I was able to get Mary into St. Lucia's Christian Academy with such short notice.

I am suing the school board, Mr. Starr and Ms. Day for their irresponsible actions. Mary's First Amendment right was violated. She has to attend a private school and get weekly counseling sessions. This is costing us a small fortune all over an innocent show and tell.

#### **TESTIMONY OF HOLLY DAY**

My name is Holly Day. I am 28 years old and have been working as a teacher at Evergreen Elementary School for seven years. I teach first grade, love all of my students, and especially enjoy when students share about their personal life during show and tell.

On Friday, December 11, 2015, one very sweet student of mine, Claire, brought in dreidels and gelt for her share. She taught everyone about Hanukkah and her religion. We all enjoyed the activity.

On Monday, another student of mine, Mary Dijuno, also brought in materials to share about her religion and Christmas. She was ready to share her homemade chocolate crosses and coloring pages when I realized that this might make some students feel uncomfortable. I have students of many different faiths, and it is uncomfortable when

the children present their religion as the only one. My students have shared about different religions before but never Christianity. The students are allowed to share about these things as long as they're about the educational parts of the religion, and not the religious aspects. Mary was trying to teach us about baby Jesus and salvation, which is not at all educational.

Not wanting anyone to feel uncomfortable, I stopped Mary from sharing, and told her that maybe she should come back tomorrow and share something else. She responded in a very unruly way, screaming and crying, "I want to share my candy!" I didn't want her to disrupt the class any further, so I attempted to calm her and make her sit down. She refused to relax, though, and continued to throw a tantrum. Realizing that I wasn't making any progress with her, I called the principal, Mr. Starr, for assistance.

Mr. Starr had to come down to my classroom and escort Mary to the office himself. All of my students and I heard her screaming and crying as Mary continued to throw a fit through the hallway. Once they had left our earshot, though, the class continued on as normal and there were no more disruptions.

During my lunch break, I went down to check on Mary and stopped in Mr. Starr's office to discuss what we should do about Mary's outburst. Mr. Starr said that Mary should be sent home with her mother and be suspended for two days because of her behavior.

The Dijuno family is suing my school board, Mr. Starr and me for violating Mary's freedom of religion right. They are also suing for the cost of Mary's therapy counseling and the fee

of her new private school, St. Lucia's Christian Academy.

I am actually rather angry at the Dijuno family for suing Mr. Starr and me, as we both had no intention of violating anyone's rights. I believe the whole incident was just one big misunderstanding.

### TESTIMONY OF DAN STARR

My name is Dan Starr. I have worked at Evergreen Elementary for 20 years. I've been a principal for 12 of them and eight as a teacher. I enjoy my job and dread the day I will have to retire. I was in my office eating a late breakfast when I received a phone call from a first-grade teacher, Ms. Day, telling me I had to come down to her room right away to assist with a child.

As I got closer to the room, I started hearing loud screaming and crying. I sprinted to the room. When I got there, I found a young girl throwing a tantrum on the floor. My eyes widened with shock to see such a little girl throw such a big fit. I went right into action. She kicked me and wouldn't let me take her out of the room, so I tried to relax her by talking to her calmly. Thank goodness I recently took a course on crisis intervention training. I used the nonviolent proper transport position to carry Mary out of the classroom. I took her immediately to my office. Then I offered her a stuffed animal, a drink and fruit snacks to calm her down.

When Mary was appeased, I called her mother. I said that Mary was being disrespectful to Ms. Day and me. She sounded very worried and befuddled. I asked her to come to the school to get Mary and talk more about what happened. When she arrived at school, I saw her talking

to her daughter. I politely asked Mrs. Dijuno to step into my office. I could tell she was not happy. I tried to explain to her that Mary was making other students and her teacher uncomfortable by teaching about Christianity. Mrs. Dijuno told me that we were violating her daughter's First Amendment rights. I kept trying to explain the school's position about religion but she would not listen. Thank goodness Ms. Day stopped by during her lunch break to check on Mary. I asked Mrs. Dijuno to go wait with Mary.

Ms. Day and I had a conversation about what transpired in the classroom to cause Mary's tantrum. I decided to send Mary home and suspend her for two days because of her disrespectful actions. I knew there was going to be trouble when Mary did not return and eventually withdrew from our school. If Mrs. Dijuno would have been reasonable, we could have worked this out. But instead, the Dijuno family decided to sue us for violation of Mary's First Amendment right of freedom of religion. They also expect us to pay for the cost of Mary's emotional therapy sessions and her new private school. Seems to me if the parents had better control over their daughter, none of this would have happened.

## INSTRUCTIONS

The plaintiff must prove by a preponderance of evidence that the defendant was personally responsible for violating the plaintiff's freedom of religion rights and must pay all fees relating to therapy and school tuition reimbursement.

## SUB-ISSUES

1. Is the school responsible for the costs of Mary's emotional therapy and the costs of

her new school?

2. Was a school suspension the appropriate way to handle the situation?
3. Did Mr. Starr use unnecessary force? Could he have removed Mary from the classroom in a different way instead of carrying her out of the classroom and embarrassing her in front of the whole class?
4. Should Mary have kept talking after the teacher stopped her or should she have stopped to properly handle the situation?
5. Did Mary overreact about not wanting to come back to school?
6. Are the dreidel song and dreidels religious or cultural in nature?
7. Are the chocolate crosses and nativity scene religious or cultural in nature?
8. Did Mary's mother set the situation up to promote a religious agenda?
9. What was the true reason why Ms. Day stopped Mary from sharing during show and tell?
10. Why was Claire allowed to share her religion but not Mary?

## CONCEPTS

1. First Amendment.
2. Burden of proof.
3. Emotional suffering.
4. Liability.

## LAW

1. The Supreme Court has ruled that public schools may not sponsor religious practices (*Engel v. Vitale*, 1962; *Abington v. Schempp*, 1963) but may teach about religion.
2. It is the responsibility of the school to provide a nurturing and safe environment for all students.
3. The First Amendment of the U.S. Constitution guarantees the right to freedom of religion and speech.



## FEDERATE V. CASINO CITY BOARD OF EDUCATION

### SCHOOL

Brigantine North  
Middle  
Brigantine  
Grade 6, Second Place

### TEACHER

Rita Coyne

### STUDENTS

Megan Baldwin  
Gabriela Beare  
Jason Chandler  
Trevor Cohen  
Aidan Driscoll  
Mikayla Garraty  
Arianna Haider  
Olivia Heng  
Belinda Kinney  
Dillon Knoff  
Kelsey Lipshutz  
Frankie McArthur  
Malea Ricciardi  
Brooke Sharp  
Isabela Simpson  
Charles Storr  
Nicholas Visco

### FACTS

Ken Federate is an eighth-grade Caucasian male from the State of Mississippi. He loved the south – his friends, his school and his southern heritage. He had ancestors who fought in the Civil War. Everyone at his school considered his family southern heroes. Once every year, on the date the Civil War started, the Federate family celebrated with a massive party to honor their heritage. They proudly displayed the Confederate flag which waved over their house year-round.

On Saturday, August 1, 2015, Ken's mother told him they were moving north because his father received a promotion requiring him and the family to relocate to southern New Jersey. Before the family moved, Ken's grandfather gave him his favorite belt buckle, which bore the image of the Confederate flag on it. His grandfather said it had been in the Federate family for many generations and symbolized southern pride.

The family moved, and on September 8, 2015, Ken Federate began school in Casino City, NJ. He proudly wore his grandfather's favorite belt buckle as a symbol of his southern heritage. As he approached his locker, Barry O. Fended, an African American student, was at a neighboring locker and saw Ken's belt. Barry told Ken it offended him and respectfully requested that Ken Federate remove his belt. Ken refused to remove the belt, saying it was a symbol of his southern pride.

As the verbal altercation quickly intensified, a teacher who was on hall duty walked by and asked the students about

the cause of the problem. After they explained it to her, she agreed with Barry O. Fended and politely asked Ken Federate to remove his belt and he, once again, refused. She then escorted him to the principal, who again requested that Ken Federate remove his belt. After Ken refused to do so, the principal issued a three-day suspension for violation of dress code and for inciting potential violence. When Ken came home, his parents were incensed and decided to sue the school for violation of their son's First Amendment rights.

## ISSUE

Did Casino City Middle School violate Ken Federate's First Amendment rights of freedom of speech and expression by suspending him for wearing a belt with the image of a Confederate flag on it?

## WITNESSES

### FOR THE PLAINTIFF

Ken Federate  
Connor Federate

### FOR THE DEFENDANT

Noah Harm  
Barry O. Fended

## WITNESS STATEMENTS

### TESTIMONY OF KEN FEDERATE

My name is Ken Federate, and I am in the eighth grade at Casino City Middle School. I am from Mississippi and was born and raised there. At my old school, I was in many clubs and activities, such as band and computer club, and maintained "B" honor roll. I go to church every Sunday and have done a significant amount of community service.

I love and miss my home back in Mississippi. My family believes in the Confederate flag and sees it as a symbol of hope and pride. I was always told that my ancestors, who fought in the Civil War, were heroes and we hung the flag over our house all year long to remember the sacrifices they made.

My grandfather realized I was upset about the move and gave me a family heirloom, which was a belt with a Confederate flag on the buckle. I love my grandpa and promised him I would treasure the belt and treat it with the honor it deserved.

I was nervous on the first day at my new school in New Jersey, but wearing my belt made me feel like a part of home was still with me. When I arrived at my locker, an African American student approached me and commented on my belt. He said it was offensive and made him very uncomfortable. He politely asked me to remove it.

Puzzled by his concerns and wanting to honor my grandfather's wishes, I declined. Soon the discussion escalated into an argument. A teacher on hall duty passed by and asked if there was a problem. We explained the situation and she decided it needed the principal's involvement. The next thing I knew, I was sitting in the principal's office.

The principal gave me a boring lecture on the differences between northern and southern culture. He said he understood my point of view, but said his students should feel like they are in a safe environment. I did not understand why the school wouldn't be safe if I just wore my belt. How could a little belt harm a school's environment?

Finally, the principal asked me again to remove my belt, and when I refused, he issued me a three-day suspension. My parents were enraged and decided to sue the school for violating my First Amendment rights.

#### **TESTIMONY OF CONNOR FEDERATE**

My name is Connor Federate and I am a political science professor. I earned my doctorate at Ole Miss, where I have been teaching for 15 years. I was born and raised in the State of Mississippi, as were my parents and grandparents. Recently, I received an offer to become head of the political science department at a New Jersey college. Since this prestigious offer included a significant salary increase, I moved my family up north.

The Confederate flag, colloquially known as the Stars and Bars, has proudly flown over the south for over a century and a half. It symbolizes the pride and heritage of all who fought and died in the Civil War. It is a part of living history, and is a huge part of my own life as it represents all the efforts my ancestors contributed to the war effort. Furthermore, it was incorporated into the left-hand corner of the Mississippi State Flag in 1894 and has flown over the State Capitol since that time. The Confederate flag doesn't represent hate; it is a remembrance of all those who lost their lives fighting for the south.

Moving from the Deep South to a northern state has been a difficult adjustment for my son. My own father noticed his grandson's reluctance over the move and gave him the Confederate flag belt as a remembrance. Not only did it represent his heritage, it represented our home. The wearing of the belt on his first day of school reminded him of his hometown and everyone and everything that used to be in his life.

When I found out my son had been suspended for wearing his belt, I felt discouraged and disappointed that a school would "welcome" a new student this way. As an educator, I realize that some apparel can be inappropriate; however, the Confederate flag, as well as a state flag, are constitutionally protected under the Bill of Rights.

School administrators can't just randomly perceive symbols as trouble that can be banned.

#### **TESTIMONY OF NOAH HARM**

My name is Noah Harm and I have been principal of Casino City Middle School for the last 13 years. Prior to that, I was a teacher for 14 years at the local high school. I earned my doctorate in education from Butgers University. The school under my domain is very large, as it has just over 800 students.

Casino City Middle School has a large school population, so school safety is my number one concern. Conflicts do arise and fights occasionally occur. As school administrators, we always want to intercept a situation before it escalates.

Since 42% of our school's student population is African American, we don't want to risk offending them or any other students. We want school to be a safe and comfortable environment for all of our students, and avoid any racial tension.

Displaying the Confederate flag is a delicate issue that is currently causing a lot of controversy. Only a few months ago, a Caucasian man, bearing the Confederate flag, assaulted an African American church and killed seven churchgoers along with himself. It



appeared he was influenced by the Confederate flag and its negative connotations. As a result, many large companies are taking Confederate flags and apparel off their shelves. State capitols, Nascar races and major southern colleges are either lowering or taking down their Confederate flags. Due to this current issue in the news, I felt compelled to take immediate action with this potentially volatile situation.

In addition, the historical significance of the flag should be considered. It has been in use since 1861, when the flag's designer, William Tappen Thompson, called it "The White Man's Flag." He said the flag's white field symbolized the supremacy of the white man.

In this specific case with Ken Federate, his First Amendment rights are restricted in a school setting, especially if the educational process is hindered. Furthermore, our dress code prohibits our pupils from wearing items or apparel that disrupt the learning environment.

#### **TESTIMONY OF BARRY O. FENDED**

Hello, my name is Barry O. Fended. I am 14 years old and I attend Casino City Middle School where I am in the eighth grade. I get good grades and am president of our school's History Club. I take school very seriously as I plan to take honors courses next year in high school.

Ken Federate's belt reminded me of my African American heritage and the pain my ancestors went through during the Civil War era and beyond. When I was a young child, my mother would sing lullabies to me that her mother sang to her. They were passed down through many generations and spoke of the struggles the slaves had to endure.

History is my favorite subject so I am very familiar with the background of the Confederate flag. I am president of our school's History Club and take personal offense to displaying the Confederate flag as it represents racial oppression and is a symbol of hate.

I was at my locker on the first day of school when Ken Federate walked over to the one next to mine. As he was opening his locker, I noticed a red, white and blue insignia on his belt. When I looked closer, I realized it was the Confederate flag. I explained to Ken that I took offense to the meaning of the belt, and asked him to take it off. He said "no" because it was part of his heritage and his grandfather gave it to him. I then talked about how it was my ancestors that were oppressed for hundreds of years under that symbol.

It was then that Mrs. Newsbag walked up and interrupted our argument. After listening to us, she escorted Ken Federate to the principal. Luckily, I didn't see him or that dreaded belt for the rest of the day. However, I remained highly emotional until after school when I attended my History Club meeting. That's when I shared my experience with the other members. Four of the African American members were offended as well by the belt. So I knew it wasn't just me being overly sensitive; it really was a serious issue.

I understand Mississippi is the only state to incorporate the Confederate flag into the upper left-hand corner of its state flag. Even though Ken Federate sees one state accepted it into their flag, I see 49 other states rejected it, proving this symbol is not appropriate to use in our country.

## INSTRUCTIONS

The plaintiff must prove, by a preponderance of evidence, that his First Amendment rights as guaranteed in the United States Constitution were violated when the school district suspended him for expressing himself by wearing a belt which bore the symbol of the Confederate flag on it.

## SUB-ISSUES

1. Was the dress code policy violated?
2. Was the educational process disrupted for Barry O. Fended and other African American students by the symbol of the Confederate flag?
3. Was Ken Federate just trying to express himself or was he making a statement?
4. Was the learning environment affected by the image on Ken's belt?
5. Is the Confederate flag a hate symbol or one of pride and heritage?

## CONCEPTS

1. Freedom of speech/expression.
2. School safety.
3. Standard of reasonableness of the dress code policy.
4. Zero tolerance racial harassment policy.
5. Definition of "appropriate."
6. Credibility of witnesses.
7. Parental responsibility.
8. Past case law—*Tinker v. Des Moines School District*.

## LAW

**United States Constitution:** First Amendment: "Congress shall make no law...abridging the freedom of speech."

**Fraser Standard:** The Fraser Standard (*Bethel School District. No. 403 v. Fraser*, 1986) In the

case of *Bethel v. Fraser*, the Supreme Court ruled that school officials could punish a student for offensive expression.

***Tinker v. Des Moines School District, U. S. Supreme Court Ruling***...upheld that freedom of expression of students is protected under the First Amendment.

***Hazelwood School District v. Kuhlmeier, Supreme Court Ruling***..."Speech...can be regulated by the school if the school has a legitimate...concern in regulating the speech."

**Casino City Middle School Policy Handbook, Section 5, Disturbances and Demonstrations; Sub Heading: Responding to a School Emergency.** "School officials are empowered to order unruly or disruptive students to leave school property. Any student who fails to comply with such instructions is subject to suspension or arrest."

**Casino City Middle School Policy Handbook, Section 8, Dress Code Policy:** "Any form of apparel that is offensive or disrupts the educational process will not be tolerated. Chains, links and personalized belts will not be permitted. Students should present a suitable appearance indicating pride both personally and academically."

**Casino City Middle School Policy Handbook, Section 12, Racial Discrimination Policy:** "The Casino City Middle School has a Zero Tolerance Policy for racial harassment. Students are encouraged to notify a school official if they feel offended or threatened."

**Title VI of the Civil Rights Act of 1964** prohibits discrimination based on race, color or national origin in programs or activities

receiving federal financial assistance.

**Credibility of witnesses:** A witness whose testimony appears to be truthful and accurate. A witness is deemed credible if they are recognized as a source of reliable information about someone or an event. The quality of the testimony must be trustworthy and believable.

**Parental responsibility:** Parents and guardians are legally responsible to house, educate, appropriately clothe and care for their children until the child reaches the age of 18.



## **FIRE DRILL DRAMA**

### **HURT V. BELLE BOARD OF EDUCATION**

#### **SCHOOL**

Brigantine North  
Middle  
Brigantine  
Grade 6, Honorable  
Mention

#### **TEACHER**

Rita Coyne

#### **STUDENTS**

Riana Albers  
Liam Alling  
Mary Bennett  
Grace Dischert  
Aaliyah Carozzoni-  
Van Dyke  
Maria Dela Pena  
Giavanna Dellapace  
Dane Estler  
Brandon Hines  
Chase Kaplan  
Brian (BJ) Kuhnley  
Michael Rubino  
Alexa Pino  
Samantha Smith  
John (Jack) Vespertino  
Charley Vicario  
Danielle Weidner

#### **FACTS**

On December 7, Willy Lowd, a sixth-grade student at Belle Middle School, who is a moderately autistic child, was outside school during his recess period with his aide. As he was playing, the fire alarm sounded, which is a very loud, pulsating, high-pitched sound. This triggered a physical episode in which Willy started flailing his arms and screeching loudly. His aide had difficulty restraining him.

As a result, a classmate named Missy Hurt who was standing nearby with her friends at recess, inadvertently got hurt. The girl was knocked to the ground and sustained a concussion. In addition, she required three stitches to close a cut in her forehead. The school nurse was immediately called to the scene, and the girl's parents were called. They took her to the emergency room at the local hospital for treatment.

Her parents decided to sue the school for not maintaining a safe environment for their daughter. They demanded that the autistic child be segregated from the general school population and from recess.

#### **ISSUE**

Did Belle Middle School fail to maintain a safe environment for Missy Hurt? As a result, should Willy Loud, an autistic child, be excluded from the general school population?

#### **WITNESSES**

##### **FOR THE PLAINTIFF**

Phil Hurt

Dr. Khan Cussion

## FOR THE DEFENDANT

Isabelle Ringin  
Al Lowd

## WITNESS STATEMENTS

### TESTIMONY OF PHIL HURT

My name is Phil Hurt and I am the parent of Missy Hurt. I have a college degree in accounting, and am a financial supervisor at our local hospital, where I've worked for 10 years.

On the afternoon of December 7, I received a call from the nurse at my daughter's school informing me that she sustained injuries at recess. After I rushed out to the school, I found out it was the result of an outburst from an autistic child. I was upset to realize that nobody controlled Willy Lowd. As I understand it, this autistic child knocked my poor daughter to the ground, causing her to hit her head on the curb. This resulted in her sustaining a concussion and requiring her to have three stitches to close the wound.

We don't know the long-term effects of the concussion. She is already suffering from headaches, but my concern is that these symptoms may worsen. In addition, my beautiful daughter now has a permanent scar across her forehead.

I am suing the school for failure to maintain a safe environment for my daughter and to have students like Willy Lowd segregated from the rest of the school population so something like this doesn't happen to another student.

### TESTIMONY OF DR. KHAN CUSSION

My name is Dr. Khan Cussion. I earned my medical degree from the NJ College of

Medicine. I have been a pediatrician for the last 15 years and have been Missy Hurt's doctor since she was born.

On the afternoon of December 7, Mr. Hurt brought his daughter into the ER, and as the family physician, I was immediately called. As I was making rounds in the hospital, I was able to assist in treating Missy for her injuries.

It is difficult to predict the long-term effects of a concussion in a child. It may be decades before the brain completely heals from the trauma. Concussion may cause confusion, headache, nausea, disturbed sleep, moodiness, amnesia and more. The scar on her face, although quite traumatic now, will, in all probability, fade and diminish in time.

This is an unfortunate situation that has occurred. But now Missy Hurt is considered a high-risk patient and will need to be medically evaluated on a continual basis.

### TESTIMONY OF ISABELLE RINGIN

My name is Isabelle Ringin and I am the principal of Belle Middle School. I earned my degree from Trenton State and taught for 14 years before being promoted to principal.

On the afternoon of December 7, we had a fire drill. As required by the fire department, the alarm is a very loud, pulsating sound to enable hearing-impaired persons to hear it.

Unfortunately, this sound triggered a reaction in Willy Lowd, a moderately autistic student in our school. He was at recess when the alarm sounded, and the sound sent him into physical spasms. For an autistic child, loud unexpected noises can be extremely frightening and overwhelming. In fact, this response can be common to any sensory stimuli, such as bright

lights or stormy weather. The child doesn't even realize what has provoked him, he simply gets overwhelmed by the cause of the situation. His reaction can become physical in response.

In this case, Willy Lowd was flailing his arms and screaming as a reaction to the fire alarm. As the aide was attempting to restrain him, he accidentally hit Missy Hurt, knocking her over. With regard to the safe environment issue, children are going to get hurt on a playground. It's just a fact of life. As a school, we do everything we can to keep them safe. It is impossible to foresee every situation.

I understand Mr. and Mrs. Hurt want to segregate Willy Lowd from the general population. However, this is against the law, specifically the Individuals with Disabilities Act. Willy Lowd needs to be with the general population in order to enhance his social skills. If he doesn't learn to interact with others as a young child in school, how will he ever learn to interact with others as an adult?

#### **TESTIMONY OF AL LOWD**

My name is Al Lowd and I am the father of Willy Lowd, an autistic child. I was notified on December 7 by my child's school that there was an incident involving my son. Apparently, there was a fire drill, and the noise frightened my son to the point where he had an episode. He accidentally knocked another student over in trying to escape the sound.

Autistic children have limited control over their behavior, especially when frightened or in reaction to unexpected noises. Their reaction is almost knee-jerk and most certainly involuntary. He couldn't understand the cause of the sound, and couldn't comprehend that it

was only temporary and would end soon. To him, this sound may go on forever. Out of pain and frustration, he became physical. His aide tried to use behavior modification techniques, and then eventually tried to restrain him. Unfortunately, the other student was already knocked over by this point. Since he has no control over these seizures, he shouldn't be held liable.

To remove him from the general school population would be cruel. The only way for him to learn proper social skills is to be with the other children.

### **INSTRUCTIONS**

Did the plaintiff prove, by a preponderance of evidence, that the defendant was negligent for not maintaining a safe environment for Missy Hurt? Should Willy Lowd be removed from the general school population?

### **SUB-ISSUES**

1. Was the aide negligent in not restraining the autistic child quicker?
2. Does the school need to provide more in-depth training for their aides?
3. Does the school need to provide multiple aides for the autistic child?
4. If the autistic child exhibits violent behavior, should he or she be moved to a more restricted special needs environment, either within or outside of the school?
5. Should the school have prepared better in advance for a planned event, such as the fire drill, that could have prevented a negative impact on the autistic child and others?

## CONCEPTS

1. School safety.
2. Negligence.
3. Foreseeability.
4. Pain and suffering.
5. Fire drills.
6. Accommodations for disabled students in a public school setting.

## LAW

**Individuals with Disabilities Act (IDEA):** is a federal law that requires schools to serve the educational needs of eligible students with disabilities. It ensures that students with a disability are provided with appropriate public education that is tailored to their needs.

**“Free and Appropriate Public Education” (FAPE):** provides for a “free and appropriate education” for all school-age children with disabilities. The child should be placed in the environment in which he or she has the greatest possible opportunity to interact with children who do not have a disability and to participate in the general education curriculum.

**Individualized Education Program (IEP):** a legal outline that details a child’s educational goals, disabilities, and the services and support the school will provide. It is an evaluation for

the student with parent and teacher involvement, custom tailored to the child’s needs.

**Special Education Services:** instruction specifically designed to meet the educational and developmental needs of children with disabilities.

**National Fire Protection Association:** creates and maintains fire code and standards that are adopted by local government.

**New Jersey Department of Education, Office of School Preparedness and Emergency Planning:** School Safety and Security Plans. Public Schools are required to hold fire drills twice a month while school is in session.

**The Americans with Disabilities Act (ADA):** is a federal civil rights law that provides protections to individuals with disabilities. It guarantees individuals with disabilities equal access to public accommodations. Title II of the ADA governs public entities which includes any state and local government and any department or agency of a State or State and local government. This includes public schools. Under Title II, a public school must ensure that its services, programs, and activities are accessible to students with disabilities.





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