

Courtroom observation

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Courtroom Observation. doc The 2008 2L Moot Court Tournament at the Liberty University School of Law presented a case which was argued before the United States District Court for the Northern District of Indiana, case number 82A04-8876-CV-285, Deborah White vs. Patrick Gibbs and Stand Alone Properties, L. L. C., d/b/a O'Malley's Tavern. The courtroom procedure's purpose is to argue the motion of summary judgment with regards to the case of Deborah White vs. Patrick Gibbs; and Stand Alone Properties, L. L. C., d/b/a O'Malley's Tavern. The plaintiff in this case is Deborah White. Mrs. White is represented by moot court attorney Amanda Babbitt and Jackson Walsh. The defendants in this case are Patrick Gibbs; and Stand Alone Properties, L. L. C., d/b/a O'Malley's Tavern. Moot court attorneys Benjamin Walton and Jordan Van Meter represent the defendants. " The State of Indiana requires that a plaintiff meet the following elements in order to recover damages: the defendant must have actual knowledge that the person to whom the alcoholic beverage was furnished was visibly intoxicated at the time the alcoholic beverage was furnished, and the intoxication of the person to whom the alcoholic beverage was furnished was a proximate cause of the death, injury, or damage alleged in the complaint" (Gumprecht, 1). The intent of this courtroom process is to challenge the State of Indiana law regarding material fact, while also arguing the defendants' motion for summary judgment. The plaintiff, however, desires to proceed to trial. On Saturday, July 28, 2007, Mr. Bruno and Mrs. Deborah White arrived at O'Malley's Tavern, in Gary, Indiana, around 7: 00 p. m. Edward Hard, a frequent patron of the bar and Mrs. Whites former fiancé, was also present that night. " Almost immediately after they walked in, Mr.

Hard approached the Whites, kindly offered his congratulations regarding their marriage and returned to his stool at the bar to resume drinking" (Gumprecht, 2). As asserted by Mrs. White and the bartender John Daniels, Mr. Hard drank four to six shots of hard liquor inside twenty-eight minutes. Mr. Daniels, a licensed bartender, served Mr. Hard each of these shot of liquor and other alcoholic beverages, as Mr. Daniels was the only bartender working at O'Malley's that evening. Upon finishing his last shot of liquor, Mr. Hard knocked over his stool as he stood up and then Mr. Hard fell and many other customers witnessed Mr. Hard's fall. Mr. Hard was able to regain his composure and sit back on his bar stool, after which Mr. Daniels served him another beer. As the White's were leaving O'Malley's Tavern Mr. Hard shouted, " She should be my wife! " before they reached the door. The White's ignored the comment and exited the tavern. " Mr. Hard saw them leaving, pursued them, and raised his hand in an attempt to strike one of them but he fell to the ground as he swung... As the Whites left the tavern, Mr. Hard rose and began to chase the Whites into the parking lot, shouting, ' This isn't over yet'" (Gumprecht, 3). At this point Mr. Daniels agrees that Mr. Hard appeared intoxicated. The White's entered their vehicle and began to drive away. As the White's were leaving Mrs. White witnessed Mr. Hard enter his vehicle and begin to pursue them. Mrs. White placed a call with 911 requesting emergency assistance. " Approximately a half-mile from the tavern, Mr. White turned left while Mr. Hard, driving on the wrong side of the street and without slowing down, slammed into the Whites' driver-side door" (Gumprecht, 3). As a result of the collision caused by Mr. Hard, Mr. Bruno White was killed and Mrs. White sustained significant injuries. " Beyond the

emotional suffering incurred by Mrs. White as the result of the death of her husband Mrs. White has sustained significant injuries to the left side of her body" (Gumprecht, 4). During the police investigation it was determined that Mr. Hard's blood-alcohol level was 0.20 well in excess of the state's legal limit of 0.08. Also, as stipulated by Mr. Daniel, Mr. Hard did appear intoxicated when exiting the tavern. Which is easily explained as the computerized bar tab revealed "... that Mr. Hard ordered thirteen alcoholic drinks under the supervision of Mr. Daniels" (Gumprecht, 2). In addition, it is further shown in Mr. Hard's past history that he frequently drove while intoxicated, based on firsthand knowledge of O'Malley's owners and bartenders, and the City of Gary Police Department. In the argument for the defendants (Appellee), Benjamin Walton and Jordan Van Meter, present that the actual knowledge of visible intoxication and proximate causation are required under the Indiana Dram Shop Act were absent and not proven by the evidence. Mr. Walton presents that the evidence did not show that Mr. Hard engaging in any activities that would display intoxication. According to the Dram Shop Act, visible intoxication is required. Under this act, the bartender and owner are only held liable if the bartender or owner has actual knowledge of the patrons' visible intoxication at the time the alcoholic beverage was furnished. As presented by the defense, supported by the Indiana Seventh Circuit Court and the Indiana Supreme Court constructive knowledge of intoxication will not suffice because actual knowledge is required under the Act. In the Indiana Supreme Court case from 1988, Gariup Construction Company v. Foster, the court specifically upheld that constructive knowledge was insufficient; therefore, constructive knowledge

would not suffice when determining visible intoxication required under the Act. Mr. Daniels was not able to observe intoxication level of Mr. Hard since he was sitting on a barstool. In addition, Mr. Daniels did not witness when Mr. Hard tripped over the pool stick. However, when Mr. Hard fell in his attempt to punch Mr. White, Mr. Daniels did notice Mr. Hard's intoxication; however, this event transpired after Mr. Hard was served his last drink. Mr. Van Meter contends that since Mr. Hard's intoxication was not the proximate cause of the injury there is no genuine issue of material fact and summary judgment is required as a matter of law. In general proximate cause is when an event is sufficiently related to a legally recognizable injury, which can be held to be the cause of that injury. As supported in *Gaines - Tabb v. ICI Explosives*, companies are not liable for the criminal acts of third parties, unless the company knew or should have known that their negligence might allow the crime to occur. In support of this position Mr. Van Meter further contends the plaintiff was a victim of a crime, not negligence caused by the defendants. Mr. Hard's intoxication was not the proximate cause of the injury in based on two facts. First, his criminal act, which is evidence of his pre-existing criminal intent to cause harm to Mr. White is a superseding intervening cause, which breaks the cause of connection between any negligence of the defendant and the injury barring the plaintiff from recovery. Second, this was a criminal act and the injury was not the natural and probable consequence that was reasonably foreseeable in light of the intending circumstances. Mr. Hard had a vendetta and it can be reasonably argued and he succeeded in his goal to harm Mr. White. Showing there was a willful intent to cause harm, which bars the plaintiff from recovery.

Therefore, with the lack of evidence of actual knowledge of visible intoxication and proximate causation, which proves the defendants, are not liable for responsibility and entitled to summary judgment. In the argument for the Plaintiff (Appellant), Amanda Babbitt and Jackson Walsh, present that the actual knowledge of visible intoxication and proximate causation, which are required under the Indiana Dram Shop Act, have been proven by the evidence. Mr. Walsh argues there are two reasons to support the denial of the summary judgment for the defendant. First, the Indiana court have held that when a jury can reasonably infer could infer from the evidence and circumstances of the case more than one conclusion more than one reasonable inference then summary judgment is inappropriate. Second, in this case the jury could reasonably infer that Mr. Daniels had actual knowledge of the visible intoxication of Mr. Hard when he last served Mr. Hard alcohol. Mr. Walsh continues to contend that the events that transpired that evening were in direct result of a foreseeable consequence of a visibly intoxicated patron. In direct the basis of Mr. Walsh's argument is to presume that Mr. Daniels was aware of the intoxication of Mr. Hard. In the Dram Shop Act the following are presented as four factors support this argument. What and how much alcohol was served; the time it was served in; the condition of the patron before leaving, and the condition of the patron just after leaving. Since it has been pre-determined by records that Mr. Hard consumed at least eleven drinks, six of which were consumed in less than thirty minutes, Mr. Daniels would have reasonably noted these acts by Mr. Hard and inferred the Mr. Hard was in fact intoxicated and to cease in serving Mr. Hard any further alcoholic beverages. In addition with the evidence of a blood-alcohol level of

0. 20 indicates that he was served more than enough alcohol to make him two and half time more intoxicated than the legal limit. Moreover, as Ms. Babbitt contends, there are three reasons why the courts should not grant summary judgment on the issues of proximate cause. First, a jury can make reasonable inferences on behalf of the plaintiff, which as a matter of law this precludes, summary judgment. In addition, the death of Mr. White and Mrs. White's injuries was a foreseeable consequence of a visibly intoxicated patron. Lastly, a criminal act can be an intervene act that does not break the chain of causation because the act is reasonably foreseeable. As further concluded by Ms. Babbitt, the proximate cause of an injury is an act that sets in motion a chain of events that eventually results in the injury and that the injury was reasonably foreseeable result of the original act. Even though Mr. Hard continued to pursue the White's in his car and intended to assault Mr. White inside the bar, it does not infer the intent to murder. It is foreseeable that for Mr. Hart, someone whom has a history of driving while intoxicated would eventually cause a car accident. The untimely death of Mr. White and the injuries sustained by Mrs. White are the direct cause of Mr. Hard's drunk driving. Therefore, summary judgment should be denied. The arguments presented by both the plaintiff and defendants were very clear and concise. However, my decision would be to grant summary judgment. The defendants presented strong facts that Mr. Hand, although a person whom drinks excessively which lead to an extraordinary high of the blood-alcohol level, his proximate cause was his continued anger at the engagement followed by marriage of the woman he still loved and cared for deeply to another man. Since proximate cause is an act that sets in motion a chain of

events that eventually results in the injury, and that the injury was reasonably foreseeable result of the original act. The direct cause of the wreck was the criminal act of wanting to harm Mr. White. His anger and intent to harm Mr. White was the contributing proximate cause of Mr. White's death, his intoxication may have been a contributing factor, but not the proximate cause. In addition, according to the Indiana Dram Shop Act actual knowledge of visible intoxication is required. A bartender, under this Act, is not liable unless he/she is aware that the patron is intoxicated while serving an alcoholic drink. There was no evidence presented that showed knowledge was present during the serving of alcohol only after the last drink was served. Therefore, with this evidence, or lack thereof, this bars the defendants from liability. The Plaintiff's arguments on the basis that it should be presumed that Mr. Daniels had known Mr. Hard was intoxicated does not supersede the requirement under the Act of actual knowledge of visible intoxication. It can be inferred that since Mr. Hard spend the majority of his evening sitting on a bar stool that visible intoxication would be very difficult to witness. In addition, with regard to the position of Mr. White's death being a direct cause of Mr. Hard's intoxication. There was overwhelming evidence that Mr. Hard had held onto emotions concerning Mrs. White. In doing so, Mr. Hard's anger towards Mr. White was the cause of him continuing the criminal act of assault from the time of attempting to punch Mr. White through to crashing his vehicle into the White's car, ultimately killing Mr. White. Furthermore, there are no laws in Indiana that hold the bartender liable if Mr. Hard attempts to operate a motorized vehicle while intoxicated. It is ultimately up the law enforcement to protect pedestrians and enforce

the law. How does the biblical worldview bear on the answer to the questions before the court? With the Biblical worldview, throughout the Bible we see the principle of someone acting on behalf of another person. This is what agency is all about. As an example, when Abraham sends his servant to go find a bride for Isaac. The servant was acting on behalf of Abraham in finding a suitable bride for Abraham's son Isaac. In the New Testament there is not much emphasis in changing governments as much as it is in changing people and letting the people change the governments. " And let the peace of God rule in your hearts, to the which also ye are called in one body; and be ye thankful. Let the word of Christ dwell in you richly in all wisdom; teaching and admonishing one another in psalms and hymns and spiritual songs, singing with grace in your hearts to the Lord. And whatsoever ye do in word or deed, do all in the name of the Lord Jesus, giving thanks to God and the Father by him. " (Colossians 3: 15-17, King James Version) " If we really did everything as if we were doing it for God, how different would we do all these things that we're doing and maybe how much better of a job we would do" (Chrisman, 2011). Paul tells us this is what we should do in everything in our life. " I can do all things through Christ which strengthened me."(Philippians 4: 13) It is widely known that Man's law and God's law differ greatly. In many circumstances Man's law leaves more questions than answers. Although Man's law has its failings as a citizen in a nation with many religions I do feel Man's law is a good method for resolving disputes among those of differing beliefs. We have to maintain measures and balance that work for the people as a whole. Although I also feel that as a Christian some of Man's laws are lacking greatly and are in need of reform.

Therefore, I do feel it is my duty as a Christian to work with lawmakers to aid in improvements in Man's law. References: Gumpresht, M. E. (2008, March 12). Memorandum in Opposition to the Motion for Summary Judgment. Civil Action No. 82A04-8876-CV-285 Gaines - Tabb v. ICI Explosives, USA, Inc., 160 F. 3d 613, 621 (10th Cir. 1998). Chrisman, Esq., R (2011). Presentation: Understanding Agency and Employment Relationships [PowerPoint slides]. Retrieved from Liberty University Blackboard website: Holy Bible: King James Version.