



Judges in the Classroom

Tort Liability: Mock Trial

Source:

Written by Margaret Fisher, Institute for Citizen Education in the Law, Seattle WA, to complement the mock trial in the teacher's manual of *Street Law* (8th ed.), and updated in 2012. Staff at the Washington State Administrative Office of the Courts (AOC) edited the lesson. For more information, contact AOC Court Services, 1206 Quince Street SE, PO Box 41170, Olympia, WA 98504-1170. For an electronic copy of this lesson, or to view other lesson plans, visit Educational Resources on the Washington Courts Web site at: www.courts.wa.gov/education/.

Objectives:

1. Students will demonstrate understanding of the trial process.
2. Students will demonstrate understanding of the tort concept of host liability for injuries to third parties.

Grade Level:

Grades 10-12

Time:

One class period (approximately 50 minutes)

Materials:

One copy of Handout 1 (Standard Objections) for each student who plays the role of an attorney.

One copy of Handout 2 (Mock Trial Facts and Witness Statements) for each student who plays the role of an attorney or witness.

Procedures:

1. **Begin the class by introducing yourself** and setting the students at ease. Tell students that the purpose of this mock trial is to familiarize them with the court process, to develop analytic and communication skills, and to help them understand a little about tort law.

Note: This lesson assumes the teacher has already taught the concept of negligence and prepared students to enact this mock trial. Discussion with the teacher as to the time spent in preparation should assist the judge in setting the expectations for the students' performance. There are no additional handouts for students. All materials are included in the mock trial packet.

2. **Start the trial** by following this agenda:

a. **Mock Trial Enactment (40 minutes)**

- (1) Bailiff calls court to order as the judge enters.
- (2) Judge announces the case of *Vickers v. Hearst* and reads aloud these instructions:

This is a civil case brought by Terry Vickers claiming that Sandy Hearst is liable for the injuries that Terry Vickers received in an automobile accident caused by Dana Ivy. Terry Vickers claims that Sandy Hearst negligently served alcohol to Dana Ivy at a time when Dana Ivy was obviously intoxicated, and that, as a result of the intoxication, Dana Ivy crashed into Terry Vickers's car, causing serious injuries.

Sandy Hearst admits hosting a party on December 15 that Dana Ivy attended, but denies negligently serving or furnishing alcohol to Dana Ivy at a time when Dana Ivy was obviously intoxicated. Sandy also denies that the car crash with Terry Vickers was caused by the intoxication of Dana Ivy.

I will now swear in the jury:

Will the jury please rise and raise your right hands? Please indicate your agreement by saying, "I do." Do you swear or affirm that you will base your decision solely on the evidence presented before you in this case, not allowing any prior class work to influence your final decision?

Tell the jury to be seated.

The burden of proof in this case is on the plaintiff, and is proof by a preponderance of the evidence.

- (3) Judge asks counsel to introduce themselves and their clients.
- (4) Plaintiff's Opening Statement (3 minutes*)

*Time for each activity is tracked by a clerk who notifies the judge and lawyer of remaining time by holding up cards indicating "2 min.," "1 min.," and "0" remaining.
- (5) Defendant's Opening Statement (3 minutes)
- (6) Plaintiff's Case-in-Chief (consists of two witnesses with direct examination of 5 minutes each and cross-examination of 3 minutes)

each):

Terry Vickers, Plaintiff
Lee Porter, Guest at the Party

There are a limited number of objections that students may make.
These are included as an attachment.

- (7) Defendant's Case-in-Chief (consists of two witnesses with direct examination of 5 minutes each and cross-examination of 3 minutes each):

Sandy Hearst, Defendant
Dana Ivy, Driver

- (8) After all of the testimony, the judge then reads aloud the closing instructions to the jury:

To find Sandy Hearst liable for damages to Terry Vickers, the plaintiff must have proved each of the following elements by a preponderance of the evidence:

- (a) That on or about the 15th of December, Sandy Hearst negligently served or caused to be served alcoholic beverages to Dana Ivy at a time when Dana was obviously intoxicated, and as a result of that intoxication, Dana Ivy crashed into Terry Vickers's car causing injuries.**
- (b) "Obviously intoxicated person" means an individual whose outward signs of intoxication are plainly recognized by reasonable persons exercising reasonable care under all circumstances.**
- (c) "Negligently" means failing to exercise reasonable care in doing or not doing something for someone to whom a duty is owed.**

When you go to the jury room, you should first pick a presiding juror. It is his or her duty to see that discussion is carried on in an orderly fashion, that the issues are fully and fairly discussed, and that every juror has a chance to participate.

This being a civil case, 10 of the 12 jurors must agree upon a verdict. When you have so agreed, the presiding juror will notify the bailiff, who will conduct you into court to declare your verdict.

- (9) Plaintiff's Closing Argument (3 minutes, including rebuttal)
- (10) Defendant's Closing Argument (3 minutes)

(11) Plaintiff's Rebuttal

(12) Jury Deliberations

b. Debriefing

After the trial, the judge should convene the students for debriefing. Any time the jury reaches a verdict, the judge should suspend the debriefing process and allow the jury to render its verdict. Following the verdict, the judge should resume the debriefing.

During the debriefing the judge should acknowledge the contributions of the bailiff and clerk, and later thank the jury for listening. The judge should then offer constructive comments to the students, explaining the reasons for rulings on objections, discussing the effectiveness of their strategies, and commenting on the performance of witnesses. The judge may describe how this mock trial differs from actual cases.

c. Verdict

The verdict will be read by the foreperson. The judge may poll the jury if time allows.

d. Adjourn

Handout 1

Standard Objections

An attorney can object any time she or he thinks the opposing attorneys are attempting to introduce improper evidence or are violating the rules of evidence.

IRRELEVANT EVIDENCE

"I object, Your Honor. This testimony is irrelevant to the facts of the case."

LEADING QUESTIONS

"Objection. Counsel is leading the witness." (This is only objectionable when done on direct examination.)

BADGERING

"Objection. Counsel is badgering the witness."

OPINION

"Objection. Counsel is asking the witness to give an opinion." Unless it is within the common experience of people to form an opinion on this subject, opinions will not be allowed. **Expert witnesses are allowed to give opinions.**

LACK OF PERSONAL KNOWLEDGE

"Objection. The witness has no personal knowledge that would enable him or her to answer this question."

ARGUMENTATIVE QUESTION

"Objection. That question is argumentative." (Attorneys cannot badger or argue with the witness. Questions may also not be argumentative in tone or manner.)

SPECIAL RULE FOR MOCK TRIALS

An opposing witness cannot create new facts that would change the outcome of the case, although witnesses can add minor details. If you believe a witness has gone beyond the information provided, and is providing new information that is totally out of character, and will change the outcome of the trial, use the following objection:

"Objection. The witness is creating material fact which is not in the record."

Handout 2

Mock Trial Facts and Witness Statements*

FACTS

Early on the morning of December 16, a two-car automobile accident occurred at the intersection of Justice and Eagle Streets, N.E. in Anytown. Terry Vickers, the driver of a 1998 Toyota coupe, was taken to the Northeast Regional Medical Center and hospitalized for treatment of a broken leg, bruised ribs, and lacerations to the upper torso, neck, and face. The other car, a 1995 Chevrolet sedan, was driven by Dana U. Ivy. Ivy was not injured.

Before the accident occurred, Ivy had attended a holiday party hosted by Sandy Hearst for Hearst's friends and members of a social club to which Hearst belongs. The party was held at the party room of Hearst's apartment complex located two miles from the scene of the accident. Ivy pleaded guilty to running a stop sign and driving under the influence of alcohol.

Vickers has reached an out-of-court settlement with Ivy for any claims that Vickers might have arising from the accident. As Ivy is a student with limited insurance coverage and little money, this settlement only covered the cost of repairing her car.

Therefore, Vickers has filed suit to recover additional damages against Sandy Hearst, the host of the party. In this suit, Vickers alleges that Hearst negligently served alcoholic beverages to Dana Ivy in violation of Anytown Statute 1MT. Vickers' suit further alleges that Vickers' injuries in the automobile accident resulted from Hearst's negligence. In the suit, Vickers wants \$18,400 in compensatory damages for medical bills and lost wages. The defendant does not contest the amount of damages but denies any liability for serving alcoholic beverages to Ivy.

WITNESSES

For the plaintiff:

1. Terry Vickers, Plaintiff
2. Lee Potter, Guest at the Party

For the defendant:

1. Sandy Hearst, Defendant
2. Dana U. Ivy, Driver

COURT

This case focuses on an interesting aspect of negligence: third party liability. The statute involved in this mock trial (see below) is similar to some state statutes that establish special categories of negligence through legislative enactment. The elements of this type of negligence

are outlined in the language of the statute. The plaintiff should use the facts of the case to try to establish the liability as outlined in the statute. The defendant should raise defenses aimed at disproving the elements.

The issue of third party liability is timely in many states and raises interesting public policy issues for further discussion after the mock trial.

**Anytown Statute 1MT:
An Act to Establish Third Person Liability of
Persons Negligently Serving Alcoholic Beverages**

Section 1: Every person who negligently serves or causes to be served any alcoholic beverages to an obviously intoxicated person shall be severally liable for injuries to third persons caused by the acts or omissions of the intoxicated person.

Section 2: For the purposes of this section, the following definitions shall apply:

- a. **"every person"** means any and all individuals, associations, or corporations, and any and all employees, agents, or servants;
- b. **"serves"** means sells, lends, gives, or otherwise furnishes, with or without monetary compensation;
- c. **"obviously intoxicated person"** means an individual whose outward signs of intoxication are plainly recognized by reasonable persons exercising reasonable care under all the circumstances; and
- c. **"negligently"** means failing to exercise reasonable care in doing something, or in not doing something for someone to whom a duty is owed.

d.

WITNESS STATEMENTS

For the Plaintiff:

1. Terry Vickers

I am a computer programmer for a local retail chain. On the morning of December 16, I was going home from work. I had to work at night to get time to test some new programs I am working on. I was driving down Eagle Street at about 30 to 35 miles per hour. There was hardly any traffic. There is a stop sign for the traffic on Justice at the intersection of Justice and Eagle.

As I proceeded through the intersection, I noticed this Chevy speeding at me from my left side on Justice Street. I slammed on the brakes, but the Chevy never stopped. It was as though the driver never saw me or the stop sign. The Chevy's headlights were not turned on. Just before we crashed, the driver slammed on the brakes and skidded into my car at the door on the driver's side. After the accident as I lay on the stretcher, I saw the driver, Dana Ivy, talking to the police. Ivy was mumbling badly. Ivy had trouble standing up straight. Ivy was clearly drunk.

A police officer investigated the accident. He charged Ivy with driving while intoxicated. Ivy was crying at the time and refused to take chemical sobriety tests.

I suffered serious injuries from the accident, resulting in my being in the hospital for 10 days and out of work for a month. Ivy's insurance only covered the damage to my automobile and because he is student, he has no more money. I think the person who should pay is Sandy Hearst. Hearst served the alcohol when Ivy was already intoxicated and then told Ivy to leave and drive the car. Someone has got to be responsible for what happened.

WITNESS STATEMENTS

For the Plaintiff:

2. Lee Porter

I am a senior at Capital City College and 21 years of age. Although I had seen Sandy Hearst once or twice around campus, I did not really know Sandy. Sandy is the president of one of the big social clubs on campus, The Breaks, so it's hard not to know of someone as popular as Sandy. Sandy invited Dana Ivy and me to Sandy's party, because Sandy knew we were interested in joining The Breaks.

When we arrived at the party about 11:00 p.m., Sandy greeted us and I said we were late because it was difficult for Dana to find a place to park his car. Sandy said not to worry about that but "just come in and have a few drinks." He said there were sodas for "non-drinkers if there were any" but that the real party-goers would have the "spiked punch" or beer. He gave Dana some punch, and I had a soda. I am involved in our college's Students Against Drunk Driving (SADD) chapter and don't believe people should drink, especially when driving.

There was a lot of loud music and over 30 people were drinking, dancing and talking. I saw Dana serve himself more punch, and Sandy was encouraging many people to drink. I didn't see Dana for a while but about 12:30 a.m. I saw a group playing a video game and Sandy handed all of them beers including Dana.

Shortly thereafter Dana seemed to get into a loud argument with James, another club member, and they almost knocked over the video game. Sandy became quite annoyed and told both of them it was time to leave. Dana grabbed another beer while heading out the door and Sandy took no steps to stop this action. As I wasn't going to ride home with Dana after all that drinking, I just stayed behind and decided to get a ride home with someone else.

I was never invited to be a member of The Breaks social club. I'm sure it's because I don't drink or approve of the way Sandy and Dana acted that night.

WITNESS STATEMENTS

For the Defendant:

1. Sandy Hearst

I am a sales representative for the Mutual Opportunity Insurance Company. I am a graduate of Capital City College, and I am the President of The Breaks, a social club. Our club has a chapter at Capital City College. That's where I met Dana.

One of the purposes of our club is to promote lasting business, professional, and social ties between our younger club members at the college and those of us who are making it in the real world. It is hoped that these contacts can translate into job opportunities for our younger members once they have graduated. In order to promote our network, I had a holiday get-together on December 15 for some of my club members and some of the students like Dana and Lee whom we were considering inviting to become members.

I provided food, soft drinks, beer, and punch. I made the punch myself, with a little rum in one batch, but it was no more intoxicating than rum cake.

I didn't pay attention to Dana at the party because I had a lot of guests, but from what I saw, Dana just talked and acted like any other normal person would at this kind of function. Dana did act pretty lively during the party and at one point was dancing on a table, but Dana has an outgoing personality. Dana wanted Lee to loosen up and enjoy the party but Lee is a real loser -- definitely not the kind of person we would want to join The Breaks.

I may have offered Dana a drink or two at the party but no more than I offered anyone else. I didn't force anyone to drink; it was their decision. They are adults. He did get out of hand at about 12:30 a.m. when I saw him get in an argument with James, another club member, over a video game. I got angry and told Dana, "You should leave if you can't act more civilized." I didn't know he would really leave and I had no way of knowing Dana was driving. I didn't see Dana take any more beer while leaving.

I know that Dana wasn't drunk at the time of leaving the party. As far as I know I gave Dana some punch on arrival, and perhaps a beer later on. I saw Dana eat a lot of food, too, and that would have cut the effect of any alcohol.

WITNESS STATEMENTS

For the Defendant:

2. Dana U. Ivy

I am a senior at Capital City College, and 21 years of age. I attended the party at Sandy Hearst's apartment complex on December 15th, but I did not have too much to drink and was not drunk when I left.

I remember having a couple of glasses of a very weak punch with some rum in it and maybe two beers. I remember Sandy offering people drinks but I don't think Sandy pushed drinks on me. There was lots of food and I ate some of that as well.

I came with Lee to the party in my car but I don't remember if Sandy knew I had driven. Lee doesn't like drinking as he's part of the SADD (Students Against Drunk Driving) chapter at school and was a little unhappy about alcohol being served at the party. He also is angry at Sandy because he was never invited to join The Breaks club. I was invited to join the month after the party.

I generally had a good time at the party and did some dancing and played video games. At one point I got in an argument with James, another club member, over a video game we were playing. Sandy overreacted and told me to leave and I got mad and decided to go. I took a beer on the way out but I wasn't drunk and that beer didn't make me drunk either. Sandy had nothing to do with my taking that beer.

When I got in the car accident, it was because I was tired and didn't see the stop sign -- not because I was drunk. I was charged with driving while intoxicated, but I refused to take the test. I learned later they automatically charge you if you do that and you lose your license. I pleaded guilty only because I thought I would receive a lesser sentence.

*Adapted with permission from Street Law, Glencoe/McGraw-Hill, Teacher's manual.