2023 NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT MATERIALS

Remington Stone

v.

Marley Miser and Acme Construction Company

Materials prepared by the Law, Youth & Citizenship Program of the New York State Bar Association®

Supported by The New York Bar Foundation

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Greetings Mock Trial Tournament Participants! November 2022

Welcome back to in-person competitions! Each year, the Mock Trial Subcommittee spends several months creating a new mock trial case for you to work with. The cases typically alternate each year between a civil and criminal case. There are over 400 teams around the state competing in the high school mock trial tournament, so it does take some time for everyone to begin working with the case.

It is possible that once the case has been released and teams begin to work with it, questions may arise, and corrections may be required. Please note the following important information:

- **All questions and comments about the case should be submitted in writing (no phone calls please) and sent the NYS Bar Mock Trial Statewide Coordinators, Stacey Whiteley swhiteley@nysba.org and Kim McHargue kmchargue@nysba.org for review** (copy your County Coordinator on the email).

- The Statewide Coordinator will forward all questions to the Mock Trial Subcommittee for their review, and if necessary, a **correction memo** will be issued, along with any **revised pages** which may need to be inserted into the case booklet. The most current revisions will always be easily identifiable for you.

- All correction memos and revised pages will immediately be provided by email to the county coordinators, who will then notify the team coaches/advisors. **The memos and revised pages will also be accessible online at www.nysba.org/nys-mock-trial/**

- **Once a correction memo has been issued, the current pages in the case booklet should immediately be replaced with the revised pages.** You may also want to include the correction memo in your case booklet for reference purposes.

- Please be aware that more than one correction memo may be issued if the questions or comments received require additional changes to be made to the case after the first correction memo has been issued. We realize that receiving the correction memos can be frustrating once you have begun working with the case, and although the case is proofread before being released, please bear in mind that human error does occur, so your patience and understanding is greatly appreciated.

- The most current updated version of the case will also be available **online at** www.nysba.org/nys-mock-trial/should you choose to reprint the entire case. It is **not** necessary to reprint the entire case booklet each time a correction memo is issued, but you do have that option.

We hope you enjoy working with this year's case. Have fun, and good luck with your trials!

The 2023 Mock Trial State Finals will be held in Albany on May 21-23.

Questions/Comments? Contact Stacey Whiteley swhiteley@nysba.org

Current Mock Trial Case Materials always available online at www.nysba.org/nys-mock-trial/

Information about the Mock Trial program is available online at www.nysba.org/nys-mock-trial/

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New York State Bar Association
NYSBA
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LETTER FROM THE CHAIRS

November 22, 2022

Dear Mock Trial Students, Teacher-Coaches and Attorney-Advisors:

Thank you for participating in the 2022-2023 New York State High School Mock Trial Tournament and we hope you are excited for a return to an in-person tournament. Although we are moving ahead with an in-person tournament, we are prepared to pivot to a virtual tournament, if necessary. The tournament is now entering its 41st year. Thanks to the continued financial and logistical support from the New York Bar Foundation and the New York State Bar Association, New York State continues to have one of the largest and longest running high school mock trial programs in the nation. Equally important to the success of the program is the continued support of the numerous local bar associations across the state that sponsor mock trial tournaments in their counties and the County Coordinators who spend many hours managing the local tournaments. We are grateful to the teacher-coaches and the attorney-advisors who give their time, dedication, and commitment to the program. And finally, our special thanks to the students who devote their time and energy in preparing for the tournament. Every year, we are amazed at the level of skill and talent the students bring to the courtrooms. Congratulations to the 2021-2022 New York State Tournament Champion, Hunter College High School, who was victorious in the virtual Mock Trial Finals in May.

Please take the time to carefully review all the enclosed mock trial tournament information. The **Simplified Rules of Evidence** and the **General Tournament Rules** should be studied carefully. Please pay special attention to the information regarding the timing, redaction of evidence and constructive sequestration of witnesses.

In this civil case, Remington Stone v. Marley Miser and Acme Construction Company, construction worker Remington was injured when a metal ladder on which Remington was standing fell onto a live electrical line. Remington sustained severe burns on both hands and both forearms. The injuries occurred at a house, owned by defendant Marley Miser, that was undergoing renovations by defendant Acme Construction Company. Remington commenced a lawsuit against Acme Construction Company pursuant to sections 240[1] and 241[6] of the Labor Law and against Miser pursuant to Labor Law §200[1]. Since Acme Construction settled with Remington before trial, the action now is just against Miser.

The mock trial program is, first and foremost, an educational program designed to teach high school students basic trial skills. Students learn how to conduct direct and cross examinations, how to present opening and closing statements, how to think on their feet, and learn the dynamics of a courtroom.

Students will also learn how to analyze legal issues and apply the law to the facts of the case. Second, but equally important, is that participation in mock trial will teach the students professionalism. Students learn ethics, civility, and how to be ardent but courteous advocates for their clients. Good sportsmanship and respect for all participants are central to the competition. We thank the teachers, coaches, advisors, and judges, not only for the skills that they teach, but for the example of professionalism and good sportsmanship they model for the students throughout the tournament.

We remind the teams that all participants (students, teachers, attorneys, parents, and all spectators) must conduct themselves with the utmost respect and civility toward the judge, before, during and after each round. If there is a circumstance in which any participant does not abide by this standard, a referral will be made to the LYC Mock Trial Subcommittee to consider appropriate sanctioning.

The tournament finals will be held in Albany, Sunday, May 21 through Tuesday, May 23, 2023. As in years past, the regional winners in each of the eight regions will be invited to participate in the semi-finals, and two of the teams will advance to the final round the last day. The New York Bar Foundation is generously supporting the tournament again this year and will fund the teams' room and board for the state tournament. More details will be available closer to the date of the tournament.

This year's Mock Trial Tournament materials will be posted on the Law, Youth and Citizenship website, www.nysba.org/nys-mock-trial/ .

We trust you will enjoy working on this year's case. Best wishes to all of you for a successful and challenging mock trial tournament.

Sincerely,

Gail Ehrlich, Esq.
Co-Chairperson

Jay Worona, Esq.
Co-Chairperson

Lisa Eggert Litvin, Esq.
Vice-Chair

Subcommittee Members:

Oliver C. Young, Esq., *Buffalo (Chair)*
Laetitia Kasay Basondwa, Esq., *Maryland*
Craig R. Bucki, Esq., *Buffalo*
Angel S. Cox, Esq., *Washington DC*
Christine E. Daly, Esq., *Chappaqua*
Hon. Erin P. Gall, *Utica*
Seth F. Gilbertson, *Williamsville*
Allen M. Hecht, Esq., *Bronx*
David P. Johnson, Esq., *Albany*
Candice Baker Leit, Esq., *Rochester*
Alexander Paykin, Esq., *NYC*
Jennifer Letitia Smith, Esq., *NYC*
Lynn B. Su, Esq., *NYC*
Hon. Jonah Triebwasser, *Red Hook*

STANDARDS OF CIVILITY

". . . [O]urs is an honorable profession, in which courtesy and civility should be observed as a matter of course."

Hon. Judith S. Kaye, Former Chief Judge of the State of New York

The following standards apply to all Mock Trial Tournament participants, including students, teachers, attorneys, and parents/guardians. A Mock Trial Tournament participant's failure to abide by any of these standards may result in the disqualification of his or her team from the Tournament, pursuant to the sole discretion of the New York State Bar Association Law, Youth and Citizenship Committee's Mock Trial Subcommittee.

1. Lawyers should be courteous and civil in all professional dealings with other persons.
2. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others.
3. Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. All participants in the Mock Trial Tournament shall avoid vulgar language or other acrimonious or disparaging remarks, whether oral or written, about other Mock Trial Tournament participants.
4. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.
5. A lawyer should adhere to all expressed promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.
6. A lawyer is both an officer of the court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.
7. Lawyers should speak and write civilly and respectfully in all communications with the court and court personnel.
8. Lawyers should use their best efforts to dissuade clients and witnesses from causing disorder or disruption in the courtroom.
9. Lawyers should not engage in conduct intended primarily to harass or humiliate witnesses.
10. Lawyers should be punctual and prepared for all court appearances. If delayed, the lawyer should notify the court and counsel whenever possible.
11. Court personnel are an integral part of the justice system and should be treated with courtesy and respect at all times.

The foregoing Standards of Civility are based upon the Standards of Civility for the New York State Unified Court System.

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT RULES

PART I

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MOCK TRIAL TOURNAMENT RULES

1. TEAM COMPOSITION

a. The Mock Trial Tournament is open to all 9th–12th graders in public and nonpublic schools who are currently registered as students at that school.

b. If a school chooses to limit student participation for any reason, this should be accomplished through an equitable "try-out" system, not through disallowing participation by one or more entire grade levels.

c. Each school participating in the Mock Trial Tournament may enter only **ONE** team.

d. Members of a school team entered in the Mock Trial Tournament—including teacher–coaches, back-up witnesses, attorneys, and others directly associated with the team's preparation—are **NOT** permitted to attend the trial enactments of any possible future opponent in the contest. This rule should not be construed to preclude teams from engaging in practice matches, even if those teams may meet later during the competition.

Violations of this rule can lead to being disqualified from the tournament.

e. Immediately prior to each trial enactment, the attorneys and witnesses for each team must be physically identified to the opposing team and the judge by stating their first and last names. Please do not state the name of your school in front of the judge since the judge will not otherwise be told the name of the schools participating in the enactment he or she is judging.

2. OBJECTIONS

a. Attorneys should stand when making an objection, if they are physically able to do so.

b. When making an objection, attorneys should say "objection" and then, very briefly, state the basis for the objection (for example, "leading question"). Do not explain the basis unless the judge asks for an explanation.

c. Witnesses should stop talking immediately when an opposing party makes an objection. Please do not try to "talk over" the attorney making an objection.

3. DRESS

We emphasize to the judges that a student's appearance is not a relevant factor in judging his or her performance. However, we strongly encourage students to dress neatly and appropriately. A "business suit" is not required.

4. ABOUT STIPULATIONS

Any stipulations are binding on all participants and the judge and may **NOT** be disputed at the trial.

5. OUTSIDE MATERIALS

Students may read other materials such as legislative histories, judicial opinions, textbooks, treatises, etc., in preparation for the Mock Trial Tournament. However, students may cite only the materials and cases provided in these Mock Trial Tournament materials.

6. EXHIBITS

Students may introduce into evidence or use only the exhibits and documents provided in the Mock Trial Tournament materials. Students may not create their own charts, graphs, or any other visual aids for use in the courtroom in presenting their case. **Evidence is not to be enlarged, projected, marked, or altered for use during the trial.**

7. SIGNALS AND COMMUNICATION

The team coaches, advisors, and spectators may not signal the team members (neither student attorneys nor witnesses) or communicate with them in any way during the trial, including but not limited to wireless devices and text messaging. The use of cellular telephones, laptop computers, or any other wireless devices by any student attorney or witness, other than a timekeeper for the purpose of keeping time during the trial, is strictly prohibited. The restriction upon the use of electronic devices during an enactment by a person other than a timekeeper should not be construed to prevent a county coordinator or other authorized tournament official from authorizing the use of such a device as a reasonable accommodation for a participant with a disability, where such use is required to ensure the person's full and equal participation in the tournament. A student witness may talk to a student attorney on his/her team during a recess or during direct examination but may not communicate verbally or non-verbally with a student attorney on his/her team during the student witness' cross-examination.

8. VIDEOTAPING/AUDIOTAPING

a. During any tournament round, except State semi-finals and State finals, a trial may be videotaped, or audio taped but only if each of the following conditions are satisfied:

i. The courthouse in which the tournament round is taking place must permit video or audio taping, and the team wishing to videotape, or audiotape has received permission from the courthouse in advance of the trial. *We note that many State and Federal courthouses prohibit video or audio taping devices in the courthouse.*

ii. The judge consents before the beginning of the trial.

iii. The opposing team consents in writing prior to the time the trial begins. Written consents should be delivered to the County Coordinator. Fax or e-mail is acceptable.

iv. A copy of the video or audio tape must be furnished to the opposing team (at no cost) within 48 hours after the trial.

v. The video or audio tape may not be shared by either team with any other team in the competition.

b. Video or audio taping of the State semi-finals and final rounds is **NOT** permitted by either team.

9. MOCK TRIAL COORDINATORS

The success of the New York State Mock Trial Program depends on the many volunteer county and regional coordinators. **The appropriate supervisor will be contacted if any representative from a high school, parent, coach, or team member addresses a mock trial volunteer or staff person at any level of the competition in an unprofessional or discourteous manner. County Coordinators may also refer any such matters to the Law, Youth and Citizenship Committee of the New York State Bar Association for appropriate action by the LYC Committee.**

Absent prior approval by the Mock Trial Subcommittee of the New York State Bar Association's *Law, Youth and Citizenship Committee*, a county or regional Mock Trial Tournament coordinator or assistant coordinator may not be an employee of a school that competes, or of a school district that includes a high school that competes, in that county or regional Mock Trial Tournament. Nothing in this rule shall prohibit an employee of a Board of Cooperative Educational Services (BOCES) or the New York City Justice Resource Center from serving as a county or regional Mock Trial Tournament coordinator or assistant coordinator.

10. ROLE AND RESPONSIBILITY OF ATTORNEYS

a. The attorney who makes the opening statement may not make the closing statement.

b. Requests for bench conferences (i.e., conferences involving the judge, attorney(s) for the plaintiff or the people and attorney(s) for the defendant) may be granted after the opening of court in a mock trial, but not before.

c. Attorneys may use notes in presenting their cases, for opening statements, direct examination of witnesses, etc. Witnesses are **NOT** permitted to use notes while testifying during the trial.

d. Each of the three attorneys on a team must conduct the direct examination of one witness and the cross examination of another witness.

e. The attorney examining a particular witness must make the objections to that witness's cross-examination, and the attorney who will cross-examine a witness must make the objections to the witness's direct examination.

11. WITNESSES

a. Each witness is bound by the facts of his/her affidavit or witness statement and any exhibit authored or produced by the witness that is relevant to his/her testimony. Witnesses may not invent any other testimony. However, in the event a witness is asked a question on cross examination, the answer to which is not contained in the witness's statement or was not testified to on direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial.

b. If there is an inconsistency between the witness statement or affidavit and the statement of facts or stipulated facts, the witness can only rely on, and is bound by, the information contained in his/her affidavit or witness statement.

c. A witness is not bound by facts in other witness' affidavits or statements.

d. If a witness contradicts a fact in his or her own witness statement, the opposition may impeach the testimony of that witness.

e. A witness's physical appearance in the case is as he or she appears in the trial re-enactment. No costumes or props may be used.

f. Witnesses, other than the plaintiff and the defendant, may be constructively sequestered from the courtroom at the request of opposing counsel. A constructively sequestered witness may not be asked on the stand about the testimony another witness may have given during the trial enactment. A team is **NOT** required to make a sequestration motion. However, if a team wishes to make such motion, it should be made during the time the team is introducing itself to the judge. Please note that while a witness may be constructively sequestered, said witness **WILL REMAIN** in the courtroom at all times. (Note: Since this is an educational exercise, no participant will actually be excluded from the courtroom during an enactment.)

g. Witnesses shall not sit at the attorneys' table.

h. All witnesses are intended to be gender-neutral and can be played by any eligible student regardless of the student's sex or gender identity.

12. PROTESTS

a. Other than as set forth in 12(b) below, protests of judicial rulings are **NOT** allowed. **All judicial rulings are final and cannot be appealed.**

b. Protests are highly disfavored and will only be allowed to address two issues:

(1) Cheating (a dishonest act by a team that has not been the subject of a prior judicial ruling)

(2) A conflict of interest or gross misconduct by a judge (e.g., where a judge is related to a team member). All protests must be made in writing and either faxed or emailed to the appropriate County Coordinator and to the teacher-coach of the opposing team. The County Coordinator will investigate the grounds for the protest and has the discretion to make a ruling on the protest or refer the matter directly to the LYC Committee. The County Coordinator's decision can be appealed to the LYC Committee.

c. Hostile or discourteous protests will not be considered.

13. JUDGING

THE DECISIONS OF THE JUDGE ARE FINAL.

14. ORDER OF THE TRIAL

The trial shall proceed in the following manner:

- Opening statement by plaintiff's attorney/prosecuting attorney
- Opening statement by defense attorney
- Direct examination of first plaintiff/prosecution witness
- Cross-examination of first plaintiff/prosecution witness
- Re-direct examination of first plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second plaintiff/prosecution witness
- Cross-examination of second plaintiff/prosecution witness
- Re-direct examination of second plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third plaintiff/prosecution witness
- Cross-examination of third plaintiff/prosecution witness
- Re-direct examination of third plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Plaintiff/prosecution rests
- Direct examination of first defense witness
- Cross-examination of first defense witness
- Re-direct examination of first defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second defense witness
- Cross-examination of second defense witness
- Re-direct examination of second defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third defense witness
- Cross-examination of third defense witness
- Re-direct examination of third defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Defense rests
- Closing arguments by defense attorney
- Closing arguments by plaintiff's attorney/prosecuting attorney

15. TIME LIMITS

a. The following time limits apply:

- Opening Statement.....5 minutes for each team
- Direct Examination .....10 minutes for each witness
- Cross Examination.....10 minutes for each witness
- Closing Argument.....10 minutes for each team

b. At all county and regional trials, the time will be kept by two timekeepers. Each team shall provide one of the timekeepers. Timekeeper shall be a student of the participating school. A school may use a student witness who is not a witness during a particular phase of the trial. (For example, a defense witness can keep time when the plaintiff/prosecution attorneys are presenting their case.)

The timekeepers will use one watch and shall agree as to when a segment of the trial (e.g., the direct examination of a witness) begins. When one minute remains in a segment, the timekeepers shall flash the "1 Minute Remaining" card (found in the *Appendices*), alerting the judge and the attorneys. The timekeepers will not stop the clock during objections, *voir dire* of witnesses, or bench conferences.

Since the number of questions allowed on redirect and re-cross is limited to three, time limits are not necessary. Any dispute as to the timekeeping shall be resolved by the trial judge. The judge, in their sole discretion, may extend the time, having taken into account the time expended by objections, *voir dire* of witnesses and/or bench conferences, thereby allowing an attorney to complete a line of questioning.

16. TEAM ATTENDANCE AT STATE FINALS ROUND

Eight teams will advance to the State Finals. All eight teams are required to participate in all events associated with the Mock Trial Tournament, including attending the final round of the competition.

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES

PART II

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MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES

New York's Annual Mock Trial Tournament is governed by the policies set forth below. The LYC Committee and the Law, Youth and Citizenship Program of the New York State Bar Association reserve the right to make decisions to preserve the equity, integrity, and educational aspects of the program.

By participating in the Mock Trial Tournament, participants agree to abide by the decisions rendered by the LYC Committee and the Mock Trial program staff and accept such decisions as final.

1. GENERAL POLICIES

a. All mock trial rules, regulations, and criteria for judging apply at all levels of the Mock Trial Tournament.

b. The Simplified Rules of Evidence and Procedure contained in Part III govern the trial proceedings.

c. County Coordinators administer county tournaments. County Coordinators have sole responsibility for organizing, planning, and conducting tournaments at the county level and should be the first point of contact for questions at the county level.

d. For any single tournament round, all teams are to consist of three attorneys and three witnesses.

e. For all tournament rounds, one judge will be utilized for trial re-enactments.

f. Teams must not identify themselves by their school's name to the judge prior to the announcement of the judge's decision.

g. If a team member who is scheduled to participate in a trial enactment becomes ill, injured, or has a serious conflict and as a result cannot compete, then the team may substitute an alternate team member. If an alternate team member is not available, the local coordinator may declare a forfeit or reschedule the enactment at his or her sole discretion.

h. Members of a team may play different roles in different rounds, or other students may participate in another round.

i. Winners in any single round will be asked to switch sides in the case for the next round. Where it is impossible for both teams to switch sides, a coin flip will be used to determine assignments in the next round.

j. Teacher-coaches of teams who will be competing against one another are required to exchange information regarding the names and gender of their witnesses at least three days prior to each round.

k. No attorney may be compensated in any way for his or her service as an attorney-advisor to a mock trial team or as a judge in the Mock Trial Tournament. When a team has a student or students with special needs who may require an accommodation, the teacher-coach **MUST** bring this to the attention of the County Coordinator at least two weeks prior to the time when the accommodation will be needed.

l. The judge must take judicial notice of the Statement of Stipulated Facts and any other stipulations.

m. Teams may bring perceived errors in the problem or suggestions for improvements in the tournament rules and procedures to the attention of the LYC staff at any time. These, however, are not grounds for protests. Any protest arising from an enactment must be filed with the County Coordinator in accordance with the protest rule in the Tournament Rules.

2. SCORING

a. Scoring is on a scale of 1-5 for each performance (5 is excellent). Judges are required to enter each score on the Performance Rating Sheet (Appendix) after each performance, while the enactment is fresh in their minds. Judges should be familiar with and use the performance rating guidelines (Appendix) when scoring a trial.

b. Judges are required to also assign between 1 and 10 points to **EACH** team for demonstrating professionalism during a trial. A score for professionalism may not be left blank. Professionalism criteria are:

- Team's overall confidence, preparedness, and demeanor
- Compliance with the rules of civility
- Zealous but courteous advocacy
- Honest and ethical conduct

- Knowledge and adherence to the rules of the competition
- Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team's time for its examinations. A score of 1 to 3 points should be awarded for a below average performance, 4 to 6 points for an average performance, and 7 to 10 points for an outstanding or above average performance.

c. The appropriate County Coordinator will collect the Performance Rating Sheet for record-keeping purposes. Copies of score sheets are **NOT** available to individual teams; however, a team can get its total score through the County Coordinator.

3. LEVELS OF COMPETITION

a. For purposes of this program, New York State has been divided into eight regions:

Region 1 .....West
Region 2 .....Central
Region 3 .....Northeast
Region 4 .....Lower Hudson
Region 5 .....New York City (NYC-A)
Region 6.....New York City (NYC-B)
Region 7.....Nassau County
Region 8.....Suffolk County

b. See Map and Chart of Counties in Regions (Appendix).

4. COUNTY TOURNAMENTS

a. All rules of the New York State Mock Trial Tournament must be adhered to at tournaments at the county level.

b. In these tournaments, there are two phases. In the first phase, each team will participate in at least two rounds before the elimination process begins, once as plaintiff/prosecution and once as defendant. After the second round, a certain number of the original teams will proceed to the second phase in a single elimination tournament. Prior to the competition, and with the knowledge of the competitors, the County Coordinator may determine a certain number of teams that will proceed to the Phase II single elimination tournament. While this number may be more or less than half the original number of teams, any team that has won both rounds based on points, but whose combined score does not place it within the established number of teams, **MUST** be allowed to compete in the Phase II single elimination tournament.

c. The teams that advance to Phase II do so based on a combination of wins and point differential, defined as the points earned by a team in its Phase I matches minus the points earned by its opponents in those same Phase I matches. All 2-0 teams automatically advance; teams with a 1-1 record advance based upon point differential, then upon total number of points in the event of a tie. If any spots remain open, teams with a record of 0-2 advance, based upon point differential, then upon total number of points in the event of a tie.

d. If the number of teams going into the single elimination phase is odd, the team with the most wins and highest combined score will receive a bye. If any region starts the year with an odd number of teams, one team from that region may receive a bye, coin toss, etc.

e. Phase II of the contest is a single round elimination tournament. Winners advance to the next round.

f. At times, a forfeit may become a factor in determining aggregate point totals and which teams should advance to the single elimination tournament. Each county should review its procedures for dealing with forfeits, in light of the recommended procedures below. Please note that due to the variety of formats in use in different counties, it is strongly urged that each county develop a system which takes its own structure into account and which participants understand prior to the start of the local tournament. That procedure should be forwarded to the New York State Mock Trial Program Manager, before the first round of competition is held.

g. If a county has an established method for dealing with forfeits, or establishes one, then that rule continues to govern. If no local rule is established, then the following State rule will apply**:**

In determining which teams will advance to the single elimination tournament, forfeits will first be considered to cancel each other out, as between two teams vying for the right to advance. If such canceling is not possible (as only one of two teams vying for a particular spot has a forfeit victory), then a point value must be assigned for the forfeit. The point value to be assigned should be derived from averaging the team's point total in the three matches (where possible) chronologically closest to the date of the forfeit; or if only two matches were scheduled, then double the score of the one that was held.

5. REGIONAL TOURNAMENTS

a. Teams who have been successful in winning county level tournaments will proceed to regional level tournaments. Coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning, and conducting tournaments at the regional level. Participants must adhere to all rules of the tournament at regional level tournaments.

b. Regional tournaments are held in counties within the region on a rotating basis. Every effort is made to determine and announce the location and organizer of the regional tournaments before the new mock trial season begins.

c. All mock trial rules and regulations and criteria for judging apply at all levels of the Mock Trial Tournament.

d. The winning team from each region will be determined by an enactment between the two teams with the best records (the greatest number of wins and greatest point differential) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.

e. The regional tournaments **MUST** be completed 16 days prior to the State Finals. Due to administrative requirements and contractual obligations, the State Coordinator must have in its possession the schools' and students' names by this deadline. Failure to adhere to this deadline may jeopardize hotel blocks set aside for a region's teacher-coaches, attorney-advisors and students coming to Albany for the State Finals.

6. STATEWIDE FINALS

a. Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days it participates in the State Finals in Albany. Funding is available to pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students of the same gender will share a room, with a maximum of four per room. Transportation costs are **not** covered. However, if a school can cover the additional costs for room and board for additional team members above the nine students, one teacher coach and one attorney-advisor sponsored through the Bar Foundation, all members of a team are welcome to attend the State Finals. However, requests to bring additional team members must be approved by the Mock Trial Program Manager in advance.

b. Costs for additional students (more than nine) and adult coaches and/or advisors (more than two) will **not** be covered by the New York Bar Foundation grant or the LYC Program. The Mock Trial Program Manager is **not** responsible for making room arrangements and reservations for anyone other than the nine students, one teacher-coach and one attorney-advisor for each team. However, the Mock Trial Program Manager may choose to make those arrangements for the additional team members. This applies to team members only, not guests. If the Program Manager chooses **not** to make the arrangements, every attempt will be made to pass along any special hotel rates to these other participants. Additional team members attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation. **The teacher coach must advise their school administration of the school's responsibility to cover those additional charges and obtain their approval in advance.**

   The Mock Trial Program Manager will provide an invoice to the coach to submit to the school's administrator. A purchase order must then be submitted to the Mock Trial Program Manager in Albany immediately after the school's team has been designated as the Regional Winner who will be participating in the State Finals in Albany. In most cases, the school will be billed after the State Finals. However, it is possible that a school may be required to provide payment in advance for their additional team members.

c. Each team will participate in two enactments the first day, against two different teams. Each team will be required to change sides—plaintiff/prosecution to defendant, defendant to plaintiff/prosecution—for the second enactment. Numerical scores will be assigned to each team's performance by the judges.

d. The two teams with the most wins and highest numerical score will compete on the following day, except that any team that has won both its enactments will automatically advance, regardless of its point total. In the rare event of three teams each winning both of their enactments, the two teams with the highest point totals, in addition to having won both of their enactments, will advance.

e. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the Mock Trial Program Manager. All teams invited to the State Finals must attend the final trial enactment.

f. A judge will determine the winner. **THE JUDGE'S DECISION IS FINAL**.

7. MCLE CREDIT FOR PARTICIPATING ATTORNEYS AND JUDGES

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program in the State of New York, as an accredited provider of CLE programs, we are required to carefully monitor requests for earning CLE credit through participation in our high school mock trial program. Credit may be earned for preparing students for and judging law competitions, mock trials, and moot court arguments, including those at the high school level. Ethics and professionalism credit hours are not available for participation in this type of activity. No additional credit may be earned for preparation time.

One (1) CLE credit hour may be earned for each 50 minutes of participation in a high school or college law competition. **A maximum of three (3) CLE credits** in skills may be earned for judging or coaching mock trial competitions **during any one reporting cycle**, i.e., within a two-year period[1]. **Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit.**

The LYC Program will process all requests for CLE credit through the New York State Bar Association's Continuing Legal Education Department, an accredited provider of CLE approved by the New York State Continuing Legal Education Board. The procedure is as follows:

a) The Mock Trial Program Manager will provide the County Coordinators with a copy of the Request for CLE Credit Verification Form[2] to disseminate to attorneys/judges participating in the mock trial tournament in their county.

b) **Request for CLE Credit Verification Forms** must be signed by the attorney/judge and returned to the County Coordinator. The County Coordinator must return the signed copy to the Mock Trial Program Manager in Albany by mail, email, or fax by June 30 for processing.

c) MCLE certificates will be generated and sent by **email** to the attorney/judge requesting the credit. **MCLE credit cannot be provided without the signed Request for CLE Credit Verification Form.** The attorney/judge **MUST** provide a valid email address on the form. A copy of the Request for CLE Credit Verification Form follows and is also available online at www.nysba.org/nys-mock-trial/ .

[1] 1) The biennial reporting cycle shall be the two-year period between the dates of submission of the attorney's biennial registration statement; 2) An attorney shall comply with the requirements of this Subpart commencing from the time of the filing of the attorney's biennial attorney registration statement in the second calendar year following admission to the Bar.

[2] County Coordinators will begin disseminating this revised form to participating attorneys and judges during the 2022-2023 New York State Mock Trial tournament season.

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New York State Bar Association
New York Statewide High School Mock Trial Tournament

Request for CLE Credit Verification Form

PER THE NEW YORK STATE CLE BOARD RULES IN REGARD TO CLE CREDIT FOR MOCK TRIAL PARTICIPATION:
One (1) CLE credit hour may be earned for each 50 minutes of participation in a high school or college law competition. (No additional credit may be earned for preparation time.) A maximum of three (3) CLE credits in skills may be earned for judging or coaching mock trial competitions during any one reporting cycle, i.e., within a two-year period. Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit.

IMPORTANT! ***You must complete this form to receive CLE credit (form must be signed to be valid, and a valid email address must be included.) Immediately return completed form to your County Coordinator****. They will verify your request and forward the form to the Mock Trial Program Manager in Albany for processing.* ***All forms must be received in Albany no later than June 30 of the current tournament season. Any forms received after this date will not be processed for MCLE credit.*** *Once your CLE credit has been processed by the NYSBA, your CLE certificate will be emailed directly to you. If you have questions, contact Kim McHargue, kmchargue@nysba.org.*

Are you a member of the New York State Bar Association (NYSBA)? ☐ **Yes** ☐ **No**

If Yes, what is your NYSBA member ID #? _____ (If you do not know your NYSBA member ID #, leave blank

PLEASE PRINT NEATLY

- Your Name: _____
- Home Address: _____
  Street *City* *State* *Zip Code*

- Name of Firm/Court: _____
- Work Address: _____
  Street *City* *State* *Zip Code*
- Work Phone Number: _____
- Primary Email Address **(required):** _____

Your CLE Certificate will be sent to you by email, so please be sure to include your email address!

PLEASE NOTE: New York State CLE Board Rules pertaining to CLE credit for mock trial participation allows a maximum of 3.0 credits per biennial registration cycle, even if you served in more than one county and/or on more than one date durin the mock trial tournament season.

- County of Service where you Coached or Judged: _____
- Date of Service: _____ Hours of Service: _____ (max. of 3.0 credit hours
- Role: Attorney: ☐ Coach ☐ Judge ☐ Presiding Sitting Judge

By signing below, I certify that the information provided on this form is accurate.

➢ **Signature:** _____ **Date:** _____

THIS FORM IS NOT VALID WITHOUT YOUR SIGNATURE AND DATE!

Revised Nov. 2022 **NYSBA Staff use only: Date processed:** _____ **CE21:** ☐ **Download** ☐ **Email** **Initials:** _____

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

PART III

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SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In trials in the United States, elaborate rules are used to regulate the admission of proof (i.e., oral, or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge.

The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the attorneys to know the rules of evidence and to be able to use them to protect their client and to limit the actions of opposing counsel and their witnesses.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this Mock Trial Tournament, the New York State rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule that you think is proper. No matter which way the judge rules, you should accept the ruling with grace and courtesy.

1. SCOPE

Rule 101: SCOPE. These rules govern all proceedings in the mock trial competition. The only rules of evidence in the competition are those included in these rules.

Rule 102: OBJECTIONS. The court shall not consider an objection that is not contained in these rules. If counsel makes an objection not contained in these rules, counsel responding to the objection must point out to the judge, citing Rule 102 that the objection is beyond the scope of the listed objections. However, if counsel responding to the objection does not point out to the judge the application of this rule, the court may exercise its discretion and consider such objection.

2. RELEVANCY

Rule 201: RELEVANCY. Only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the probative value of the relevant evidence is substantially outweighed by the

danger that the evidence will cause unfair prejudice, confuse the issues, or result in undue delay or a waste of time, the court may exclude it. This may include testimony, physical evidence, and demonstrations that do not relate to time, an event or a person directly involved in the litigation.

Example:

Photographs present a classic problem of possible unfair prejudice. For instance, in a murder trial, the prosecution seeks to introduce graphic photographs of the bloodied victim. These photographs would be relevant because, among other reasons, they establish the victim's death and location of the wounds. At the same time, the photographs present a high danger of unfair prejudice, as they could cause the jurors to feel incredible anger and a desire to punish someone for the vile crime. In other words, the photographs could have an inflammatory effect on the jurors, causing them to substitute passion and anger for reasoned analysis. The defense therefore should object on the ground that any probative value of the photographs is substantially outweighed by the danger of unfair prejudice to the defendant.

Problems of unfair prejudice often can be resolved by offering the evidence in a matter that retains the probative value, while reducing the danger of unfair prejudice. In this example, the defense might stipulate to the location of the wounds and the cause of death. Therefore, the relevant aspects of the photographs would come in, without the unduly prejudicial effect.

Rule 202: CHARACTER. Evidence about the character of a party or witness may not be introduced unless the person's character is an issue in the case or unless the evidence is being offered to show the truthfulness or untruthfulness of the party or witness. Evidence of character to prove the person's propensity to act in a particular way is generally not admissible in a civil case.

In a criminal case, the general rule is that the prosecution cannot initiate evidence of the bad character of the defendant to show that he or she is more likely to have committed the crime. However, the defendant may introduce evidence of her good character to show that she is innocent, and the prosecution may offer evidence to rebut the defense's evidence of the defendant's character. With respect to the character of the victim, the general rule is that the prosecution cannot initiate evidence of the character of the victim. However, the defendant may introduce evidence of the victim's good or (more likely) bad character, and the prosecution may offer evidence to rebut the defense's evidence of the victim's character.

Examples:

A limousine driver is driving Ms. Daisy while he is intoxicated and gets into a car accident injuring Ms. Daisy. If Ms. Daisy sues the limousine company for negligently employing an alcoholic driver, then the driver's tendency to drink is at issue. Evidence of the driver's alcoholism is admissible because it is not offered to demonstrate that he was drunk on a particular occasion. The evidence is offered to demonstrate that the limousine company negligently trusted him to drive a limousine when it knew or should have known that the driver had a serious drinking problem.

Sally is fired and sues her employer for sexual harassment. The employer cannot introduce evidence that Sally experienced similar problems when she worked for other employers.

Evidence about Sally's character is not admissible to prove that she acted in conformity with her prior conduct, unless her character is at issue, or it relates to truthfulness.

If an attorney is accused of stealing a client's money, he may introduce evidence to demonstrate that he is trustworthy. In this scenario, proof of his trustworthiness makes it less probable that he stole the money.

Richard is on trial for punching his coworker, Larry, during an argument. The prosecution wants to offer that Richard has, in the past, lost his temper and has neared physical altercations. This evidence constitutes character evidence within the meaning of the rule because it is being offered to show that Richard has a propensity for losing his temper and that he may have acted in conformity with this character trait at the time he struck Larry.

Therefore, it would only be admissible if Richard, as the defendant, has decided to place his character at issue.

Rule 203: OTHER CRIMES, WRONGS, OR ACTS. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person. Such evidence, however, may be admissible for purposes other than to prove character, such as to show motive, intent, preparation, knowledge, or identity.

Examples:

Harry is on trial for stealing from a heavy metal safe at an office. The prosecution seeks to offer evidence that, on an earlier date Harry opened the safe and stole some money from the safe. The evidence is not being offered to show character (in other words, it is not being offered to show that Harry is a thief), but rather it is being offered to show that Harry knew how to crack the safe. This evidence therefore places Harry among a very small number of people who know how to crack safes and, in particular, this safe. The evidence therefore goes to identity and makes Harry somewhat more likely to be guilty.

William is on trial for murder after he killed someone during a fight. The prosecution seeks to offer evidence that a week earlier William and the victim had another physical altercation. In other words, the victim was not some new guy William has never met before; rather, William and the victim had a history of bad blood. The evidence of the past fight would be admissible because it is not being offered to show that William has bad character as someone who gets into fights, but rather to show that William may have had motive to harm his victim.

In the same trial, the evidence shows that the victim died after William struck him in the larynx. William's defense is that the death was completely accidental, and that the fatal injury suffered by his victim was unintended and a fluke.

The prosecution seeks to offer evidence that William has a black belt in martial arts, and therefore has knowledge of how to administer deadly strikes as well as the effect of such strikes. This evidence would be admissible to show the death was not an accident; rather, William was aware that the strike could cause death.

3. WITNESS EXAMINATION

a. Direct Examination (attorneys call and question witnesses)

Rule 301: FORM OF QUESTION. Witnesses should be asked direct questions and may not be asked leading questions on direct examination. Direct questions are phrased to evoke a set of facts from the witnesses. A leading question is one that suggests to the witness the answer desired by the examiner and often suggests a "yes" or "no" answer.

Example of a Direct Question: "*What is your current occupation*?"

Example of a Leading Question: "*Isn't it true that in your current position you are responsible for making important investment decisions*?"

Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable.

Example of a Narrative Question: "*Please describe how you were able to achieve your financial success." Or, "Tell me everything that was said in the board room on that day.*"

Narrative Answers: At times, a direct question may be appropriate, but the witness's answer may go beyond the facts for which the question was asked. Such answers are subject to objection on the grounds of narration.

Objections:

"*Objection. Counsel is leading the witness." "Objection. Question asks for a narration." "Objection. Witness is narrating."*

Rule 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all the facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

Objection:

"Objection. The question requires information beyond the scope of the witness's knowledge."

Rule 303: REFRESHING RECOLLECTION. If a witness is unable to recall a statement made in an affidavit, the attorney on direct may show that portion of the affidavit that will help the witness to remember.

b. Cross-Examination (questioning the other side's witnesses)

Rule 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided.

Rule 305: SCOPE OF WITNESS EXAMINATION. Attorneys may only ask questions that relate to matters brought out by the other side on direct examination, or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

Objection:

"Objection. Counsel is asking the witness about matters that did not come up in direct examination."

Rule 306: IMPEACHMENT. An attorney may impeach the credibility of a witness (show that a witness should not be believed) in the following ways:

1. A witness may testify as to another witness's reputation for truthfulness, provided that an adequate foundation is established for the testifying witness's ability to testify about the other witness's reputation.

Example:

Ben testifies at trial. Jeannette then takes the stand and is familiar with Ben's reputation in the community as not being truthful. Jeannette therefore would be able to testify to Ben's reputation for truthfulness.

2. Counsel may ask questions demonstrating that the witness has made statements on other occasions that are inconsistent with the witness's present testimony. A foundation must be laid for the introduction of prior contradictory statements by asking the witness whether he or she made such statements.

Example:

If a witness previously stated that the car was black but at trial testified that the car was red, the witness could be questioned about this prior inconsistent statement for impeachment purposes.

3. An attorney may ask questions demonstrating the witness's bias in favor of the party on whose behalf the witness is testifying, or hostility toward the party against whom the witness is testifying or the witness's interest in the case.

Examples:

"Isn't it true that you are being paid to testify at this trial?" If the witness is paid to testify, he may have an incentive not to tell the truth while testifying.

Steve is on trial for bank robbery and calls his father as a defense witness to testify that they were watching football at the time of the crime. On cross-examination, the prosecutor could attempt to demonstrate the father's bias that could cause him to fabricate an alibi for his son. Proper questions to impeach the father's credibility might include, "You love your son very much, don't you?" and "You don't want to see your son go to jail, do you?"

Rule 307: IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION.

For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted, but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the value of this evidence as reliable proof outweighs its prejudicial effect to a party. Crimes of moral turpitude are crimes that involve dishonesty or false statements. These crimes involve the intent to deceive or defraud, such as forgery, perjury, counterfeiting and fraud.

Example:

"Have you ever been convicted of criminal possession of marijuana?"

Objections:

"Objection. The prejudicial effect of this evidence outweighs its usefulness."

"Objection. The prior conviction being testified to is not a felony or a crime involving moral turpitude."

c. Re-Direct Examination

Rule 308: LIMIT ON QUESTIONS. After cross-examination, up to three, but no more than three questions, may be asked by the attorney conducting the direct examination, but such questions are limited to matters raised by the attorney on cross-examination. The presiding judge has considerable discretion in deciding how to limit the scope of re-direct.

NOTE: If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness's truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Please note that at times it may be more appropriate not to engage in re- direct examination.

Objection:

"Objection. Counsel is asking the witness about matters that did not come up in cross- examination."

d. Re-Cross Examination

Rule 309: LIMIT ON QUESTIONS. Three additional questions, but no more than three, may be asked by the cross-examining attorney, but such questions are limited to matters on re-direct examination and should avoid repetition. The presiding judge has considerable discretion in deciding how to limit the scope of re-cross. Like re-direct examination, at times it may be more appropriate not to engage in re-cross-examination.

Objection:

"Objection. Counsel is asking the witness about matters that did not come up on re-direct examination."

e. Argumentative Questions

Rule 310: Questions that are argumentative should be avoided and may be objected to by counsel. An argumentative question is one in which the cross-examiner challenges the witness about his or her inference from the facts, rather than seeking additional facts.

Example:

"*Why were you driving so carelessly*?"

Objection:

"Objection. Your Honor, counsel is being argumentative."

f. Compound Questions

Rule 311: Questions that are compound in nature should be avoided and may be objected to by counsel. A compound question requires the witness to give one answer to a question, which contains two separate inquiries. Each inquiry in an otherwise compound question could be asked and answered separately.

Examples:

"Tony, didn't you get sued by the buyer of your company and get prosecuted by the IRS?"

"Did you see and feel the residue on the counter?"

Objection:

"Objection. Your Honor, counsel is asking a compound question."

g. Asked and Answered Questions

Rule 312: A student-attorney may not ask a student-witness a question that the student-attorney has already asked that witness. Such a question is subject to objection, as having been asked and answered.

Objection:

"Objection. Your Honor, the witness was asked and answered this question."

h. Speculation

Rule 313: Questions that ask a witness to speculate about matters not within his personal knowledge are not permitted and are subject to an objection by opposing counsel.

Example:

"Do you think your friend Robert knew about the robbery in advance?"

Objection:

"Objection. Your Honor, the question asks the witness to speculate."

4. HEARSAY

Understanding and applying the Hearsay Rule (Rule 401), and its exceptions (Rules 402, 403, 404, and 405), is one of the more challenging aspects of the Mock Trial Tournament. We strongly suggest that teacher-coaches and students work closely with their attorney-advisors to better understand and more effectively apply these evidentiary rules.

Rule 401: HEARSAY. A statement made out of court (i.e., not made during the course of the trial in which it is offered) is hearsay if the statement is offered for the truth of the fact asserted in the statement. A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case and is being offered against that party. The party who made the prior out-of-court statement can hardly complain about not having had an opportunity to cross-examine himself regarding this statement. He said it, so he has to live with it. He can explain it on the witness stand. Essentially, the witness on the stand is repeating **a statement made** outside the courtroom**.** The hearsay rule applies to both written as well as spoken statements. If a statement is hearsay and no exceptions to the rule are applicable, then upon an appropriate objection by opposing counsel, the statement will be inadmissible.

REASONS FOR EXCLUDING HEARSAY: The reason for excluding hearsay evidence from a trial is that the opposing party was denied the opportunity to cross-examine the declarant about the statement. The declarant is the person who made the out-of-court statement. The opposing party had no chance to test the declarant's perception (how well did she observe the event she purported to describe), her memory (did she really remember the details she related to the court),

her sincerity (was she deliberately falsifying), and her ability to relate (did she really mean to say what now appears to be the thrust of her statement).

The opportunity to cross-examine the witness on the stand who has repeated the statement is not enough because the judge or the jury is being asked to believe what the declarant said.

Example:

Peter is on trial for allegedly robbing a 7-Eleven store on May 1. A witness who is testifying on Peter's behalf testifies in the trial, "I heard Joe say that he (Joe) went to the 7-Eleven on May 1." Peter, the party offering the witness's testimony as evidence, is offering it to prove that Joe was in the 7-Eleven on May 1, presumably to create a question as to whether it could have been Joe at the scene of the crime, rather than Peter. In this example, Joe is the declarant. The reason why the opposing party, in this case the prosecution, should object to this testimony is that the prosecution has no opportunity to cross-examine Joe to test his veracity (was he telling the truth or just trying to help his friend Peter out of a mess) or his memory (was Joe sure it was May 1, or could it have been May 2)?

5. EXCEPTIONS

Hearsay may be admissible if it fits into certain exceptions. The exceptions listed below are the only allowable exceptions for purposes of the Mock Trial Tournament.

Rule 402: ADMISSION OF A PARTY OPPONENT: A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case that amounts to an admission that is against that party's interest at trial. Essentially, the party's own out-of- court statement is being offered into evidence because it contains an admission of responsibility or an acknowledgment of fault. The party who made the prior out-of-court statement can hardly complain about not having had the opportunity to cross-examine himself. He said it, so he must live with it. He can explain it on the witness stand.

Example:

Pam is involved in a car accident. Wendy was at the scene of the crash. At Pam's trial, Wendy testifies that she heard Pam say, "I can't believe I missed that stop sign!" At the trial, Wendy's testimony of Pam's out-of-court statement, although hearsay, is likely to be admitted into evidence as an admission against a party's interest. In this example, Pam is on trial so she can testify about what happened in the accident and refute having made this statement or explain the circumstances of her statement.

Rule 403: STATE OF MIND: A judge may admit an out-of-court statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health). Such out-of-court statements of pain or intent do not present the usual concerns with the reliability of hearsay testimony. For instance, when a witness testifies as to a declarant's statement of intent, there are no memory problems with the declarant's statement of intent and there are no perception problems because a declarant cannot misperceive intent. When applying this exception, it is important to keep in mind that the reliability concerns of hearsay relate to the out-of-court declarant, not to the witness who is offering the statement in court.

Example:

Mike is on trial for a murder that occurred at the West End Restaurant. Mike's defense relies upon the theory that another person, Jane, committed the murder. The defense then calls a witness who testifies that on the night of the murder he heard Jane say that she intended to go to the West End Restaurant. This hearsay statement is admissible as proof of Jane's intent to go to the restaurant.

Rule 404: BUSINESS RECORDS. A judge may admit a memorandum, report, record, or data compilation concerning an event or act, provided that the record was made at or near the time of the act by a person with knowledge and that the record is kept in the regular course of business. The rationale for this exception is that this type of evidence is particularly reliable because of the regularity with which business records are kept, their use and importance in the business and the incentive of employees to keep accurate records or risk being reprimanded by the employer.

Example:

Diane is on trial for possession of an illegal weapon. The prosecution introduces a written inventory prepared by a police officer of items, including a switchblade knife, taken from Diane when she was arrested as evidence of Diane's guilt. The written inventory is admissible. In this example, the statement that is hearsay is the written inventory (hearsay can be oral or written), the declarant is the police officer who wrote the inventory, and the inventory is being offered into evidence to prove that Diane had a switchblade knife in her possession. The reason that the written inventory is admissible is that it was a record made at the time of Diane's arrest by a police officer, whose job required her to prepare records of items taken from suspects at the time of arrest and it was the regular practice of the police department to prepare records of this type at the time of an arrest.

Rule 405: PRESENT SENSE IMPRESSION. A judge may admit an out-of- court statement of a declarant's statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. The rationale for this exception is that a declarant's description of an event as it is occurring is reliable because the declarant does not have the time to think up a lie.

Example:

James is witnessing a robbery and calls 911. While on the phone with the 911 operator, James describes the crime as it is occurring and provides a physical description of the robber. These hearsay statements are admissible because they are James's description or explanation of an event – the robbery – as James perceives that event.

Rule 406: STATEMENTS IN LEARNED TREATISES. A statement contained in a treatise, periodical, or pamphlet is admissible if:

(A) The statement is called to the attention of an expert witness on cross- examination or relied on by the expert on direct examination; and

(B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

Example:

Dr. G, plaintiff's expert witness, is being cross-examined by defendant's counsel. During the cross-examination Dr. G is shown a volume of a treatise on cardiac surgery, which is the subject of Dr. G's testimony. Dr. G is asked if s/he recognizes the treatise as reliable on the subject of cardiac surgery. Dr. G acknowledges that the treatise is so recognized.

Portions of the treatise may then be read into evidence although the treatise is not to be received as an exhibit. If Dr. G does not recognize the treatise as authoritative, the treatise may still be read to the jury if another expert witness testifies as to the treatise's reliability or if the court by judicial notice recognizes the treatise as authoritative.

Rule 407: STATEMENTS BY AN UNAVAILABLE DECLARANT. In a civil case, a statement made by a declarant unavailable to give testimony at trial is admissible if a reasonable person in the declarant's position would have made the statement only if the declarant believed it to be true because, when the statement was made, it was so contrary to the declarant's

proprietary or pecuniary interest or had so great a tendency to expose the declarant to civil or criminal liability.

Example:

Mr. X, now deceased, previously gave a statement in which he said he ran a red light at an intersection, and thereby caused an accident that injured plaintiff P. Offered by defendant D to prove that D should not be held liable for the accident, the statement would be admissible as an exception to the exclusion of hearsay.

6. OPINION AND EXPERT TESTIMONY

Rule 501: OPINION TESTIMONY BY NON-EXPERTS. Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their story. A witness may not testify to any matter of which the witness has no personal knowledge, nor may a witness give an opinion about how the case should be decided. In addition, a non-expert witness may not offer opinions as to any matters that would require specialized knowledge, training, or qualifications.

Example:

(General Opinion)

The attorney asks the non-expert witness, "Why is there so much conflict in the Middle East?" This question asks the witness to give his general opinion on the Middle East conflict.

Note: This question is objectionable because the witness lacks personal perceptions as to the conflict in the Middle East and any conclusions regarding this issue would require specialized knowledge.

Objection:

"Objection. Counsel is asking the witness to give an opinion."

Example:

(Lack of Personal Knowledge)

The attorney asks the witness, "Why do you think Abe skipped class?" This question requires the witness to speculate about Abe's reasons for skipping class.

Objection:

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

Example:

(Opinion on Outcome of Case)

The attorney asks the witness, "Do you think the defendant intended to commit the crime?" This question requires the witness to provide a conclusion that is directly at issue and relates to the outcome of the case.

Objection:

"Objection. The question asks the witness to give a conclusion that goes to the finding of the Court."

Rule 502: OPINION TESTIMONY BY EXPERTS. Only persons qualified as experts may give opinions on questions that require special knowledge or qualifications. An expert may be called as a witness to render an opinion based on professional experience. The attorney for the party for whom the expert is testifying must qualify the witness as an expert. This means that before the expert witness can be asked for an expert opinion, the questioning attorney must bring out the expert's qualifications, education and/or experience.

Example:

The attorney asks the witness, an auto mechanic, "Do you think Luke's recurrent, severe migraine headaches could have caused him to crash his car into the side of George's house?"

Objection:

"Objection. Counsel is asking the witness to give an expert opinion for which the witness has not been qualified."

However, a doctor can provide an expert opinion on how migraine headaches affect eyesight.

7. PHYSICAL EVIDENCE

Rule 601: INTRODUCTION OF PHYSICAL EVIDENCE. Physical evidence may be introduced if it is relevant to the case. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic or its identification and/or authenticity have been stipulated to. That a document is "authentic" means only that it is what it appears to be, not that the statements in the document are necessarily true.

A prosecutor must authenticate a weapon by demonstrating that the weapon is the same weapon used in the crime. This shows that the evidence offered (the weapon) relates to the issue (the crime). If the weapon belonged to the prosecutor, it would not be relevant to the defendant's guilt. The evidence must be relevant to the issue to be admissible.

PROCEDURE FOR INTRODUCING EVIDENCE: Physical evidence need only be introduced once. The proper procedure to use when introducing a physical object or document for identification and/or use as evidence is:

a. Have exhibit marked for identification. *"Your Honor, please mark this as Plaintiff's Exhibit 1 (or Defense Exhibit A) for identification*."

b. Ask witness to identify the exhibit. "*I now hand you what is marked as Plaintiff's Exhibit 1 (or Defense Exhibit A). Would you identify it, please?"*

c. Ask witness questions about the exhibit, establishing its relevancy, and other pertinent questions.

d. Offer the exhibit into evidence. "*Your Honor, we offer Plaintiff's Exhibit 1 (or Defense Exhibit A) into evidence at this time."*

e. Show the exhibit to opposing counsel, who may make an objection to the offering.

f. The judge will ask opposing counsel whether there is any objection, rule on any objection, admit or not admit the exhibit.

g. If an exhibit is a document, hand it to the judge.

NOTE: After an affidavit has been marked for identification, a witness may be asked questions about his or her affidavit without its introduction into evidence. In order to read directly from an affidavit or submit it to the judge, it must first be admitted into evidence.

Rule 602: REDACTION OF DOCUMENT. When a document sought to be introduced into evidence contains both admissible and inadmissible evidence, the judge may, at the request of the party objecting to the inadmissible portion of the document, redact the inadmissible portion of the document and allow the redacted document into evidence.

Objection:

"Objection. Your Honor, opposing counsel is offering into evidence a document that contains improper opinion evidence by the witness. The defense requests that the portion of the document setting forth the witness's opinion be redacted."

Rule 603: *VOIR DIRE* OF A WITNESS. When an item of physical evidence is sought to be introduced under a doctrine that normally excludes that type of evidence (e.g., a document which purports to fall under the business record exception to the Hearsay Rule), or when a witness is offered as an expert, an opponent may interrupt the direct examination to request the judge's permission to make limited inquiry of the witness, which is called "*voir dire*."

The opponent may use leading questions to conduct the *voir dire* but it must be remembered that the *voir dire's* limited purpose is to test the competency of the witness or evidence and the opponent is not entitled to conduct a general cross-examination on the merits of the case.

The *voir dire* must be limited to three questions. The clock will not be stopped for *voir dire*.

8. INVENTION OF FACTS (Special Rules for the Mock Trial Competition)

Rule 701: DIRECT EXAMINATION. On direct examination, the witness is limited to the facts given. Facts cannot be made up. If the witness goes beyond the facts given opposing counsel may object. If a witness testifies in contradiction of a fact given in the witness's statement, opposing counsel should impeach the witness during cross- examination.

Objection:

"*Objection. Your Honor, the witness is creating facts which are not in the record."*

Rule 702: CROSS-EXAMINATION. Questions on cross-examination should not seek to elicit information that is not contained in the fact pattern. If on cross-examination a witness is asked a question, the answer to which is not contained in the witness's statement or the direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial. If a witness's response might materially alter the outcome of the trial, the attorney conducting the cross-examination may object.

Objection:

"Objection. The witness's answer is inventing facts that would materially alter the outcome of the case."

9. PROCEDURAL RULES

Rule 801: PROCEDURE FOR OBJECTIONS. An attorney may object any time the opposing attorneys have violated the "Simplified Rules of Evidence and Procedure." Each attorney is restricted to raising objections concerning witnesses, whom that attorney is responsible for examining, both on direct and cross-examinations.

NOTE: The attorney wishing to object (only one attorney may object at a time) should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question, and the attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

Rule 802: MOTIONS. No substantive pre-trial or trial-term motions are permitted.

Rule 803: CLOSING ARGUMENTS. Closing arguments must be based on the evidence presented during the trial.

Rule 804: OBJECTIONS DURING OPENING STATEMENTS AND CLOSING ARGUMENTS. Objections during opening statements and closing arguments are **NOT** permitted.

Rule 901: PROSECUTION'S BURDEN OF PROOF (criminal cases).

Beyond a Reasonable Doubt: A defendant is presumed to be innocent. As such, the trier of fact (jury or judge) must find the defendant not guilty, unless, on the evidence presented at trial, the prosecution has proven the defendant guilty beyond a reasonable doubt. Such proof precludes every reasonable theory except that which is consistent with the defendant's guilt. A reasonable doubt is an honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary one. It is a doubt that a reasonable person would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence. While the defendant may introduce evidence to prove his/her innocence, the burden of proof never shifts to the defendant.

Moreover, the prosecution must prove beyond a reasonable doubt every element of the crime including that the defendant is the person who committed the crime charged. (Source: NY Criminal Jury Instructions).

Rule 902: PLAINTIFF'S BURDENS OF PROOF (civil cases).

902.1 Preponderance of the Evidence: The plaintiff must prove his/her claim by a fair preponderance of the credible evidence. The credible evidence is testimony or exhibits that the trier of fact (jury or judge) finds to be worthy to be believed. A preponderance of the evidence means the greater part of such evidence. It does not mean the greater number of witnesses, or the greater length of time taken by either side. The phrase refers to the quality of the evidence, *i.e.*, its convincing quality, the weight, and the effect that it has on the trier of fact. (Source: NY Pattern Jury Instructions, §1:23).

902.2 Clear and Convincing Evidence: (To be used in cases involving fraud, malice, mistake, incompetency, etc.) The burden is on the plaintiff to prove fraud, for instance, by clear and convincing evidence. This means evidence that satisfies the trier of fact that there is a high degree of probability that the ultimate issue to be decided, *e.g.,* fraud, was committed by the defendant. To decide for the plaintiff, it is not enough to find that the preponderance of the evidence is in the plaintiff's favor. A party who must prove his/her case by a preponderance of the evidence only needs to satisfy the trier of fact that the evidence supporting his/her case more nearly represents what actually happened than the evidence which is opposed to it. But a party who must establish his/her case by clear and convincing evidence must satisfy the trier of fact that the evidence makes it highly probable that what s/he claims is what actually happened. (Source: NY Pattern Jury Instructions, §1:64).

Rule 903: DIRECT AND CIRCUMSTANIAL EVIDENCE

903.1 Direct evidence: Direct evidence is evidence of a fact based on a witness's personal knowledge or observation of that fact. A person's guilt of a charged crime may be proven by direct evidence if, standing alone, that evidence satisfies the factfinder (a judge or a jury) beyond a reasonable doubt of the person's guilt of that crime. (Source: NY Criminal Jury Instructions).

903.2 Circumstantial evidence: Circumstantial evidence is direct evidence of a fact from which a person may reasonably infer the existence or non-existence of another fact. A person's guilt of a charged crime may be proven by circumstantial evidence, if that evidence, while not directly establishing guilt, gives rise to an inference of guilt beyond a reasonable doubt. (Source: NY Criminal Jury Instructions).

NOTE: The law draws no distinction between circumstantial evidence and direct evidence in terms of weight or importance. Either type of evidence may be enough to establish guilt beyond a reasonable doubt, depending on the facts of the case as the factfinder (a judge or a jury) finds them to be. [Source: NY Criminal Jury Instructions].

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL SCRIPT

PART IV

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CASE SUMMARY

Remington Stone

v.

Marley Miser, Owner

and

Acme Construction Company

Marley Miser, 78 years old, was renovating a 125-year-old Victorian house located in the town of Depew, just outside Gotham, Nirvana. Approximately 50 years ago, the house was converted to a two-family side-by-side duplex with Marley living in the right-hand side unit. Marley bought the structure eight years ago with the intent to reside in one of the units and rent out the other. Marley, a former building inspector with the City of Gotham, never married and was childless. Although Marley grew up relatively poor, Marley inherited several million dollars from a wealthy uncle approximately 2 years ago. The money did not change Marley. Marley chose to continue living modestly and watched every penny.

Marley contracted with Acme Construction Company, a general contractor, to renovate the left-hand side of the duplex. The contract involved putting in new hardwood floors, taking out and putting in drywall, installing new windows and rewiring the dwelling. Acme would use 7 to 10 workers to work on the site at any given time. The workers were union members from Construction Workers Local 1212 and were employed by the subcontractor Home Renovator, LLC.

Remington is 28 years old and is a member of Construction Workers Local 1212. Remington's job was to tear down old sheetrock and install new drywall. Remington began work at the site on Monday, August 23, 2021.

After work on September 22, 2021, Remington went to a big party for several retiring union workers. The event was held at Painters' Union Hall and more than 200 people were in attendance. Marley, who knew one of the retiring union workers, was also at the party.

On Thursday, September 23, 2021, Remington arrived at the job site at 7:30 a.m., the usual start time. Marley noticed that Remington's eyes appeared to be bloodshot, that Remington was walking somewhat slowly as if trying to maintain balance and that Remington appeared to be tired. Marley asked Remington whether Remington was okay, and Remington replied snarkily, "I'm about as good as I am going to get today." Marley was concerned but did not say anything to the general contractor's site supervisor, Reese Withers.

Remington strapped on the tool belt and looked for a ladder so that Remington could start taking down drywall. The day before, Remington used a fiberglass ladder that had rubberized footings. Because the fiberglass ladder was the tallest one on site, the supervisor told another worker to use it outside to remove windows located on the second floor. Remington noticed an old aluminum ladder in the far corner of the room that belonged to Marley. Remington asked Marley whether it would be okay for Remington to use that ladder. Marley just said, "Whatever." Remington did not notice

that the rubberized footings were missing from the bottom of the aluminum ladder. After ascending the ladder, Remington reached for a claw hammer from the tool belt and brought back their hand to strike the drywall. Just as Remington struck the drywall, the feet of the ladder slipped, causing the ladder to fall against a live 220-volt electrical line and giving Remington a severe electrical shock. The 220-volt line, which is used by the clothes dryer, was worn, exposing the copper wires. Remington received third-degree electrical burns to Remington's hands and forearms, with severe damage to the nerves in the skin of Remington's forearms. Remington was hospitalized for four days and received extensive plastic surgery, including skin grafts.

After Remington had been taken to the hospital, Marley told site supervisor Reese that Remington should never have reported to work today. Marley recounted seeing Remington at the party last night and that Remington appeared to be "knocking down" quite a few shots. Marley claimed that the whole time Marley was at the party Remington never left the side of the bar, except to go to the restroom. When Remington tried to stand to go to the restroom, Marley claimed that Remington stumbled slightly before being caught by a nearby patron. Marley also claimed that Remington was still at the party when Marley left at around 10 p.m. and that Marley had heard that the party went to well past midnight. Marley claimed that it is well-known Remington once had a drinking problem and was in and out of rehab on several occasions. Suggesting that Remington could have been suffering from the results of a hangover, Marley contends that Remington was completely responsible for Remington's injuries on September 23.

Site supervisor Reese Withers was also at the party and from across the room saw Remington hanging out at the bar. Reese saw Remington drinking a number of dark colored liquids, and believed Remington was drinking liquor. Anyway, Reese was not happy that Remington was on the job site. Reese had wanted the drywall job to go to Reese's nephew, who has been out of work for six months and just had a new baby. However, the union rep, Dakota Springs, is a very good friend of Remington's parents and is Remington's guide-parent. The union rep pushed Remington ahead of Reese's nephew to get the job. Dakota had stopped by the party for a brief moment and talked to Remington at the bar. Dakota, during the brief time there, asserted that Remington was drinking only diet colas. Also, Dakota believes that Remington did not drink any alcoholic beverages at all that night. Dakota acknowledges that Remington had a drinking problem. Dakota always counsels Remington not to consume alcohol whenever Dakota sees Remington at an outing.

Remington's attorney hired Alexis Andersen, an expert on industrial accidents, to develop a theory of how the accident happened. Andersen, age 55, contends that the vinyl floor tiles were too wet from the rain getting into the room as a result of the missing windows. In the opinion of Andersen, the wet floor, combined with the missing rubber footings on the bottom of the ladder, caused the bottom of the ladder to slide backwards, resulting in the top of the ladder falling onto the live electrical line.

Acme Construction Company hired Professor Skyler Harris of the University of Nirvana. Professor Harris, age 60, who is an accident reconstruction expert, opined that Remington was completely responsible for the accident. The professor contends that, even with the wet flooring, Remington had sufficient body weight such that the ladder, if properly pitched, would not have given way. Because of Remington's intoxicated or hungover state, Remington did not properly angle the ladder and consequently caused the accident.

Remington claims that Remington was not inebriated or hungover on the morning of the accident since Remington did not drink any beer or hard liquor at the party. Remington maintains that their eyes were bloodshot because of staying too late at the party and getting very little sleep. Other than being a little tired, Remington claims that they were in adequate shape to work the shift.

Remington sued the general contractor, Acme Construction Company, under both Labor Law §240[1] and §241[6]. Remington sued Marley under Labor Law §200[1] only. The general contractor settled prior to trial for an undisclosed amount and Remington agreed not to discuss the settlement in any court proceeding or elsewhere.

Remington maintains that Marley failed to keep the premises in a condition safe for the workers. There was an unsafe ladder near a live power source and on a slippery floor. Remington admits that the workers had been told on several occasions to properly angle the ladders before ascending.

Marley claims that Remington was contributorily negligent for being drunk or hungover at the worksite and failing to use the equipment correctly. According to Marley, the ladder struck a 220-volt electrical line that Marley believed was not live. Marley believes they turned off the circuit breaker for that line and claims that someone else must have turned it back on without Marley's permission.

NOTE: State of Nirvana is a common law contributory negligent state. This trial is for liability ONLY.

Plaintiff:

- Remington Stone, plaintiff
- Dakota Spring, union steward
- Alexis Andersen, expert on industrial accidents

Defense:

- Marley Miser, owner of the duplex
- Reese Withers, site supervisor for Acme Construction Company
- Professor Skyler Harris, accident reconstruction expert

LIST OF STIPULATIONS

1. All witness statements are deemed sworn or affirmed, and duly notarized.

2. All items of evidence are originals and eligible for use during the match, following proper procedure for identification and submission.

3. Any enactment of this case is conducted after the named dates in the Case Summary and the witnesses' affidavits. (Please note that the Case Summary is provided solely for the convenience of the participants in the Mock Trial Tournament. Said summary itself does not constitute evidence and may not be introduced at the trial or used for impeachment purposes.)

4. Remington Stone at the time of the accident was 5 feet, 10 inches tall and weighed 177 pounds.

5. The ladder depicted in the exhibit is the ladder used by Remington Stone.

6. The workplace safety rules were duly promulgated by Nirvana's Commission on Occupational Safety and Health.

7. No party to, or witness in, this lawsuit will comment on Remington Stone's settlement with Acme Construction Company in any court proceeding or elsewhere.

8. The single electrical wire in the exhibit is the 220-volt line that caused the injury to Remington Stone.

SUPREME COURT OF THE STATE OF NIRVANA
COUNTY OF GOTHAM

REMINGTON STONE,

Plaintiff,

v.

MARLEY MISER, Owner

and

ACME CONSTRUCTION COMPANY,

Defendants.

COMPLAINT

Index No. 1-2022-1422

Plaintiff Remington Stone by and through Plaintiff's attorneys alleges as follows for its complaint against Defendants Marley Miser and Acme Construction Company:

JURISDICTION AND VENUE

1. This court has subject matter jurisdiction, personal jurisdiction, and is a proper venue for this lawsuit.

THE PARTIES

2. Plaintiff Remington Stone ("Plaintiff") is a member of Construction Workers Local 1212 and resides at 534 South Percy Street Apt. 312, Gotham, Nirvana.

3. Defendant Marley Miser ("Defendant Miser") is a retired building inspector with the City of Gotham and is the owner of and resides at 2597 Lancaster Road, Depew, Nirvana.

4. Defendant Acme Construction Company ("Defendant Acme Construction") is a Delaware corporation duly licensed to do business in the State of Nirvana and maintains a principal office at 1 Acme Business Park, Gotham, Nirvana.

FIRST CAUSE OF ACTION
(Nirvana Labor Law § 200[1])

5. Defendant Miser resides in a 125-year-old Victorian house that has been converted into a two-family side-by-side duplex.

6. In 2021, Defendant Miser hired Acme Construction Company, a general contractor, to renovate the duplex.

7. Defendant Acme Construction contracted with a subcontractor, Home Renovator, LLC, to provide seven (7) to ten (10) workers, including the Plaintiff, from Construction Workers Local 1212 to install new hardwood floors, replace drywall, install new windows, and rewire the property. Defendant Marley, having been involved in the construction industry for many years, assisted in the installation of the hardwood flooring and assisted Defendant Acme Construction in directing the work of one or more employees of Defendant Acme Construction, to wit: Plaintiff and others.

8. On September 23, 2021, Plaintiff was tasked with removing the drywall from the Defendant Miser's house.

9. Plaintiff, after receiving permission from Defendant Miser, attempted to use an aluminum ladder belonging to the Defendant Miser to remove drywall.

10. Unknown to Plaintiff, Defendant Miser's ladder was missing the rubberized footing on the base of the ladder used to prevent the ladder from slipping.

11. While Plaintiff was on the ladder, the feet of the ladder slipped causing the ladder to break through a portion of the drywall and strike a live 220-volt electrical line hiding behind the drywall and resulting in a severe electrical shock to Plaintiff.

12. Plaintiff received third-degree electrical burns to Plaintiff's hands and forearms, with severe damage to the nerves in the forearm skin.

13. As a result, Plaintiff was hospitalized for four days and received extensive plastic surgery, including skin grafts.

14. Under Nirvana Labor Law § 200[1], the Defendant, as the owner of the workplace, was required to keep the premises, and the equipment on the premises, safe for workers.

15. Defendant Miser failed to keep the premises, and the equipment thereon, in a condition safe for workers when he kept a defective ladder near a live power source on a slippery floor.

SECOND CAUSE OF ACTION
(Nirvana Labor Law § 240[1])

16. Plaintiff repeats and realleges all of the allegations set forth above as if more fully set forth herein.

17. At the time of the accident, Plaintiff was engaging in an activity that was an integral and necessary part of the overall project.

18. The overall project was one governed by Nirvana Labor Law § 240[1].

19. Under Nirvana Labor Law § 240[1], Defendant Acme Construction, as a contractor at the workplace, was required to provide appropriate safety devices for the performance of the work.

20. Defendant Acme Construction was required to provide devices, including, but not limited to, ladders, that provide proper protection to the workers.

21. Defendant Acme Construction failed to provide a ladder or other climbing device to Plaintiff that was safe and operable.

22. The failure of Defendant Acme Construction to provide a safe ladder to Plaintiff was the proximate cause of Plaintiff's injury.

THIRD CAUSE OF ACTION
(Nirvana Labor Law § 241[6])

23. Plaintiff repeats and realleges all of the allegations set forth above as if more fully set forth herein.

24. Under Nirvana Labor Law § 241[6], Defendant Acme Construction, as a contractor at the workplace, was required to provide a safe working environment for the workers, including Plaintiff.

25. At the time of the accident, Defendant Acme Construction had notice of the wet floor in the area where Plaintiff was directed to work.

26. Defendant Acme Construction directed Plaintiff to work in the wet floor area.

27. While Plaintiff was on a ladder and said ladder was on the wet surface, the ladder slipped, resulting in the injury to Plaintiff.

28. The proximate cause of the injury to Plaintiff was the failure of Defendant Acme Construction to provide a work surface that was free of water.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory damages, pain and suffering, attorney's fees, costs, disbursements, and such other and further relief as this Court may deem just and proper in such amounts to be determined at trial.

Respectfully submitted,

Mitchell P. Murphy
Mitchell P. Murphy
Attorney for Plaintiff
Rossi & Salcedo LLP

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SUPREME COURT OF THE STATE OF NIRVANA
COUNTY OF GOTHAM

REMINGTON STONE,

Plaintiff,

v.

MARLEY MISER, Owner

and

ACME CONSTRUCTION COMPANY,

Defendants.

ANSWER

Index No. 1-2022-1422

Defendant Marley Miser ("Defendant Miser"), by and through Defendant's attorneys, alleges as follows in response to Plaintiff Remington Stone's ("Plaintiff's") complaint:

JURISDICTION AND VENUE

1. Admits the allegation in paragraph 1.

THE PARTIES

2. Admits the allegation in paragraph 2.

3. Admits the allegation in paragraph 3.

4. Defendant Miser is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 4.

FIRST CAUSE OF ACTION
(Nirvana Labor Law § 200[1])

5. Admits the allegation in paragraph 5.

6. Defendant Miser is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 6.

7. Admits the allegation in paragraph 7.

8. Defendant Miser is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 8.

9. Denies the allegation in paragraph 9.

10. Defendant Miser is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 10.

11. Admits the allegation in paragraph 11.

12. Defendant Miser is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 12.

13. Defendant Miser is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 13.

14. Plaintiff's allegation in paragraph 14 is a conclusion of law to which no response is required.

15. Denies the allegation in paragraph 15. Defendant Miser believed the power line was off. As such, someone other than the Defendant Miser turned the power back on without the Defendant Miser's knowledge or permission.

PRAYER FOR RELIEF

16. Denies the Plaintiff is entitled to any relief.

SECOND CAUSE OF ACTION
(Nirvana Labor Law § 240[1])

17. Submits that allegations 16 through 22 are inapplicable to Defendant Miser.

SECOND CAUSE OF ACTION
(Nirvana Labor Law § 241[6])

18. Submits that allegations 23 through 28 are inapplicable to Defendant Miser.

FIRST DEFENSE
(Contributory Negligence)

19. On September 22, 2021, the night before the incident, Plaintiff attended a party where Plaintiff consumed a significant amount of alcohol.

20. When Plaintiff arrived at the work the next day, Plaintiff was drunk or hungover as evidenced by Plaintiff's bloodshot eyes and difficulty maintaining balance.

21. In this state, Plaintiff failed to properly angle the ladder before ascending despite being instructed to do so on multiple occasions.

22. For the reasons outlined above, Plaintiff was contributorily negligent and should be denied relief.

WHEREFORE, Defendant Miser demands judgment in their favor and against Plaintiff and an award of the costs and disbursements of this action, including reasonable attorney's fees, and such other relief as this Court may deem just and proper.

Respectfully submitted,

Courtney Skimmer
Courtney Skimmer
Attorney for Defendant
Sodus & Robinson LLP

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SUPREME COURT OF THE STATE OF NIRVANA
COUNTY OF GOTHAM

REMINGTON STONE,

Plaintiff,

v.

MARLEY MISER, Owner

and

ACME CONSTRUCTION COMPANY,

Defendants.

ANSWER

Index No. 1-2022-1422

Defendant Acme Construction Company ("Defendant Acme Construction"), by and through Defendant Acme Construction's attorneys, alleges as follows in response to Plaintiff Remington Stone's ("Plaintiff's") complaint:

JURISDICTION AND VENUE

1. Admits the allegation in paragraph 1.

THE PARTIES

2. Admits the allegation in paragraph 2.

3. Defendant Acme Construction is without knowledge or information sufficient to form a belief as to the prior or current employment status of Defendant Miser. Defendant Acme Construction admits that Defendant Miser is the owner of and resides at 2597 Lancaster Road, Depew, Nirvana.

4. Admits the allegation in paragraph 4.

FIRST CAUSE OF ACTION
(Nirvana Labor Law § 200[1])

1. Submits that allegations 5 through 15 are inapplicable to Defendant Acme Construction.

SECOND CAUSE OF ACTION
(Nirvana Labor Law § 240[1])

2. In reference to paragraph 16, denies all prior allegations not otherwise admitted or where Defendant Acme Construction lacked sufficient information to form a belief as to the truth of any such allegations.

3. Admits the allegation in paragraph 17.

4. Plaintiff's allegation in paragraph 18 is a conclusion of law to which no response is required.

5. Plaintiff's allegation in paragraph 19 is a conclusion of law to which no response is required.

6. Plaintiff's allegation in paragraph 20 is a conclusion of law to which no response is required.

7. Denies the allegation in paragraph 21.

8. Denies the allegation in paragraph 22.

SECOND CAUSE OF ACTION
(Nirvana Labor Law § 241[6])

9. In reference to paragraph 23, denies all prior allegations not otherwise admitted or where Defendant Acme Construction lacked sufficient information to form a belief as to the truth of any such allegations.

10. Plaintiff's allegation in paragraph 24 is a conclusion of law to which no response is required.

11. Denies the allegation in paragraph 25.

12. Denies the allegation in paragraph 26.

13. In reference to paragraph 27, admits that Plaintiff was on a ladder, that said ladder slipped, and that Plaintiff was injured. Lacks knowledge or information sufficient to form a belief that the ladder slipped as a result of being on a wet floor.

14. Denies the allegation in paragraph 28.

15. Denies the Plaintiff is entitled to any relief.

FIRST DEFENSE
(Contributory Negligence)

16. On September 22, 2021, the night before the incident, Plaintiff attended a party where Plaintiff consumed a significant amount of alcohol.

17. When Plaintiff arrived at the work the next day, Plaintiff was drunk or hungover as evidenced by Plaintiff's bloodshot eyes and difficulty maintaining balance.

18. In this state, Plaintiff failed to properly angle the ladder before ascending despite being instructed to do so on multiple occasions.

19. For the reasons outlined above, Plaintiff was contributorily negligent and should be denied relief.

WHEREFORE, Defendant Acme Construction demands judgment in their favor and against Plaintiff and an award of the costs and disbursements of this action, including reasonable attorney's fees, and such other relief as this Court may deem just and proper.

Respectfully submitted,

Andy P. Brown
Andy P. Brown
Attorney for Defendant Acme
Construction Company
Sherry, Levin & Wallach, LLP

Note from the Mock Trial Sub-Committee:

This year's case involves an individual with a history of alcohol use disorder and questions are raised regarding whether they returned to use and the possible impact it had on their behaviors. If the issue of alcohol misuse brings up questions or concerns for you, there are resources that can be of help.

All resources below are confidential and free to access.

The New York State Bar Association's Lawyer Assistance Program is available to those in the legal profession that need assistance with alcohol or substance misuse or mental health challenges. Because of the nature of this year's case, the LAP will provide assistance to Mock Trial participants who reach out for help. Advisement, referrals, and connection to community supports are available. All communications are confidential. Call 518.487.5688 or email the LAP Director, Stacey Whiteley at swhiteley@nysba.org.

Self-assessments are a useful tool, a reliable one can be found here: Self-Assessment Tool

The New York State Office of Addiction Services and Support has a comprehensive website with in-depth information regarding alcohol and substance misuse and available support: https://oasas.ny.gov/about

On a federal level there is the **Substance Abuse and Mental Health Services Administration**'s (SAMSA) hotline 1-800-662-4357, which provides information 24/7 to callers regarding mental health issues and substance use questions.

There are also numerous support groups that can provide support and connection. For teenagers that are affected by another's problematic drinking, **Alateen** is a well-established resource. https://al-anon.org/newcomers/teen-corner-alateen/

For others struggling with alcohol misuse, **Alcoholics Anonymous** hosts meetings in-person and online to provide support and community to those who wish to stop drinking. https://www.aa.org/find-aa

There is help available, don't suffer in silence.

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AFFIDAVIT OF REMINGTON STONE

1. My name is Remington Stone. My parents were big fans of the 1980's TV show, *Remington Steele*. So, that's how I got the name. I currently reside at 534 South Percy Street, Apt. 312, Gotham, State of Nirvana.

2. I was born on March 15, 1994, in Buffalo, Nirvana. I had a good childhood for the most part. I tried to play sports, but I was always a little clumsy and awkward. My parents often remind me of the time when I was in first grade and fell off the jungle gym, spraining my arm. They just won't let me forget it. In middle school, I tried to play softball, basketball, and soccer, but I could never get the hang of those sports because of my lack of balance and hand-eye coordination. I was always falling down during agility drills and running exercises. I didn't even try out for sports in high school, and I don't play any sports today. I'm just a spectator and a fan. I graduated from high school in June 2012 and could hardly wait to get out.

3. I lived with my parents in Buffalo until about eight years ago. As with most parents, they wanted me to go to college, then get a good job, get married, raise a family, and, you know, live the American Dream. Well, I had other plans.

4. My parents always said that after I graduated from high school, I could not live at home unless I was in college or working at meaningful employment — no flipping burgers at the local greasy spoon. After seeing Guns N' Roses when I was 16, I have ever since wanted to be a roadie for a rock band. Handling the lighting, the sound, and the special effects as well as the other electrical needs of a band, just fascinated me. Needless to say, my parents were not happy with my career choice.

5. I looked around Buffalo for a couple of years, but I could not find a band that could afford to pay me. I could have volunteered with several bands, but with no income, I worried that I could soon be living on the streets after my parents were to "give me the boot." I had managed to stay at home for two years after graduation by promising my parents that I would soon find a good job. Not finding a roadie job in Buffalo, I moved in June 2014 to the big city Gotham, State of Nirvana to find my dream roadie job. There are a lot more rock bands in Gotham than in Buffalo, so my chance of landing a good roadie job increased significantly.

6. In July 2014, I enrolled in an apprentice program with Electrical Workers Union Local 1000. The five-year apprenticeship allowed me the opportunity to learn the trade and earn a decent income. Upon successful completion of the apprenticeship, I would earn my journeyman's license. Things were starting to look very good for me. I was learning the trade and also making good contacts with many of the area rock bands.

7. Being away from home for the first time was challenging. I made a lot of acquaintances but no close friends. So, when I turned 21 in 2015, I started to go out to some of the local bars to meet people. That was a big mistake! At first everything was fine. I venture out one or two nights a week and would have one or two rum and colas, my favorite drink, and strike up conversations with the bartenders or anyone else around the bar, and then go back to my apartment. Over time, I began to stop by Chuckie's Bar, then my usual hangout, almost every day after work and would drink, let's say, a little more than one or two rum and colas during happy hour. Many times, I would stay well past the usual happy hour.

8. Well, my luck ran out in 2019 when I was 25 years old. I was at Chuckie's on Thursday June 13, 2019 after work. I stayed until well past midnight because there was a local group performing and I liked the music. Of course, I probably had too many rum and colas. When I woke up on Friday morning at 6:30 a.m., I was still in the clothes I wore on Thursday and suffering from a very bad hangover. I had to be at the worksite by 7 a.m., so I did not change my clothes, wash up, or brush my teeth. When the crew chief for the Electrical Workers Union saw me, she said, "You look like crap." The crew chief was short several workers that day; otherwise, she probably would have sent me home without pay. I kept my distance from the crew chief so that she could not smell my breath. At around 8 a.m. on June 14, tragedy set in. I was working with Earl, a co-worker, splicing wires and installing conduits. I was up on the scaffold, and Earl was on the floor right underneath the scaffold. I did not have time to stop for coffee and I could hardly keep my eyes open. As I was dozing off, I dropped a live wire in a tray of acetone left by the painters. The acetone ignited and Earl's clothing was on fire. Two other workers came over to help Earl and put out the fire. When the crew chief came over, she got in my face and asked me what had happened. She was close enough to smell my breath and asked me, "Are you drunk?" I said no, but she made me leave the worksite anyway.

9. Earl was in very bad shape. He spent several months in the hospital getting numerous skin grafts. I was directed to report to the union headquarters on Monday, June 17. When I arrived, there was a brief hearing, and I was terminated for being drunk on the job. To add insult to my injury, I was just two weeks from earning my journeyman's license. I was devastated. My parents convinced me that I should seek help for my alcoholism.

10. I enrolled in the Gotham 12-Step Treatment Program on August 1, 2019. I completed the 90-day program, attending 90 meetings in 90 days (08/01/2019 – 10/29/2019). Unfortunately, about a month after completing the program I had a relapse. It happened around Thanksgiving of that year with all the festivities going on. My sponsor encouraged me to enroll in a second 12-Step Program. I started the second program on January 2, 2020, and since that time, have been completely alcohol-free! It is not easy, but if I feel the need to take a drink, I just call a member of my support group and they help me through the crises.

11. I completed the second 12-step program on March 30, 2020. I was unemployed since my firing and relied on unemployment compensation, SNAP benefits, and support from my parents. Because of the onset of the COVID-19 virus, work was hard to find. However, due to COVID-19, I received enhanced unemployment compensation for many months beyond the normal expiration of such benefits. My parents were still helping me out financially.

12. In July 2021, I learned that the COVID-19 unemployment benefits were scheduled to end on September 5, 2021. I knew I had to find a job a job very soon. In early August 2021, my parents learned that their longtime friend and my guide-parent, Dakota Springs, had recently become union steward for Construction Workers Local 1212 located in Gotham. They called Dakota and asked Dakota to consider bringing me in as a union member. I met with Dakota on August 16, 2021, at union headquarters. Dakota knew from talking with my parents about my long battle with alcoholism. I assured Dakota that I had it under control and that Dakota would have no problem with me. Dakota also knew of the situation with my ex-coworker Earl, but Dakota decided to make me a member

anyway out of loyalty to my parents. In addition to being my guide-parent, I came to regard Dakota also as a mentor, and I would never do anything to betray Dakota's trust.

13. I started working on Monday, August 23, 2021. The union has an exclusive agreement with Home Renovator, LLC to employ Local 1212 members. Home Renovator was a subcontractor to Acme Construction Company, a general contractor, that had a contract to renovate a 125-year-old Victorian house. The house, with its very high ceilings, is located in Depew, Nirvana, a town just outside of Gotham. My job was to tear down and put-up drywall. The whole project was scheduled to be completed about three months from my start date. The owner of the house was a cantankerous curmudgeon named appropriately, Marley Miser. From the first day on the job, Miser was critical of my work. Miser would stand around watching us and butt in when Miser did not think we were doing something right, as if Miser was our supervisor. Reese was hardly ever around me and, as far as I was concerned, it appeared to me that Reese had given Miser supervisory authority over much of my work. In fact, Reese would leave the worksite on some days for extended periods of time and Miser would be there snooping around and giving us orders. One of my co-workers said Miser is a former building inspector with the City of Gotham and I vaguely recall Reese telling us to listen to Miser because Miser has a wealth of experience in the construction industry. Of course, Miser is just full of themself, thinking Miser knows everything about construction. I did not like Miser looking over my shoulder all the time, so about two weeks into the job I politely said to Miser, "Let me do my work. Everything will be fine." Miser took it the wrong way and has tried everything to get me fired.

14. Miser complained to Acme Construction's site supervisor, Reese Withers, about me. Reese would like to fire me, but Reese will need good cause. It is my understanding that at the time I was hired, there was only one opening at the union hall and Reese was pushing for Reese's nephew to get the position. Reese was not a happy camper and very often gave me the worst jobs to try to get me to fail. I wouldn't put anything past Reese. Reese would say or do anything to hurt me. For instance, I don't know where Reese got the notion that I did not like climbing ladders. Like most normal people, I am not thrilled about going up very high on a ladder, but I do what I have to in order to get the job done.

15. Another fateful day in my life was September 23, 2021. I arrived at the job site at 7:30 a.m., the usual start time. As I exited my vehicle, Miser was right at the front of the house staring at me. I was a little tired and walking very slowly. Looking at me up and down as I got closer to the house, Miser asked me whether I was OK, and trying to be humorous I replied, "I'm about as good as I am going to get today." I probably looked worse than I felt, and I was so afraid Miser was going to say something to Reese that might cause Reese to send me home. At the time, I was glad Miser did not blow me in to Reese, because I can't afford to lose even one day's pay.

16. I strapped on my tool belt and looked for a ladder so that I could start taking down drywall as per Reese's order from the day before. I looked for the fiberglass ladder with rubberized footings that I had used several days ago. Because the fiberglass ladder was the tallest one on site, Reese apparently told another worker, prior to my arrival to the worksite, to use it outside to remove windows located on the second floor. I noticed an old 12-foot aluminum ladder in the far corner of the room; the ladder belonged to Miser. I asked Miser whether it would be OK for me to use that ladder. Miser just said, "Whatever," and walked away. I did not notice that the rubber footings were missing from the bottom of the aluminum ladder. But I am pretty sure Miser knew that the

ladder was defective before granting me permission to use it. Also, Miser, with all of Miser's knowledge of the construction industry, had to know that a defective ladder on a wet, slippery floor was an accident waiting to happen. After ascending the ladder, I reached for my claw hammer from the tool belt and brought back my hand to strike the drywall. Just as I struck the drywall, the feet of the ladder slipped, causing the ladder to fall against a live electrical line and give me a severe electrical shock. As the ladder was slipping, I let go of the hammer and grabbed the ladder with both hands. I never saw the worn electrical line with the exposed copper wires before encountering it. I received third-degree electrical burns to my hands and forearms and suffered severe damage to the nerves in the skin of my forearms. I was hospitalized for four days and received extensive plastic surgery, including skin grafts. Now, I sorta know what poor old Earl had gone through. Miser saw the water on the floor and had the responsibility to have it mopped up so as to keep the area safe for the workers.

17. On the night before my accident, I went to a big party for several retiring union workers. The event was held at Painters' Union Hall and more than 200 people were in attendance. Miser, who knew one of the retiring union workers, was also at the party. Reese was there as well, and Dakota also stopped by the party for a brief moment. Dakota came up to the bar counter where I was sitting, and we talked briefly. I think Dakota asked me what was I drinking and I'm sure I said, "Just diet cola." Dakota would always tell me whenever Dakota sees me out: "Remember, you are not to have any alcohol."

18. I was having a really great time at the party talking to the union members that I knew and meeting new people. The whole time I was there I was sitting on a bar stool and throwing down diet colas one after another. I stood up once to go to the restroom and stumbled a bit. One of the union members, I don't remember who, caught me and prevented me from falling to the floor. Whenever I sit for a long time, my legs sometimes cramp up and I takes a few seconds for the blood to start flowing again. No big deal.

19. It was past midnight when the bartender announced "final call" for drinks. I had a final one and decided to leave around 12:30 a.m. I probably stayed a little longer than I should have, but it felt really good to be around real people. Any claim that I was stumbling because I was drunk is completely false. I have never claimed to be graceful when I walk, especially when getting up suddenly after sitting for a long time. Besides, I drove home safely. No accidents!

20. After leaving the hospital, I decided to sue the construction company and Marley Miser under the Labor Law. My attorneys hired an industrial accident expert, Alexis Andersen, to determine the cause of this incident. I talked to Andersen on October 4, 2021 and told Andersen about everything that happened to me on September 23. Andersen found that the vinyl floor tiles in the old Victorian house were too wet from the rain getting into the room as a result of the missing windows. The wet floor, combined with the missing rubber footings on the bottom of the ladder, caused the bottom of the ladder to slide backwards, resulting in the top of the ladder falling onto the live electrical line.

21. Andersen's report clearly vindicates me. The cause of the accident was the wet floor and Miser's unsafe ladder I had to use. I was not drunk or hungover on the morning of the accident since I did not drink hard liquor or even beer at the party. Besides, Dakota was at the party, and I would not have disrespected Dakota by drinking liquor in Dakota's presence. My bloodshot eyes were probably from me staying too late at the party and

getting very little sleep. Other than being a little tired, I was in adequate shape to work the shift. I wish the bartender, his name I believe is Martim, was here to testify. He would confirm that I was drinking diet colas all night. Unfortunately, Martim had overstayed his travel visa, and Immigration and Customs Enforcement had him deported in October 2021 to his home country of Portugal. No one else, except Dakota, knew exactly what I was drinking that night. I did not see the need to broadcast to the world what I was drinking. I would just say to Martim, "Hit me with the usual," and a fresh-filled glass would appear.

22. Miser is responsible for my accident. Miser failed to keep the premises in a safe condition for me and my co-workers. There was an unsafe ladder near a live power source and on a slippery floor. While Reese told me on several occasions to make sure the ladder was angled properly before ascending, the pitch of the ladder, according to my lawyers, was not the proximate cause of my injuries.

23. I don't know why my employer, Home Renovator, has not been brought into this case by Acme Construction. I vaguely recall my lawyers talking about an indemnification clause in the contract between Acme Construction and Home Renovator that would indemnify and hold Home Renovator harmless for any damages. I guess workers' compensation is my only remedy against Home Renovator.

24. Miser has ruined my life. I don't know if I will be able to go back to work again. I'm afraid to deal with any electrical wiring right now, so my dream of becoming a roadie is deferred if not lost. Marley Miser has to pay for what has happened to me.

DATED: Gotham, Nirvana
September 5, 2022

Remington Stone

Remington Stone

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AFFIDAVIT OF DAKOTA SPRINGS

1. My name is Dakota Springs. I am 55 years old as of this past July. Lucky me, I was born on the Fourth of July. I guess that's why I have a strong, independent spirit. I currently live at 245 Hill Street, Gotham, Nirvana.

2. I have spent my whole life in and around Buffalo, Nirvana. It is a great place to live, with lots of friendly neighbors looking out for one another and taking care of our families. "Family first," I always say. You've got to stick together through thick and thin.

3. I have known Remington Stone since Remington was born. Remington comes from a pretty great family. Remington's parents and I go all the way back to high school. They got married in June 1992. When they asked me to be in their wedding party, I was thrilled and honored. Standing up for them at their wedding bonded us for life and made us family as far as I am concerned. In fact, I am the guide-parent of Remington.

4. I have worked in the construction business my whole life, starting with working in my dad's contracting business. I started at the bottom as his helper. But then my dad got me a real job as an "apprentice" through his connections, which was the first step to a strong and solid career. I've always believed it's not what you know, but who you know. That's the way people get ahead in this world. So, when Remington's dad asked me to help get his kid's career going, I, of course, said yes without even thinking twice. I helped Remington get into our union too. So now we're both proud members of Construction Workers Local 1212. I take care of my friends no matter what.

5. Even so, I came up through the ranks and paid my dues like Remington is doing. At first, I kept materials and equipment organized, cleaned up around job sites, and learned about using all kinds of tools, including power tools, though no tools you need a license to use. My main talent was keeping everyone on a job site happy and motivated. The workers always like me and the bosses respect me. I guess that's why I was elected union steward for Local 1212 in June 2021 and I'm proud to be a union leader. Unions built this country. My rank and file know that even if they come to work a little late sometimes, or misplace tools, or take too long a lunch break - no matter what, I will always have their backs. They work hard; but they're only human. Sometimes things happen that aren't their fault.

6. Our union has an exclusive arrangement with Home Renovator, LLC. The firm has a ton of business as a subcontractor and has kept my members employed full-time for years. With construction now booming since the easing of the pandemic, I expect business to be plentiful for the foreseeable future.

7. I believe Remington is a good, upstanding, honest person and a very capable hard worker. When I talked to Alexis Andersen, the expert hired by Remington's lawyers to investigate the accident, I told Andersen that it was ridiculous for anyone to suggest that Remington was afraid to climb high upon ladders. Remington is fearless! Remington's parents first told me in confidence about the kid's past drinking problem and rehab, and all. Then, being as close as we are, Remington comes clean about it to me. I have always reminded Remington not to drink alcohol whenever we're together at an outing, which is usually some union gathering or celebration. But my reminders probably are not necessary. Remington knows how important it is to maintain sobriety and avoid falling back into bad habits.

8. On September 22, 2021, both Remington and I attended the big retirement party at the Painters' Union Hall for a few of the older guys. Marley Miser, whose house Remington had been working at for about a month, was also there. I've heard a lot of negative things about Miser, especially about prying into people's personal lives. I wasn't there long. I got there about 7:30 p.m. and left before 9 p.m. Remington and I spoke briefly at the bar - and yes, as usual, I probably overstepped by warning Remington to stick to non-alcoholic beverages. Remington assured me that Remington was just drinking diet colas. I was close enough to Remington that I would have smelled alcohol on Remington's breath if Remington had been drinking. I know that Remington did not drink any liquor while I was there, and I know in my heart that Remington drank no alcoholic beverages that night at all.

9. I wasn't at the work site when Remington was injured on September 23. I have no reason to believe Remington wasn't physically able to work. And like I said, I have no reason to believe Remington was hung over. I have little regard for property owners like Marley. They are always getting in the way trying to "supervise" the work of my union members. I personally know Acme Construction site supervisor Reese Withers. Reese was always leaving the Marley job to visit other Acme Construction sites. Because of Marley's background in the construction industry, I'm sure Reese must have asked Marley to oversee the work while Reese was away. That is what I have heard from Remington and some of the other workers. I blame Marley Miser for the poorly maintained ladder, the wet slippery floor, and the live electric wire that caused such a terrible injury to Remington. I feel so sorry for Remington. It's like I personally failed Remington's parents because of this injury. I hope Remington will be able to recover from this fiasco and continue working in construction. I'll do whatever I can to help Remington get the relief Remington deserves.

DATED: Gotham, Nirvana
September 19, 2022

Dakota Springs

Dakota Springs

AFFIDAVIT OF ALEXIS ANDERSEN

1. My name is Alexis Andersen. I am 55 years old and reside with my partner at 3301 Commercial Avenue, Depew, Nirvana. I am an industrial engineer and currently serve as Vice President and Senior Investigator at Taylor & Associates, a firm that investigates industrial accidents.

2. As a child, I was always fascinated with the way things work, and at an early age, I showed an aptitude for mathematics and science. When I was in high school, my beloved grandfather Herman, a factory worker at a meat packing plant, was severely injured on the job when the equipment he was using malfunctioned. After witnessing my grandfather's suffering, I decided to pursue a career in industrial engineering, hoping to help make the workplace safer for people like my grandfather.

3. After high school, I attended Purdue University, graduating in 1989 with a B.S. degree in industrial engineering. My advisor at Purdue told me that if I wanted to become an expert in the field, I should pursue graduate studies. I followed her advice and enrolled in Northeastern University's graduate program, where I received an M.S. degree in industrial engineering in 1991, and a Ph.D. in industrial engineering in 1997. At Northeastern, I studied a wide variety of subjects, including biomechanics, robotics, data analytics, human and machine systems, operations, facility functions, and quality control. My dissertation, "Improving Workplace Safety Through Intelligent Systems Design," was awarded honors.

4. In 1998, I was hired as an investigator by Taylor & Associates, a company that investigates industrial accidents. In 2012, I was promoted to Vice President and Senior Investigator at Taylor & Associates. During my career, I have performed more than 500 investigations, examining factors contributing to workplace accidents and making recommendations for remedial measures.

5. Over the years, I have written numerous articles for *Safety+Health, IOSH Magazine*, the premier publication in the industrial safety community. In addition, I wrote a chapter, "How to Analyze and Diagnose Workplace Accidents," for *Accidents in the Workplace* (2005), the leading textbook on workplace safety. My chapter drew on the methodologies and findings in my Ph.D. dissertation.

6. I have been qualified as an expert in the fields of industrial engineering and industrial accident investigations more than 150 times. I have testified in both state and federal courts in various U.S. jurisdictions. I have been retained by plaintiffs in approximately 90 cases and defendants in approximately 60 cases.

7. My fees for litigation are as follows: $5,000 retainer, $700 per hour for preparation and investigation, and $1,000 per hour for time spent in court. My typical fee in a case is $15,000. I've been told that this is on the high side, but my clients get what they pay for: my extensive expertise and commitment to justice. I'm known as a crusader for workplace safety.

8. On October 1, 2021, the attorneys for Remington Stone engaged me to investigate the workplace accident that caused Remington to suffer severe injuries.

9. Acme Construction Company, a general contractor, hired Remington, a member of Construction Workers Local 1212, to tear down and put-up drywall at a house in Depew, Nirvana, owned by Marley Miser. On September 23, 2021, a ladder on which Remington was standing slipped and fell onto a 220-volt electrical line. This caused Remington to suffer third-degree electrical burns to Remington's hands and forearms, and severe nerve damage.

10. My investigation of the accident, conducted from October 4 through October 6, 2021, included the following: interviews with Remington, Marley Miser, and Dakota Springs, the union steward for Construction Workers Local 1212; an examination of the accident scene on October 5; and a review of the statements, reports, and exhibits in this case. I interviewed Remington on October 4 and Remington stated that the only ladder available for Remington to use on the day of the accident was a 12-foot aluminum one with its rubber footings missing. A tall ladder was necessary because the ceilings at the structure under repair were 14-foot-high. Remington also stated that the surface where Remington had to work was vinyl tile flooring that was very wet because of the heavy rain the night before and the missing windows, which allowed the water to enter. On the October 5 site visit, I spoke with Miser who acknowledged that the floor was wet due to the rain.

11. It is my expert opinion, within a reasonable degree of scientific certainty, that the accident was caused by the wet vinyl flooring on which the ladder was standing and the lack of rubber footings on the ladder. When Remington reached for their claw hammer and proceeded to strike the drywall, the unsafe conditions—the wet flooring and defective ladder—caused the ladder to slip and fall against the electrical line. Another lapse in workplace safety that easily could have been prevented! The 4-to-1 rule for ladder positioning is inapplicable in this case. The missing rubber footings and the wet vinyl flooring made positioning of the ladder virtually irrelevant. Given the condition of the floor as described by Remington and Miser, it is more likely than not that the ladder Remington had used would have slipped regardless of how it was pitched.

12. By the way, I've been on the opposite side of Skyler Harris, the defense expert, in several cases. Harris is a professor at the University of Nirvana and assistant dean of the Department of Industrial Arts. Acme Construction is the largest donor to the University of Nirvana, and I suspect that Harris's department gets a big chunk of Acme's donations each year. I believe Harris has tailored their opinion relating to the cause of the accident so as not to throw any shade at Acme's business practices. After all, the university wants to stay in Acme's good graces and keep the cash flowing. The attorneys for Remington told me that they learned during their research that Professor Harris has testified on behalf of Acme for about five times since 2016, and that the contribution the professor's department receives

each year from the Acme donation to the University is larger and larger. The whole mess involving Acme and the professor was exposed in a recent issue of the Gotham Daily Chronicle.

13. Moreover, it's very likely that Harris is charging below the standard market rate for Harris's opinion, a huge "friends and family discount" for its biggest donor. I recall that the good professor and I were on opposite sides in a vehicle rollover case in 2019. I was hired by the plaintiff and Professor Harris was working for the defendant, Gotham EV Motors. The good professor testified at that trial that the rate the professor was charging was $500/hr out-of- court and $750/hr in court. I would guess Professor Harris made about $12,000 to $15,000 on that case. So, spare me that the professor is not in this reconstruction business for the money. By the way, the plaintiff in the rollover case won big; thanks to me.

I affirm the veracity of the foregoing statement.

DATED: Depew, Nirvana
September 27, 2022

Alexis Andersen, Ph.D.

Alexis Andersen, Ph.D.

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AFFIDAVIT OF MARLEY MISER

1. My name is Marley Miser. I am 78 years old and reside at 2597 Lancaster Road in Depew, a town just outside of Gotham, Nirvana. I was a building inspector with the City of Gotham for about 30 years until my retirement five years ago. From the age of 21 until the time I took the building inspector job, I worked in the construction industry building all kinds of structures, including houses, apartment buildings, and office buildings. I have always been single and have no children.

2. My residence is a 125-year-old Victorian house, with 14-foot-high ceilings that I acquired about eight years ago. Approximately 50 years ago, the house was converted to a two-family side-by-side duplex. I live in the right-side of the duplex. When I first acquired the property, my intent was to reside in the right-side of the duplex and rent out the other side. At that time, I did not have the funds to get the structure up to code so that the left-side could be rented. Then, I inherited two million dollars from my late mother's youngest brother, Uncle Charlie, about two years ago. Uncle Charlie always liked me because he knew I was industrious and thrifty. Because we all grew up poor, I have always lived modestly and watched every penny. Even though I am fairly wealthy now, I will continue my frugal ways.

3. With the inheritance, I now have the money to make the renovations to the property. I hired Acme Construction Company to do the work. The contract involved putting in new hardwood floors, taking out and putting in drywall, installing new windows, and rewiring the duplex. The work started on the left-side of the duplex on August 2, 2021. The projected completion date for the duplex was November 30, 2021. Early on, it concerned me that Acme didn't seem to have enough workers on site every day to complete the project on time. At any given time, I counted 7 to 10 workers, including Acme's site supervisor Reese Withers. Reese assured me that everything was on schedule, and that, in fact, the union would be bringing on another worker by August 23.

4. Sure enough, the union, on August 23, sent over a new worker by the name of Remington Stone. It's my understanding that Remington was employed by the subcontractor Home Renovator and was a member of Construction Workers Local 1212. Remington was completely worthless. Most days, Remington showed up looking tired. It seemed that Remington hardly slept at all the night before. With bloodshot eyes and walking so slowly as if Remington would fall over any time, I really thought Remington was drunk practically every day. I would often stand by and watch the workers, especially the younger ones. These young ones think they know it all and are unwilling to listen to seasoned professionals like me. Heck, I have forgotten more than these youngsters will ever learn. About two weeks after Remington started, I was offering some helpful suggestions to Remington, and in a very bitter retort, Remington said, "Get lost you old ninny. Let me do my work." Remington's response was uncalled for. I was just trying to be helpful. I told Reese about the incident, but I did not try to get Remington fired. My major concern was the project staying on schedule even if it meant putting up with worthless characters like Remington.

5. On September 23, the day Remington was injured, I was standing in front of the house as Remington was exiting Remington's vehicle. It was about 7:30 a.m. and I noticed that Remington's eyes were bloodshot, that Remington was walking somewhat slowly as if trying to maintain balance, and that Remington appeared to be tired. As Remington got closer, I asked Remington whether they were OK, and Remington replied snarkily, "I'm about as good as I am going to get today." I was very concerned, but I did not say anything to Reese. I'm still kicking myself for not speaking up at the time. A couple of weeks before the accident, I had overheard some of the workers talking about Remington and saying that Remington really liked those rum and colas.

6. Shortly after Remington had arrived to work on September 23, I had to leave the premises to run an errand. When I got back, I learned of Remington's injury and that Remington had been taken to the hospital. It appears that Remington was using my old 12-foot aluminum ladder that I had stashed in a corner and that I was in the process of throwing away. Before I left for my errand, I recall Remington asking me whether Remington could use the ladder in the corner. Without looking and without knowing exactly which ladder Remington was referencing, I just said, "Whatever." Anyway, it was not my responsibility to provide ladders or any other equipment to the workers. Besides, I was not in charge of this project in any way. What I was doing on many occasions was merely giving suggestions to Remington and some of the other incompetent workers. You would think that they would take my helpful advice gleefully. Simply telling a worker how to do something right is not being a "supervisor." Anyway, Reese certainly understood the value I brought to this construction project. I assisted in the installation of the hardwood flooring and was asked to keep an eye on the work performed by Remington and some of the other workers whenever Reese was offsite, but I was not operating as an "official" supervisor. I agreed to take on that task for Reese just to help keep the project on schedule.

7. There is vinyl flooring throughout the house and vinyl can be very slippery when wet. It rained pretty good overnight, and with some of the windows of the left-side of the duplex being renovated missing, some water got onto the floors. The ladder Remington used was missing its rubber feet and everyone knows you should not use a metal ladder when you might encounter electrical wiring. I knew that there were all kinds of old and exposed electrical wires behind the drywall and that one was a powerful 220-volt line used to provide electricity to the clothes dryer. I never told the workers about those old electrical wires. Well, anyway, construction workers should expect to encounter old wiring behind drywalls in a house as old as this one. I had planned to put that ladder out to the curb for pickup by the town's trash collectors, but just kept forgetting to do that.

8. I am pretty sure, but not certain, that I had turned off the circuit breaker for that 220 line because there was no need for it in the left-side of the duplex then under repair. No one saw me turn off the circuit breaker and I never told anyone that I had turned it off. Anyway, it is clear that someone must have turned the breaker back on by mistake. Each unit of the duplex is on a separate electrical panel. One of the workers, probably Remington, had gone down to the electrical panel for the left-side of the duplex and just started flipping all of the breakers, including the 220 line, back on. In any event, I could not have known that Remington would be so clumsy on the ladder as to fall onto a live wire. Someone told me that Remington was an electrical apprentice and was close to earning a journeyman's license. If that is true, Remington should know how to handle themselves around electrical wires.

9. Remington brought all of this upon themselves. After I had learned that Remington had been taken to the hospital, I told site supervisor Reese that I did not feel that Remington should have reported to work today because Remington appeared to be hung over. I was at the big retirement party on September 22. My friend, Fred Williams, who worked in building inspection with me before leaving to work in construction, was one of the people retiring. I was at the party from about 7 p.m. to 10 p.m. I saw Remington sitting at the bar knocking down what looked like rum and cola back-to-back. Remington was very animated, talking to anybody and everybody who walked by Remington. The whole time I was there Remington never left the side of the bar, except one time to go to the restroom. When Remington stood up, Remington appeared to stumble a bit and was caught by someone near Remington. Without thinking, I shouted to Fred, who was near me, "I hope Remington is not driving. Remington is so loaded that Remington is going to run someone off the road!" I understand the party went well past midnight, and I bet Remington was there the whole time. Unfortunately, my friend Fred, who recently passed away, is not here to confirm what I had said about Remington.

10. Once you come into some money, all the scoundrels come looking for a share by hook or by crook. My mistake, if any, was not asking Reese to send Remington home on September 23 before Remington hurt themself. Clearly, Remington was in no shape to work that day. I don't mean to be insensitive, but it is well-known that Remington once had a drinking problem and was in and out of rehab on several occasions.

11. It is my understanding that Acme Construction Company hired a professor from the University of Nirvana to reconstruct the accident. The professor, I believe the professor's name is Skyler Harris, completed a review of the accident and is ready to testify at trial on behalf of Acme. With Acme now out of the case, my attorneys asked Prof. Harris to testify on my behalf. The professor accepted and is only charging me for the professor's time in court. You know how much I like saving money! During my interview, I told the professor that the floor was a little damp due to the rain but that in my opinion, if Remington had properly angled the ladder, it would not have slipped. I said the same thing to that hack Alexis Andersen, who was hired by the attorneys for Remington to make up a story about the accident. Flash a couple of dollars and these hacks come running!

12. My goal was simply to have the project completed on time, but only if it could be done safely. All I need is for my homeowner's insurance to go up because of an accident. Remington's problem was that Remington did not want to miss a day's pay. My lawyers have carefully looked at this case and believe that Remington's physical state was the proximate cause of the accident. I now know that Remington was suffering from the effects of a severe hangover and that Remington was completely responsible for Remington's injuries on September 23, 2021.

Depew, Nirvana
September 16, 2022

Marley Miser

Marley Miser

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AFFIDAVIT OF REESE WITHERS

1. My name is Reese Withers. I am 51 years old and reside at 625 W. Johnson Street, Depew, Nirvana.

2. I have been a site supervisor for Acme Construction Company since 2016. I have worked for Acme for the past 25 years. They have been good to me and I like working there. I give them a good day's work for a good day's pay (not like these young people today) and would do anything within the bounds of the law to protect the company.

3. I believe in getting the job done as inexpensively as possible. Sometimes that might mean that the workers may not have all the equipment that they need under Nirvana's workplace safety rules. Maybe I closed an eye to some sloppy work habits but when I started in this job, we sucked it up and did the job despite the dangers. We didn't whine like a bunch of crybabies about safety rules.

4. Marley Miser contracted with Acme to renovate a 125-year-old Victorian house, with 14-foot-high ceilings, in the Pepe neighborhood of Depew. We were putting in hardwood floors, installing new drywall, rewiring the place, and installing new windows. Acme contracted with Home Renovator, LLC, a subcontractor, to provide workers for the project.

5. I had the misfortune of supervising Remington Stone when they came on the job in August of 2021. Despite the fact that this slug Stone beat out my nephew for the one remaining union position at Construction Workers Local 1212, I gave Remington a fair chance because that's the kind of person I am.

6. Because Home Renovator is a unionized employer, we work strictly on a seniority basis. As the new kid on the block, Remington got the less desirable jobs. So what? We all had to go that route when we started.

7. Remington was supposed to tear down the old drywall and put up the new drywall in Miser's place. Remington did not appear to like climbing ladders, always looking a little shaky and ill-at-ease. While working, Remington tightly holds onto the ladder with one hand as if for dear life. I told Remington that if they were going to make it in the construction industry, they have to climb ladders. Frequently, I tell my new workers, like Remington, to make sure that they apply the 4-to-1 ladder rule so that the ladder is properly pitched before climbing. Boy, you should see Remington's eyes when Remington is high up on a ladder! Can we say bug-eyed?!

8. Although Remington was a pain, I didn't try to get Remington fired. To fire anyone on a union job site is too much of a hassle, but I wouldn't have been too broken up if Remington quit and didn't come back. My nephew, who has been out of work for about six months and just had a new baby, is still looking for a good job.

9. On September 22, 2021, I saw Remington at the union retirement party. The retirees were old-school workers like I used to be. We got the job done no matter what, not like young Remington. I was across the crowded room from Remington. It's bad enough that I have to be with Remington on the work site but I don't have to socialize with Remington on my own time. Despite Remington's presence, it was an enchanted evening.

10. At the party, I saw Remington banging back glass after glass of a dark colored liquid all night long. Before I left the party at 11 p.m., I asked Martim, the bartender, what Remington was drinking. Martim said, "Rum and cola – that's Remington's favorite drink!"

11. Shortly after Remington's accident, I learned that Martim was deported back to Portugal. That is a shame because Martim could testify as to what Remington drank at the party. Besides, he was a heck of a good bartender!

12. On September 23, 2021, I was watching the window removal job. I found out that Remington was hurt when Remington's ladder fell onto a 220-volt electrical line while Remington was removing the old drywall. As Claude Raines said in *Casablanca*, Remington was "Shocked! Shocked!" (I'm a big fan of old movies!) I didn't see what actually happened. I had one of the workers call 911 for an ambulance. Before Remington left for the hospital, Remington gave me Remington's version of how the accident happened. I suspect Remington did not have the ladder properly pitched as I have instructed Remington time and time again. I'm sorry that Remington was hurt, mainly because of all of the extra paperwork it caused me.

13. After the incident, Marley told me that Marley thought Remington shouldn't have been on the job site, that Marley saw Remington drinking all night at the union party, that Remington never left the bar, and that on September 23 when Remington arrived at the job site, Remington appeared to be hung over from the festivities. A lot of good that did for Marley to tell me all of this after the fact! I hate to say it but Marley was just hell-bent on getting this project completed on schedule and didn't want anything to interfere with that. I wouldn't necessarily say that Marley was assisting me in supervising the work. Although I had to leave the site on some days for extended periods of time to help out at other project sites, I was always the sole supervisor of the Miser project. However, I was glad Marley was around observing

the work, serving pretty much as my eyes and ears when I was away, and giving out helpful instructions to some of our newer workers like Remington. If Remington was smart, Remington would have accepted much of Marley's instructions and advice.

14. Remington decided to use an old aluminum ladder that was missing its rubber footings. The ladder belonged to Marley, not Acme. It had rained the night before and because the windows had been removed, a little water had collected on the floor. Remington should have known that such a ladder on a wet floor could slip, leading to a fall. Remington's own stupidity and negligence caused the accident.

DATED: Depew, Nirvana

September 30, 2022

Reese Withers

Reese Withers

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AFFIDAVIT OF PROFESSOR SKYLER HARRIS

1. My name is Dr. Skyler Harris. I am 60 years old and reside at 2050 Lebrun Street, Gotham, Nirvana. I am a tenured professor in the Department of Industrial Arts at the University of Nirvana, where I was first hired as an assistant professor in 1990. I hold a B.S. in Mechanical Engineering Technology from SUNY Albany, a M.S. in Mechanical Engineering from Niagara University, and a Ph.D. in Fluid Dynamics from New York University. In addition to being a full professor in the Department of Industrial Arts, I am also an assistant dean of the department. I have taught courses related to building codes, construction practices, accident reconstruction, and structural systems for over 30 years and published more than a dozen peer reviewed articles on related topics. I also co-authored a textbook *Accident Reconstruction: Theory and Practice, 3rd Edition (2018*).

2. In addition to my teaching and scholarship duties for the University, for the past several years I have also served as an accident reconstruction expert in dozens of court cases. In fact, I have testified on behalf of Acme Construction Company and its subcontractors many times. We have a close relationship and some of the money Acme has donated to the University over the years has funded much of my research.

3. Acme actually gives a lot of money to the University of Nirvana. I believe Acme is the largest donor to the University. The football and basketball teams probably get most of the Acme funding for all I know. My department gets a significant share but the actual amount the department receives each year is up to the University. For the 2015-2016 academic year, my department received $50,000 of the Acme funding. For academic year 2016-2017, it was $100,000; $175,000 for 2017-2018; $225,000 for 2018-2019; $275,000 for 2019-2020; $315,000 for 2020-2021; $370,000 for 2021-2022; and $450,000 for 2022-2023. I can't tell you how much I appreciate what the good people at Acme do for my department. There was a good chance the department would have closed if the Acme funding did not come through.

4. I charge Acme a fair rate of $100/hr preparation; $200/hr in court. In a case like this, I may make $2,000. Like I said, I only do this to supplement my income. I don't rely on fees from accident reconstruction like some of the hustlers (Alexis Andersen, for example), so I am free from the conflicts of interest that some experts have. In the interest of full disclosure, however, I was involved in a case in 2019 where Gotham EV Motors was being sued by a plaintiff for a rollover accident. I testified for Gotham EV Motors, and if my memory serves me correctly, Alexis Andersen was on the other side. I believe I charged $500/hr preparation and $750/hr in court. I may have made about $14,000 on that case, but it was a very complicated matter, and I deserved every penny of the fee for the effort I put into the case. Sure, I could charge Acme a higher fee, but Acme is a long-time client and has called upon me on many occasions to provide investigative services. My relationship with Acme in no way affects my impartiality.

5. In recent years, I have testified on behalf of Acme in about five accident cases: 2016 – a traveling salesperson allegedly slipped and fell in Acme's parking lot (no cause); 2017 – a driver claimed Acme's truck hit his vehicle and seriously injured him (jury found driver contributorily negligent; no cause); 2018 – a pedestrian was walking along a sidewalk, allegedly tripped on Acme's scaffold, and suffered a subdural hematoma ($2 mil. claim settled for $100,000 based on my strong report); 2019 – worker for a subcontractor lost index finger while using Acme's band saw (contributorily negligent; no cause); and 2021 – $15 mil. wrongful death claim (jury awarded $1.2 mil.) Because of my very strong report, I'm pretty sure there will be a no cause in this case.

6. I first became aware of this case on September 25, 2021 when I attended the wedding of Tonya Withers, Reese Withers' daughter. Reese told me about the accident and said that Remington should have never been on the site anyway. I guess the union pulled some shenanigans.

7. Acme contacted me a few days later and asked me to help out. I began my research by obtaining a copy of Remington's medical report, visiting the site of the accident on September 30, 2021, and looking to speaking to any witnesses, including Reese Withers and Marley Miser. Then I took a few measurements, inspected the ladder, and proceeded to investigate how the accident could have happened.

8. In my opinion, a properly pitched ladder will almost never slide away in the manner that this one is supposed to have done. A lot of people think they are on a stable ladder because it feels stable when their weight is on the bottom rungs. As they move up, the center of gravity moves with them and changes the way that the anchors contact the floor surface. The higher the person climbs, the more angular tension is placed on the ladder and the less stable the footing becomes. Dynamic movement on an improperly placed ladder will make it even more unstable because the vibrations and movement will break the friction between the anchor and the floor, causing it to slip.

9. Ideally, a fixed ladder should be angled at 75 degrees or greater, which is commonly referred to as the 4-to-1 rule. The base of the ladder should be ¼X from the wall where X represents the height of the ladder. Since the ladder in question is 12 feet tall, the base should not have been more than three feet from the wall.

10. I see people overestimate the security of improperly pitched ladders all the time. Sometimes you will see a dingbat jump up and down on the first step to test the security. You can jump on the first step all you want without learning anything about how a ladder will perform when the weight distribution changes. That's like testing the breaks on a car when it is idling. Also, believe it or not, some people, including construction workers, are afraid of heights and will pitch the base of the ladder farther away from the wall so that the slope of the ladder is not as steep. The less-steeped slope gives them a false sense of security.

11. I heard that so-called expert Alexis Andersen said the ladder slipped because the vinyl flooring was wet, and the ladder was missing its rubber footings. Both witnesses I spoke to said that the floor was barely wet at all. At a proper pitch, it should not have made a difference anyway. Andersen just tells his clients what they want to hear, and they pay him handsomely for it!

12. The vinyl flooring was old and relatively porous. My testing indicated that the aluminum edges on the feet of a properly positioned ladder with approximately 180 or more pounds on it would have actually penetrated slightly into the vinyl and provided a stable base for the ladder. The medical record shows that Stone was 73 inches tall and weighed about 180 pounds.

13. With regard to the live 220-volt line in a work area, that is suboptimal. Construction code would require such a power source to be disabled, marked, secured, and insulated so that only a properly trained electrician can access it. There is a reason why generators are used to power tools on a job site. The power is usually shut off at the main breaker, especially when work is being done behind the walls.

14. Every worker needs to be aware of their surroundings and looking out for their own safety. If you see a power line or a gas line or something, you have got to test it before you touch it. That's common sense.

15. I measured the distance between the 220-volt line and the ladder. If the ladder never fell, it would not have touched the ladder and it would not have been an issue. At least not for Remington Stone.

16. I have investigated many accident sites for Acme over the years and it is always these young people that cause the problems. If they are not hungover from rabble rousing, they are usually half asleep because they were up playing video games all night. Their attention span is zero and they don't respect the rules of the job site. They don't want to work their way through the ranks and think everything should just be given to them.

17. Remington Stone probably thought it was someone else's responsibility to look out for their safety. On a job site, every worker needs to look out for their own safety. You can't expect someone else to check a ladder or wire for you. That's the worker's job.

18. Acme already paid me for my investigation into this accident, so I am only charging Marley Miser for my court time. Acme has been a good client of mine over the years and it is good to the University, so I am happy to give their customer a break if I can.

Depew, Nirvana
October 3, 2022

Dr. Skyler Harris
Dr. Skyler Harris

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT EVIDENCE

PART V

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Accident Investigation Report

Name of Injured Person: Remington Stone

Date of Birth: March 15, 1994 Telephone Number: (718) 987-6543

Address: 534 South Percy Street, Apt. 312, Gotham, Nirvana

What part of the body was injured? Describe in detail. The palms of both hands and both forearms

What was the nature of the injury? Describe in detail. Third degree electrical burns to the hands and the forearms, with severe nerve damage to the forearms

Describe fully how the accident happened? What was the injured person doing prior to the event? What equipment, tools being used? Remington Stone was using an aluminum ladder and a claw hammer to remove sheetrock from a wall. After hitting the wall with the hammer, the ladder started to slip, Stone dropped the hammer and grabbed the ladder with both hands to brace for the fall. The ladder then struck a live 220-volt electrical line behind the sheetrock, causing the injuries noted above.

Names of persons interviewed:

Remington Stone	Dakota Springs
Marley Miser	

Date of Event: September 23, 2021 Time of Event: Approx. 7:45 AM

Exact location of event: 2597 Lancaster Road, Depew, Nirvana

What caused the event? Unsafe workplace: use of a defective aluminum ladder on a wet surface

Were safety regulations in place and used? If not, what was wrong? Safety regulations were ignored. The employer and the homeowner should have provided Remington Stone with a safe working environment, including, but not limited to, a non-metal ladder and a sufficiently dry work area.

Injured person went to doctor/hospital? Doctor's Name: Mark Sloan

Hospital Name: Gotham General

Analysis and Opinion:

On October 1, 2021, I was asked by the attorneys for Remington Stone to conduct an investigation of the facts and circumstances of the injuries to Remington Stone. The investigation was conducted between October 4 and October 6, 2021. I interviewed Remington on October 4 and Remington stated that the only ladder available for Remington to use on the day of the accident was an aluminum one with its rubber footings missing. Remington also stated that the surface where Remington had to work was vinyl tile flooring that was very wet because of the heavy rain the night before and the missing windows. I conducted a site visit on October 5 and spoke with the homeowner Marley Miser. Miser acknowledged that the floor was wet because of the rain. Later on October 5, I spoke with Dakota Springs, the union steward for Construction Workers Local 1212, who stated that Remington was a capable construction worker and that Remington had shown no signs of being afraid to climb ladders. The floor during my site visit was completely dry and consequently I was not able to recreate the exact conditions of September 23. However, I did examine the aluminum ladder and observed that the rubber footings that would have prevented the ladder from slipping were missing.

It is my expert opinion, within a reasonable degree of scientific certainty, that the accident was caused by the wet vinyl flooring on which the ladder was standing and the lack of rubber footings on the ladder. When Remington reached for their claw hammer and proceeded to strike the drywall, the unsafe conditions—the wet flooring and defective ladder—caused the ladder to slip and fall against the electrical line.

Alexis Andersen, Ph. D.

Alexis Andersen, Ph.D., Vice President and Senior Investigator Taylor & Associates

November 1, 2021

Accident Reconstruction Report

October 25, 2021

Raymond Fudd, Adjuster
Nascent Indemnity Insurance of Nirvana
P.O. Box 1234
Gotham, Nirvana 12233-1234

RE:	Report:	Workplace Accident Investigation
	Insured:	Acme Construction Company
	Claim No.:	98765-012
	Date of Accident:	September 23, 2021
	Accident Location:	2597 Lancaster Road, Depew, Nirvana

Dear Mr. Fudd:

As per your request on September 27, 2021, an investigation was made of the accident on September 23, 2021 at the property located at 2597 Lancaster Road, Nirvana. The property in question is 125-year-old Victorian house. It is being converted from a single-family house to a side-by-side duplex. The work is being performed by Acme Construction Company, the insured.

My instructions were to make a reconstruction of the accident and to form an opinion of how the accident happened.

The following is a summary of my investigation:

Facts:

After obtaining the HIPAA release, I received the medical report of Remington Stone, the construction worker injured in the September 23 accident. The medical report showed that Stone received third-degree electrical burns to the hands and the forearms. On September 30, 2021 I visited the property and spoke with Acme site supervisor Reese Withers and the property owner Marley Miser. Withers stated that Stone was directed on the morning of the accident to commence taking down drywall. Withers stated that Stone, who was not being directly supervised at the time, used an old aluminum ladder that belonged to the property owner. I examined the 12-foot aluminum ladder and observed that it was missing its rubber footings. Miser stated that the ladder was to be thrown away, but that Miser had kept forgetting to put it to the curb for trash pickup. Miser also stated that Miser does not remember giving Stone permission to use the ladder.

Withers stated that on the morning of the accident, some rainwater had collected on the old vinyl tile flooring. It had rained the night before, the old windows had been removed; and the new windows had not yet been installed. Withers stated that Stone told Withers that after Stone had climbed the ladder and took a big strike at the drywall, the ladder slid backwards causing the top of the ladder to fall against a live 220-volt electrical line and injuring Stone as described in the medical report. I was unable to obtain permission from Stone's attorneys to speak to Stone.

On my visit, the vinyl floor was completely dry. I poured a two-quart size bucket of water on the floor. I positioned the ladder on the wet portion of the floor (using the 4-to-1 rule) and asked a worker, who

was approximately the same height and weight as Stone, to climb up the ladder. The medical report shows that Stone was 73 inches tall and weighed about 180 pounds. After directing the worker to make the motion purportedly made by Stone striking the wall with a claw hammer, I observed that the ladder did not move in the slightest. The 4-to-1 rule provides that the base of the ladder is to be placed one foot away from the wall for every four feet of height to where the ladder rests against the building (Nirvana Workplace Safety Rules.)

Professional Opinion:

It is my professional opinion that the sole cause of the accident is Stone's failure to properly position the ladder from the wall. Pursuant to the 4-to-1 rule, the base of the 12-foot ladder should have been positioned no more than three feet away from the wall. Some people who might be fearful of heights will pitch the base of the ladder farther away from the wall so that the slope of the ladder is not as steep. The less-steeped slope gives them a false sense of security. Moreover, the aluminum edges on a properly pitched ladder with approximately 180 pounds on it would actually penetrate slightly into the vinyl and provide a stable base for the ladder. In the case at hand, Stone's improper positioning of the ladder (whether or not the floor was wet) caused the ladder to slip, resulting in the injuries Stone suffered.

Dr. Skylar Harris

Dr. Skylar Harris

EXHIBIT _____

GOTHAM GENERAL HOSPITAL

Medical Incident Report

Attending Physician: Dr. Doogie Howser, 3rd Year Resident

Date: September 23, 2021

Patient name: Remington Stone

Address: 534 S. Percy Street, Apt. 312, Gotham, Nirvana

Health Insurance: Construction Workers United Major Medical, Policy # AA-235689

Secondary Coverage: none

Patient's primary physician: Cristina Yang

Vital Statistics: **Age** 28 **Date of Birth** March 15, 1994 **Weight** 177 lbs **Height** 5' 10"

Blood pressure 135/78 **Pulse** 67 **Temperature** 99.0

Respiratory rate 25 breaths per minute **Blood alcohol content** _____%

Details of Illness/Accident: Patient reported to the ER with third-degree burns on both palms and the inside of both forearms. See diagram below. Patient presented disoriented, lacked balance and hand-eye coordination, consistent with shock and/or being under the influence. Testing also showed that patient incurred significant nerve damage in both forearms. Patient stated that the injuries occurred as the result of a metal ladder that patient was on falling onto a live electrical line. Injuries are non-life threatening.

Treatment: Palms will be treated with warm water, suave and wrapping. Forearms will require skin grafting.

Prognosis: Full recovery guarded. Skin grafting may not result in restoration of sensory nerves and muscles tissue in the forearms.

Part of body affected: (shade all that apply)

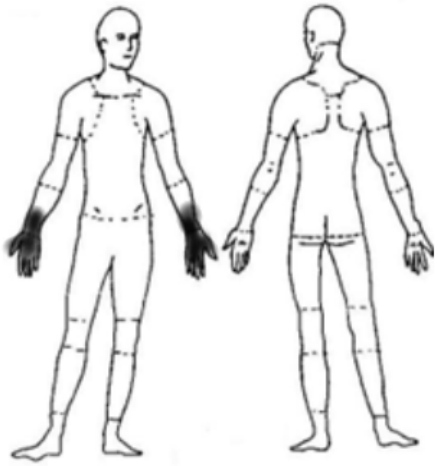

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EXHIBIT _____

State of Nirvana

Commission on Occupational Safety and Health

Workplace Safety Rules

. . .

VI. Ladders

. . .

3. Straight ladders –When using a straight ladder, pitch the ladder against the structure using the 4-to-1 rule. The rule provides that the ladder must be leaned at a 75-degree angle. As such, the base of the ladder should be ¼X from the structure where X represents the length of the ladder. For example, if the ladder being used is 12 feet tall, the base should not be more than three feet from the structure. Ladders should have rubberized footings to prevent slippage.

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EXHIBIT _____

12-Foot Aluminum Ladder

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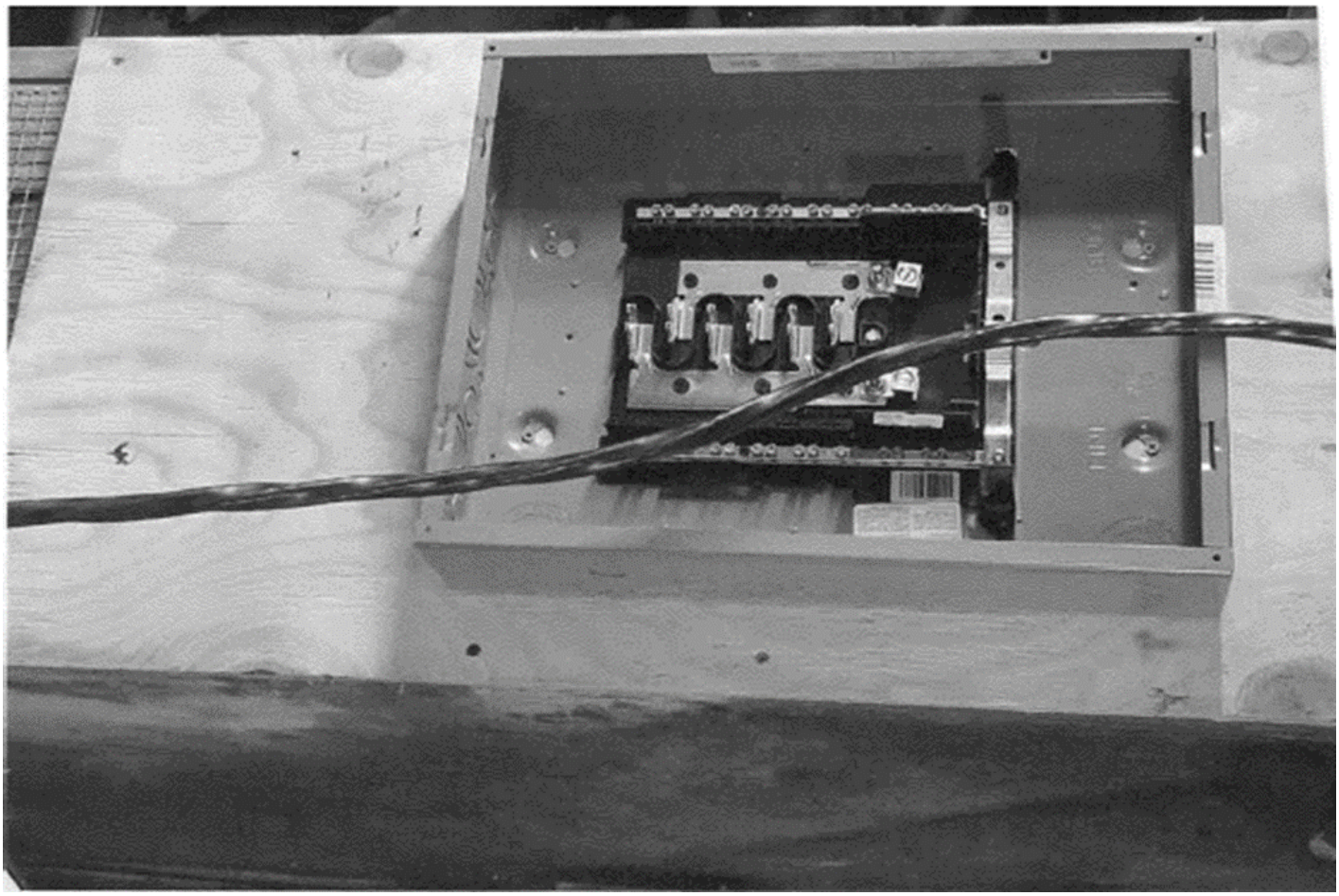
EXHIBIT ____

220-volt Electrical Wire Struck by R. Stone



Photograph taken by A. Andersen on October 4, 2021

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EXHIBIT _____

Wire Gauge Safety Rating Diagram

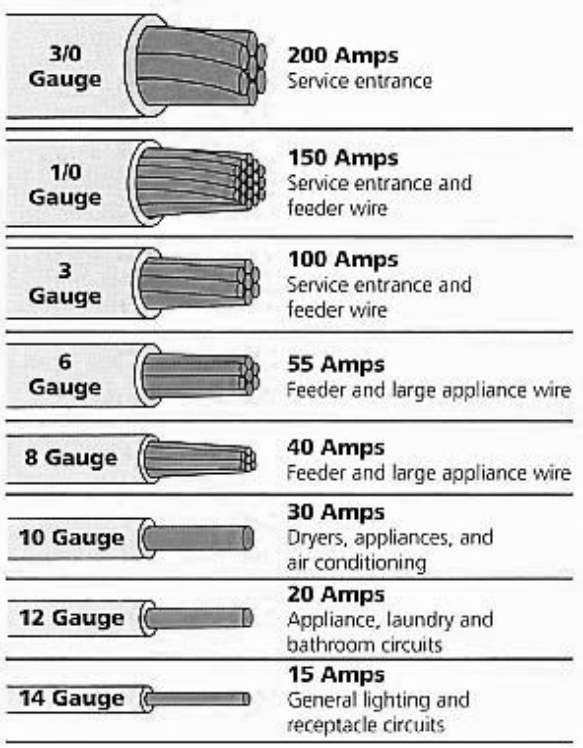

Diagram 5 from § 180(e) of the Gotham City Building Code.

Types of In-Wall Electrical Wires & Cables Permitted under State Code

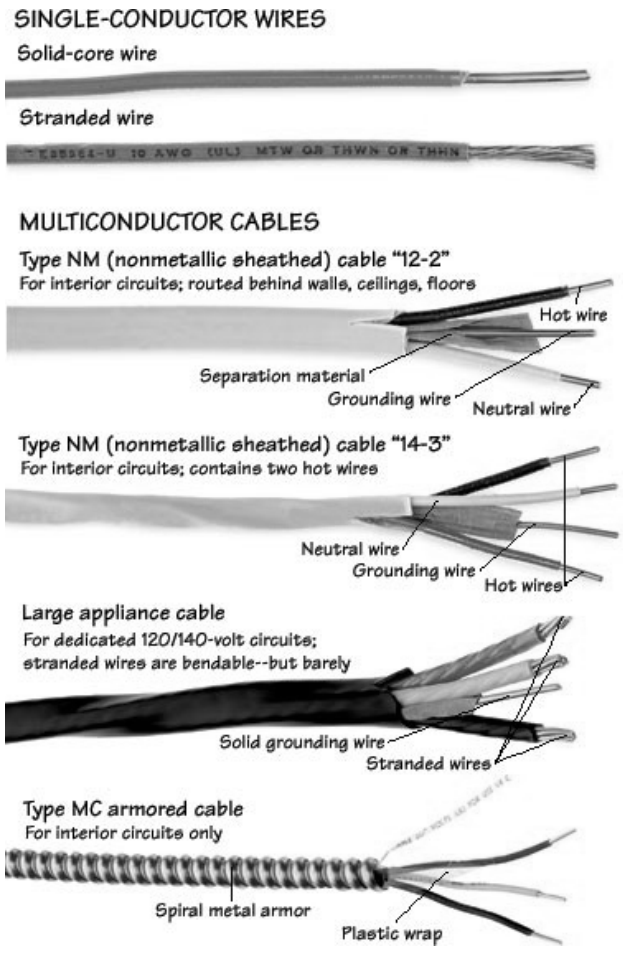

Diagram 7 from § 180(e) of the Gotham City Building Code.

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EXHIBIT_____

Gotham Daily Chronicle

Issue 42 Your favorite daily paper! August 31, 2022

University Funding from Construction Company and Testimony from Accident Reconstruction Expert

By Mortin Muckrader
Gotham Daily Chronicle – August 31, 2022

In 2014, Acme Construction Company and the University of Nirvana entered into an agreement whereby Acme Construction Company pledges $30,000,000 to the University. Pursuant to the agreement, the University will receive $1,500,000 each year for 20 years, and the first donation is scheduled for the 2015-2016 academic year.

Initially, Acme Construction Company allowed the University to decide how to allocate the funds to the University operations. However, the CEO of Acme Construction Company, Doug Mogul, has urged the University to provide a significant portion of the funding to the Department of Industrial Arts. Does Acme plan to train more construction engineers or to pay back for the services of its expert testimony?

Allocations received by the Department of Industrial Arts

Academic year	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
Allocations	$50,000	$100,000	$175,000	$225,000	$275,000	$315,000	$370,000	$450,000

According to the University's records, the funds allocated to the Department of Industrial Arts have continued to grow over the past eight years. The Department of Industrial Arts received twice the allocation in the 2016-2017 academic year than the year prior. Until the academic year of 2022-2023, the funds allocated to the Department of Industrial Arts were up to nine times the original amount!

Why did the Department of Industrial Arts receive more funding?

Conveniently, the Department of Industrial Arts received a larger allocation starting in 2016, the same year that Skyler Harris began to testify as an accident reconstruction expert on behalf of Acme.

Skyler Harris is a tenured professor and the Associate Dean in the Department of Industrial Arts at The University of Nirvana. Professor Harris also served as an accident reconstruction expert in dozens of personal injury cases.

Professor Harris has testified on behalf of Acme Construction in a number of high-profile accident cases since 2016. It is believed that Harris' testimony was instrumental in the company receiving favorable outcomes in practically all of its relevant cases. The similarity between all of the cases was that Professor Harris has always been able to provide "professional" and "reasonable" testimonies which served to help Acme get rid of those annoying personal injury lawsuits. The point is that Professor Harris provides Acme with accident reconstruction expert testimony at a price far below the market price.

According to the plaintiffs' attorneys who have sued Acme in personal injury cases, the increasingly larger contributions to Professor Harris' Department are the real payback for their "expert" services.

Overall, it is difficult to say that the increase in fund allocation to the Department of Industrial Arts in recent years has nothing to do with the expert testimony services provided by Professor Harris to Acme Construction. It is worth pondering whether experts funded by enterprises are qualified to testify on behalf of the enterprises in court and whether such expert testimony is credible.

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL RELATED CASES/CASE LAW AND STATUTES

PART VI

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CASES

Ortega v. Puccia, 57 AD3d 54 (2008)

The plaintiff was injured after falling from a scaffold. The scaffold had been disassembled on the day before the accident and reassembled just prior to the accident. There was conflicting testimony as to who reassembled the scaffold and failed to reinstall the locking wheels. Cases involving Labor Law §200 fall into two broad categories: (1) those where workers are injured as a result of dangerous or defective premises conditions at a work site, and (2) those involving the manner in which the work is performed. The court opined that where a premises condition is at issue, property owners may be held liable if the owner either created the dangerous condition that caused the accident or had actual or constructive notice of the dangerous condition that caused the accident. The court further opined that when the manner of work is at issue, no liability will attach to the owner solely because the owner may have had notice of the of the unsafe manner in which work was performed. Rather, it must be shown that the party to be charged had the authority to supervise or control the performance of the work.

Tsongas v. Apex Construction, 67 Misc.3d 1237 (2020)

The plaintiff, a construction worker, was injured after falling into an unguarded and uncovered hole in the backyard of the homeowner's property. The construction company had excavated the hole as part of creating footings for a rear deck. The plaintiff sued the construction company as well as the homeowner. The court held that in order to hold a homeowner liable under Labor Law §200, it must be shown that the accident occurred in circumstances under which (i) the homeowner exercised supervisory control of the manner and method of the work; or (ii) the homeowner had actual or constructive notice of a dangerous or defective condition and an opportunity to take action, but failed to do so. In denying the summary judgment motion, the court ruled that the homeowner had failed to establish *prima facie* that they lacked constructive notice of the dangerous condition that brought about the plaintiff's injuries.

Gittins v. Barbaria Construction Corp., 74 AD3d 744 (2010)

The plaintiff, a carpenter, was injured at the residence of the defendant homeowner. The plaintiff commenced a Labor Law §200 action against the construction company and the homeowner. There was deposition testimony that the defendant did not direct or control the plaintiff's work, that the defendant never met the homeowner, and that the homeowner never gave the plaintiff directions as to how the plaintiff should perform the work. On a summary judgment motion, the court dismissed the cause of action against the homeowner.

Hawver v. Steele, 204 AD3d 1125 (2022)

The plaintiff was injured when doors of a barn, owned by the defendant, fell on the plaintiff when the plaintiff was delivering sheetrock to the defendant. The doors were off their hinges and secured only by wedges. In reversing the lower court's order granting summary judgment to the defendant, the appellate court held that the fact that a dangerous condition is open and obvious does not relieve the defendant of all duty to maintain the premises in a reasonably safe condition.

IMPORTANT NOTE:
Only the names and the citations of the relevant cases are provided here.
Please go to *www.nysba.org/nys-mock-trial/* to **view** and/or **print** the text of each case.

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RELEVANT STATUTES

Labor Law § 200. General duty to protect health and safety of employees

1. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons. The board may make rules to carry into effect the provisions of this section.

. . .

Labor Law § 240. Scaffolding and other devices for use of employees

1. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.

. . .

Labor Law § 241. Construction, excavation and demolition work

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:

. . .

6. All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL APPENDICES

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POINTS	MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES
1 Ineffective	• Not prepared/disorganized/illogical/uninformed • Major points not covered • Difficult to hear/speech is too soft or too fast to be easily understood • Speaks in monotone • Persistently invents (or elicits invented) facts • Denies facts witness should know • Ineffective in communications
2 Fair	• Minimal performance and preparation • Performance lacks depth in terms of knowledge of task and materials • Hesitates or stumbles • Sounds flat/memorized rather than natural and spontaneous • Voice not projected • Communication lacks clarity and conviction • Occasionally invents facts or denies facts that should be known
3 Good	• Good performance but unable to apply facts creatively • Can perform outside the script but with less confidence than when using the script • Doesn't demonstrate a mastery of the case but grasps major aspects of it • Covers essential points/well prepared • Few, if any mistakes • Speaks clearly and at good pace but could be more persuasive • Responsive to questions and/or objections • Acceptable but uninspired performance
4 Very Good	• Presentation is fluent, persuasive, clear and understandable • Student is confident • Extremely well prepared—organizes materials and thoughts well, and exhibits a mastery of the case and materials • Handles questions and objections well • Extremely responsive to questions and/or objections • Quickly recovers from minor mistakes • Presentation was both believable and skillful
5 Excellent	• Able to apply case law and statutes appropriately • Able to apply facts creatively • Able to present analogies that make case easy for judge to understand • Outstandingly well prepared and professional • Supremely self-confident, keeps poise under duress • Thinks well on feet • Presentation was resourceful, original, and innovative • Can sort out the essential from non-essential and uses time effectively • Outstandingly responsive to questions and/or objections • Handles questions from judges and attorneys (in the case of a witness) extremely well • Knows how to emphasize vital points of the trial and does so
Professionalism of Team Between 1 to 10 points per team	• Team's overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team's time for its examinations.

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2020 NEW YORK STATE MOCK TRIAL TOURNAMENT
PERFORMANCE RATING SCORE SHEET

In deciding which team has made the best presentation in the case you are judging, use the following criteria to evaluate each team's performance. FOR EACH OF THE PERFORMANCE CATEGORIES LISTED BELOW, RATE EACH TEAM ON A SCALE OF 1 TO 5 AS FOLLOWS (USE WHOLE NUMBERS ONLY). INSERT SCORES IN THE EMPTY BOXES.

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 1 of 2

T I M E L I M I T S

OPENING STATEMENTS	DIRECT EXAMINATION	CROSS EXAMINATION	CLOSING ARGUMENTS
5 minutes for each side	10 minutes for each side	10 minutes for each side	10 minutes for each side

		PLAINTIFF / PROSECUTION	DEFENSE
➢ **OPENING STATEMENTS (ENTER SCORE) ➔**			
PLAINTIFF/PROSECUTION 1st Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
PLAINTIFF/PROSECUTION 2nd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
PLAINTIFF/PROSECUTION 3rd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		

PLEASE BE SURE TO ALSO COMPLETE THE OTHER SIDE OF THIS FORM (PAGE 2)

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 2 of 2

TIME LIMITS

OPENING STATEMENTS	DIRECT EXAMINATION	CROSS EXAMINATION	CLOSING ARGUMENTS
5 minutes for each side	10 minutes for each side	10 minutes for each side	10 minutes for each side

		PLAINTIFF / PROSECUTION	DEFENSE
DEFENSE 1st Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 2nd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 3rd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
➢ **CLOSING STATEMENTS** (ENTER SCORE→)			
(1–10 points PER team)			
➢ **PROFESSIONALISM** (ENTER SCORE→) • Team's overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; strategies intended to waste the opposing team's time for its examinations.			
➢ **TOTAL SCORE** (ENTER SCORE)→			

JUDGE'S NAME ***(Please print)*** →

In the event of a tie, please award one point to the team you feel won this round. Mark your choice below.

☐ PLAINTIFF/PROSECUTION ☐ DEFENSE

PREPARING FOR THE MOCK TRIAL TOURNAMENT

Learning the Basics

Teachers and attorneys should instruct students in trial practice skills and courtroom decorum. You may use books, videos, and other materials in addition to the tournament materials that have been provided to you to familiarize yourself with trial practice. However, during the competition, you may cite only the materials and cases provided in the Mock Trial Tournament materials contained in this booklet. You may find the following books and materials helpful:

Mauet, Thomas A., Trial Techniques (6th ed.), Aspen Law and Business Murray, Peter, Basic Trial Advocacy, Little, Brown and Company

Lubet, Steven, Modern Trial Advocacy, National Institute for Trial Advocacy

Vile, John R., Pleasing the Court: A Mock Trial Handbook (3rd ed.), Houghton Mifflin Company

Preparation

1. Teachers and attorneys should teach the students what a trial is, basic terminology (e.g., plaintiff, prosecutor, defendant), where people sit in the courtroom, the mechanics of a trial (e.g., everyone rises when the judge enters and leaves the courtroom; the student-attorney rises when making objections, etc.), and the importance of ethics and civility in trial practice.

2. Teachers and attorneys should discuss with their students the elements of the charge or cause of action, defenses, and the theme of their case. We encourage you to help the students, but not to do it for them.

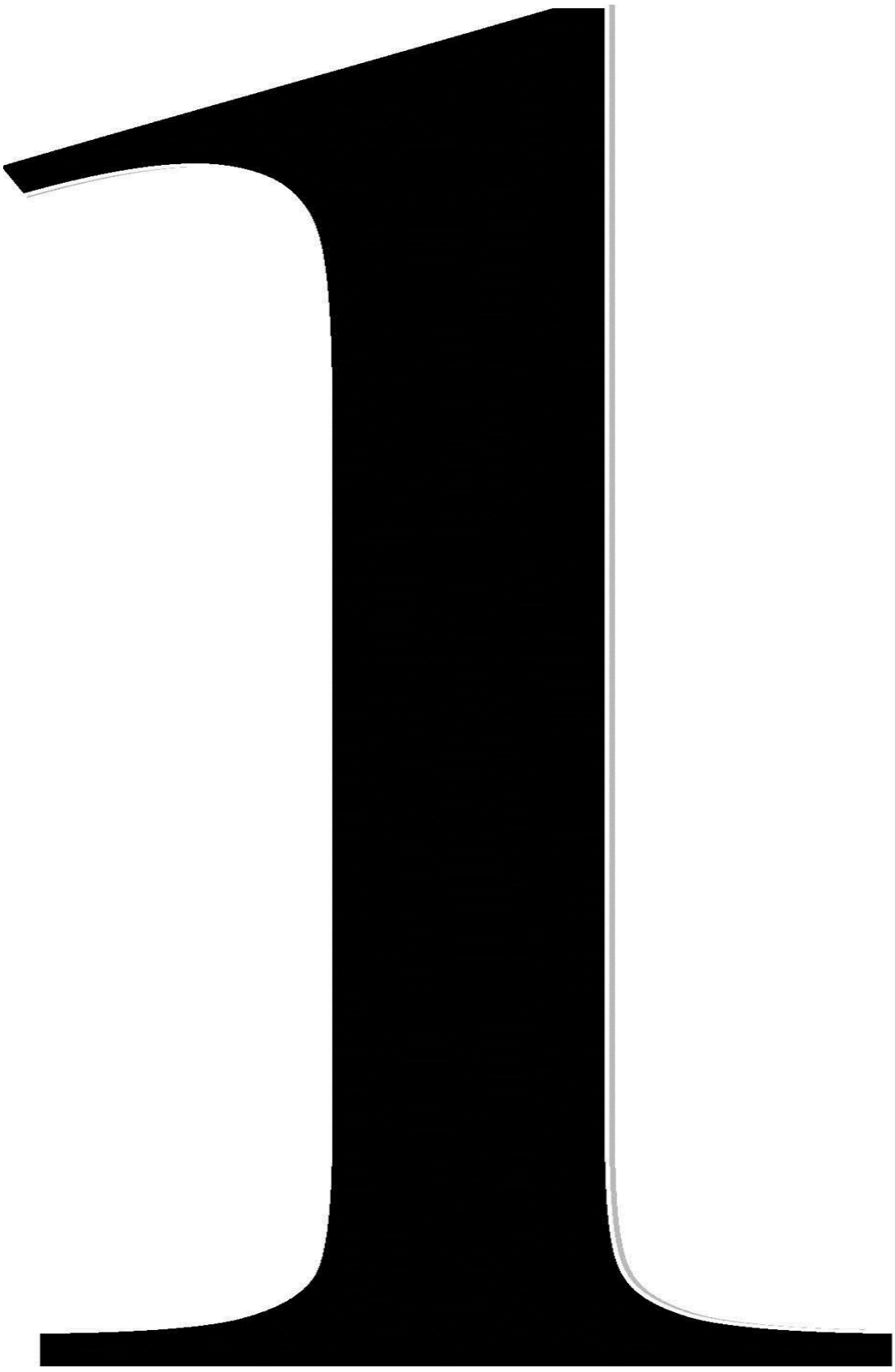
3. Teachers should assign students their respective roles (witness or attorney).

4. Teams must prepare both sides of the case.

5. Student-witnesses cannot refer to notes so they should become very familiar with their affidavits and know all the facts of their roles. Witnesses should "get into" their roles. Witnesses should practice their roles, with repeated direct and cross-examinations, and anticipate questions that may be asked by the other side. The goal is to be a credible, highly prepared witness who cannot be stumped or shaken.

6. Student-attorneys should be equally familiar with their roles (direct examination, cross-examination, opening and closing statements). Student attorneys should practice direct and cross-examinations with their witnesses, as well as practice opening and closing arguments. Closings should consist of a flexible outline. This will allow the attorney to adjust the presentation to match the facts and events of the trial itself, which will vary somewhat with each trial. Practices may include a judge who will interrupt the attorneys and witnesses occasionally. During the earlier practices, students may fall "out of role" however, we suggest that as your practices continue, this be done less and that you critique presentations at the end. Each student should strive for a presentation that is as professional and realistic as possible.

7. Each team should conduct a dress rehearsal before the first round of the competition. We encourage you to invite other teachers, friends, and family to your dress rehearsal.



(over)

TIME LIMITS

OPENING STATEMENTS
5 minutes for each side

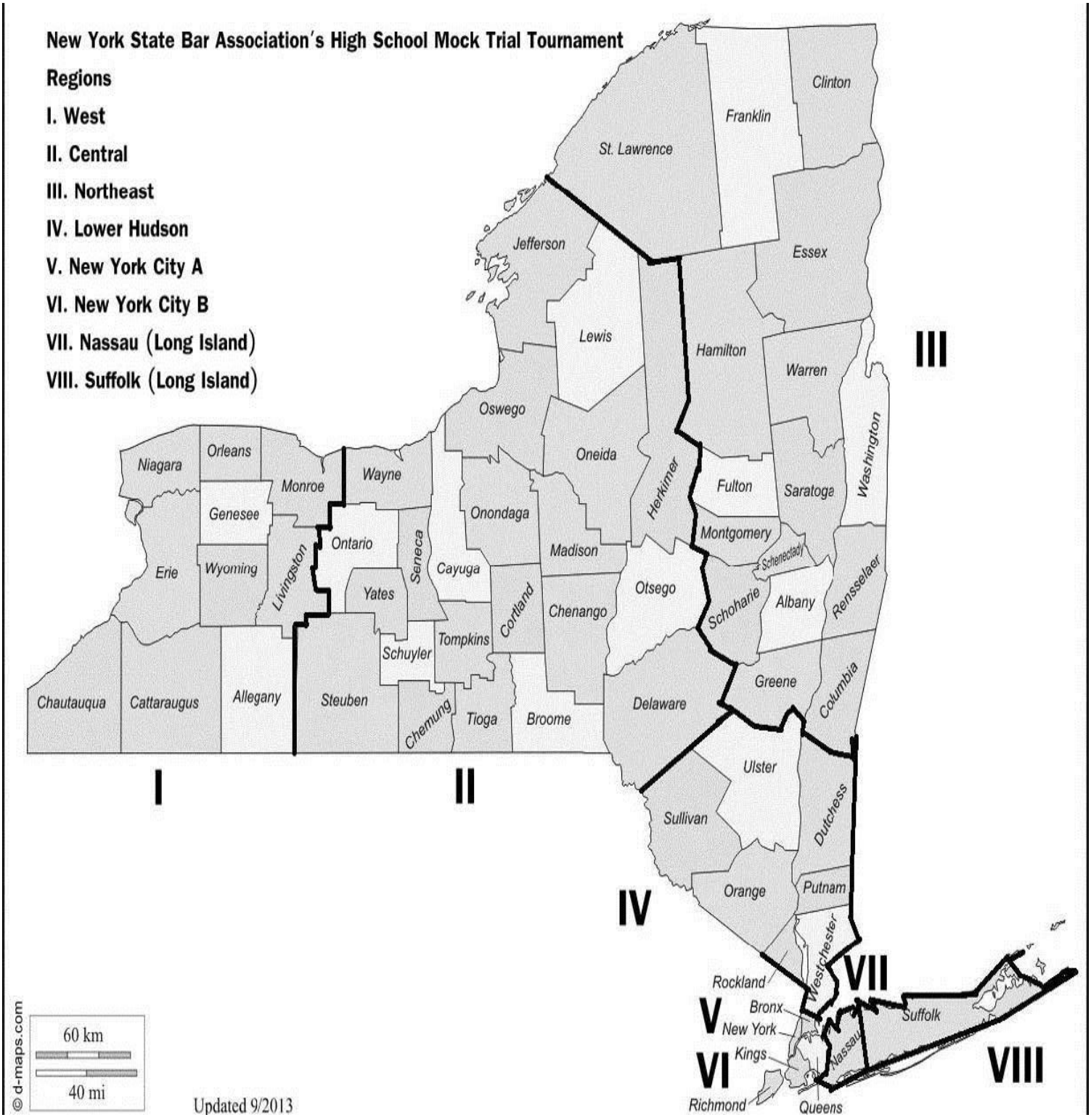
DIRECT EXAMINATION
10 minutes for each side

CROSS EXAMINATION
10 minutes for each side

CLOSING ARGUMENTS
10 minutes for each side

Regional Map for New York State Bar Association's High School Mock Trial Tournament

A list of all the Past Regional Champions is available at www.nysba.org/nys-mock-trial/



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2022 NEW YORK STATE BAR ASSOCIATION HIGH SCHOOL MOCK TRIAL CHAMPIONS

Hunter College High School -New York County, Region 5

Presiding Judge: Hon. John P. Cronan
U.S. District Judge, Southern District of New York, New York, NY

Coach
Jonathan Cartwright

Team Members
Liam Austin
Odelya Bergner-Phillips
Ila Chander
Sabina Cherner
Peri Dunn
Victoria Freeman
Daniella Glezer
Leo Greenberg
Lois Herring
Matthew Kohn
Sencha Kreymerman
Ariela Lopez
Elizabeth Louie
Cristina Mercado
Christine Neubert
Leila Shafizadeh
Devanshi Shah
Mia Taubenblat
Soleil Wizman
Caroline Xiao
Caroline Xiong
Leo Zhang

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