

New York State Bar Association
2022-2023 NYS High School Mock Trial Tournament

**“Remington Stone v.
Marley Miser and
Acme Construction Company”**

Correction Memo #1 – Issued December 23, 2022

Print this Correction Memo and keep it with your case materials for reference.
Bookmark this link to the Mock Trial page: <https://nysba.org/nys-mock-trial/>.

Replace current pages with the most recently revised pages. Revised pages are identified with Page Number-Revision Number and Date of Revision (for example: If page 55 was changed, it becomes 55-R1 (12.23.22)). Revisions on affected pages are indicated by **BOLD AND UNDERLINE**.

It may be preferable to replace an entire section rather than just individual page(s).

DOCUMENT	CORRECTIONS (CORRECTION MEMO #1 – Issued December 23, 2022)	OLD PAGE / NEW PAGE
Case Summary	<p><i>Tsongas v. Apex Construction</i>, 67 Misc.3d 1237 (2020)</p> <p>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 <i>prima facie</i> that they lacked constructive notice of the dangerous condition that brought about the plaintiff’s injuries. <u>On appeal, Appellate Division, 1st Department concluded that the dispositive issue was not the defective premises condition, but, rather, whether the defendant homeowner had authority to exercise supervisory control over the injury-producing work. The appellate court determined that the record did not establish that the homeowner had exercised such supervisory control since said homeowner had lived off-site. The First Department then reversed the lower court’s order that denied the summary judgment motion, and dismissed the complaint against the homeowner (Tsongas v. Apex Construction, 189 AD3d 567 [2020]).</u></p>	124/124