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# 2013-2014 MSBA High School Mock Trial Case & Competition



In cooperation with the  
Maryland Judicial Conference Public Awareness Committee,  
Executive Committee on Law Related Education,  
& Maryland State Department of Education

This case packet was prepared by Professor A.J. Bellido de Luna,  
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for the 2013-14 Maryland State Bar Association High School Mock Trial Competition.  
Carey Law students Katherine M. Frieder '13 and Amanda L. Sentelle '14  
provided invaluable assistance.



/MDMockTrial

/CLREP

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**Important Contacts for the Mock Trial Competition**

During LOCAL CIRCUIT COMPETITIONS, your first point of contact is your LOCAL COORDINATOR.

**Call your local coordinator regarding your local competition schedule.**

Your second point of contact is the State Mock Trial Director:

Shelley Brown, 410-706-5362/0

[sbw@clrep.org](mailto:sbw@clrep.org)

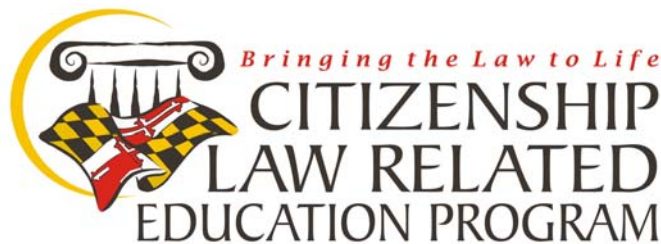
Citizenship Law Related Education Program

Maryland Bar Center

520 West Fayette Street, 4<sup>th</sup> floor

Baltimore, Maryland 21201

<b>Circuit</b>	<b>Counties/ City</b>	<b>Local Coordinators</b>
1	Dorchester, Somerset, Wicomico, Worcester	To Be Determined
2	Caroline, Cecil, Kent, Queen Anne's, Talbot	
3	Baltimore, Harford	Mr. Rex Shepard 410-887-4017 rshepard@bcps.org  Ms. Renee Folk rfolk@bcps.org
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6	Frederick  Montgomery	Mr. Michael Bunitsky 301-644-5265 mike.bunitsky@fcps.org  Mr. Scott Zanni 301-840-4627 Scott_A_Zanni@mcpsmd.org
7	Calvert, Charles, Prince George's, St. Mary's	Ms. Sue Strickland 301-449-4900 Susan.Strickland3@verizon.net
8	Baltimore City	Mr. Erik Atas <a href="mailto:ea@bobbyzirkinlaw.com">ea@bobbyzirkinlaw.com</a> 410-499-1132(c) 410-356-4455(o)



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*Attorney's Office of Baltimore City*

Charles S. Winner  
*Attorney at Law*

November 13, 2013

Dear Students & Coaches:

Welcome to the 31st annual Maryland State Bar Association Statewide High School Mock Trial Competition. We are pleased that you are joining in this exciting opportunity.

Recently, Maryland's high court upheld a law that says people cannot recover damages from an injury in a negligence case if they are found to be at fault. Last reviewed by the court more than 30 years ago, this issue has been a hot topic and closely monitored by many. Maryland is one of only four states plus the District of Columbia that still has the law; other states use a comparative negligence standard that reduces the damage an injured party can receive apportioned to the party's degree of fault. Despite the fact that Maryland is in the minority on the standard, and the Court did not argue for the current doctrine, it has placed the responsibility on the General Assembly to enact new legislation. As residents of the state of Maryland, it is an area of law to which we should pay close attention, as it may impact any of us. This year's case and the case law should serve as a cautionary story of what can occur in a moment of what appears to be fun or light-hearted behavior.

Our four primary objectives for the MSBA Mock Trial competition are:

- To further understanding and appreciation of the rule of law, court procedures, and the legal system;
- To increase proficiency in basic life skills such as listening, speaking, reading, and critical thinking;
- To promote better communication and cooperation between the school system, the legal profession, and the community at large;
- To heighten enthusiasm for academic studies as well as career consciousness for law-related professions.

Mock Trial works best when everyone competes fairly and honestly. Your goal should be learning, rather than winning. Mock Trial provides opportunities to learn through case preparation with your attorney advisor, teacher coach, and teammates, as well as during each of the competitions.

Please remember that Mock Trial parallels the real world in terms of proceedings, interpretations, and decisions by the Bench. Decisions will not always go your way and you will not always prevail. Judges may offer suggestions based on their own preferences—use these as guidelines rather than "right" or "wrong" ways of doing things. The next judge you're before may prefer things just the opposite (and that, by the way, is very real-world!)

We ask that you read carefully through this entire book. We wish you a very successful year and a rewarding learning experience.

Best Regards,

*Rick Miller*  
Rick Miller  
Executive Director

*Hon. Diane O. Leasure*  
Hon. Diane O. Leasure  
Co-Chair, CLREP

*Shannon McClellan, Esq.*  
Shannon McClellan, Esq.  
Co-Chair, CLREP

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**2013-2014**  
**MSBA HIGH SCHOOL MOCK TRIAL COMPETITION**

**PART I: ORGANIZATIONAL RULES**

1. **Forfeits are prohibited.** As a registered team, you agree to attend all scheduled competitions. If a team does not have an adequate number of students (i.e. due to illness, athletics, or other conflicts), it is still expected to attend and participate in the competition. In these instances, a team will “borrow” students from the opposing team. While this is treated as an automatic win for the opposition, both teams still gain the practice experience. Further, it maintains the integrity of the competition and is respectful of the Court, Presiding Judge, attorneys and the other team that has prepared and traveled to the competition. If this occurs, coaches should make every effort to notify the local coordinator AND the other coach in advance of the competition. When an opposing team does not have enough students to assist the other team, students may depict two or more of the roles (i.e. they may depict 2 witnesses or play the part of 2 attorneys).
2. Student attorneys are expected to keep their presentations limited to specific time guidelines. It is the presiding judge’s sole discretion as to how or if the time guidelines will be implemented during each competition. Teams should NOT object if they perceive a violation of these *guidelines*.
  - Opening statements/closing arguments—5 minutes each;
  - Direct examination—7 minutes per witness;
  - Voir Dire, if necessary— 2 minutes per expert witness (in addition to the time permitted for direct and cross examination)
  - Cross-examination—5 minutes per witness;
  - Re-Direct and Re-Cross Examination—3 minutes and a maximum of 3 questions per witness.
3. Local competitions must consist of enough matches that each participating high school presents both sides of the Mock Trial case at least once.
4. A team must be comprised of no fewer than eight (8) but a maximum of twelve (12) student members from the same high school, with the exception of high schools with a Maryland State Department of Education inter-scholastic athletics designation of Class 2A or Class 1A, which may combine with any other schools in the LEA in those classifications to field a team. Two “alternate” students are permitted during the local competition only. If a team advances beyond the local competition, an official roster must be submitted not exceeding 12 students.
5. A team may use its members to play different roles in different competitions. (See Part II: Hints on Preparing for the Competition). For any single competition, all teams are to consist of three (3) attorneys and three (3) witnesses, for a total of six (6) different students. For any single competition, a student may depict one role only of either witness OR attorney. (Note: In Circuits 1 and 2, where teams typically participate in two competitions per evening – once as prosecution and once as defense – students may change roles for the second competition.)
6. Any high school which fields more than one team (Team A and Team B, for example) may NEVER allow, under any circumstances, students from Team A to compete for Team B or vice-versa. If a high school fields two or more teams, each team must have a different teacher coach and a different attorney coach than the other team. Additionally, if a high school has multiple teams, then those teams MUST compete against one another in local (circuit) competition.
7. A.) Areas of competition coincide with the eight Judicial Circuits of Maryland. Each circuit must have a minimum of four (4) teams. However, in order to provide the opportunity for as many teams to participate as possible, if a circuit has two (2) or three (3) teams, they may compete in a “Round Robin” to determine who will represent the circuit in the circuit playoff. The runner-up team from another circuit would be selected to

compete based upon their winning record and average points scored during local competition rounds. This team would compete with the circuit representative in a playoff prior to the Regional Competition. When a circuit has only one registered team, CLREP may designate another circuit in which this team may compete.

B.) OR, under the discretion of a circuit coordinator and CLREP, if a circuit so chooses, it may combine with the “un-official” circuit to increase the number of opportunities to compete. In this case, a “circuit opening” arises and will be filled by the following method. To create the most equity, a sequential rotation of circuits will occur. If willing, the second place team from the specified circuit will advance to the regional competitions to fill the opening. If that team is unable to advance, the opportunity will move to the next circuit, and so on, until the opening is filled. In the event that all circuits are officially comprised of a minimum of four teams, the designated circuit will remain the next in-line to advance in future years.

2013-2014	Circuit 3	2016-2017	Circuit 6
2014-2015	Circuit 4	2017-2018	Circuit 7
2015-2016	Circuit 5	2018-2019	Circuit 8
		2019-2020	Circuit 1

8. Each competing circuit must declare one team as Circuit Champion by holding local competitions based on the official Mock Trial Guide and rules. That representative will compete against another Circuit Champion in a single elimination competition on April 8 or 9, 2014.
9. The dates for the Regionals, the Semi-Finals, and the Finals will be set and notice given to all known participating high schools by November 13, 2013. Changes will only occur due to conflicts in judicial schedules.
10. District Court judges, Circuit Court judges, and attorneys may preside and render decisions for all matches. If possible, a judge from the Court of Appeals or Court of Special Appeals will preside and render a decision in the Finals.
11. Any team that is declared a Regional Representative must agree to participate on the dates set for the remainder of the competition. Failure to do so will result in their elimination from the competition and the first runner-up in that circuit will then be the Regional Representative under the stipulations.
12. Winners in any single round should be prepared to switch sides in the case for the next round. Circuit Coordinators will prepare and inform teams of the local circuit schedule.
13. CLREP encourages Teacher Coaches of competing teams to exchange information regarding the names and gender of their witnesses at least 1 day prior to any given round. The teacher coach for the plaintiff/prosecution should assume responsibility for informing the defense teacher coach. A physical identification of all team members must be made in the courtroom immediately preceding the trial.
14. Members of a school team entered in the competition—including Teacher Coaches, back-up witnesses, attorneys, and others directly associated with the team’s preparation—are **NOT** to attend the enactments of ANY possible future opponent in the contest.
15. All teams are to work with their attorney coach in preparing their cases. It is suggested that they meet with their Attorney Advisor at least twice prior to the beginning of the competition. For some suggestions regarding the Attorney Advisor’s role in helping a team prepare for the tournament, see PART II: Hints on Preparing for Mock Trial and Appendix A.
16. **THERE IS NO APPEAL TO A JUDGE’S DECISION IN A CASE.** CLREP retains the right to declare a mistrial when there has been gross transgression of the organizational rules and/or egregious attempt to undermine the intent and integrity of the Mock Trial Competition. **Upon the coaches’ review of, and signature on the score sheet, THE OUTCOME IS FINAL.**

17. There shall be **NO** coaching of any kind during the enactment of a mock trial: i.e. student attorneys may not coach their witnesses during the other team's cross examination; teacher and attorney coaches may not coach team members during any part of the competition; members of the audience, including members of the team who are not participating that particular day, may not coach team members who are competing; and team members must have their cell phones and all other electronic devices turned off during competition as texting may be construed as coaching. Teacher and Attorney Coaches **MAY NOT** sit directly behind their team during competition as any movements or conversations may be construed as coaching.
18. It is specifically prohibited before and during trial to notify the judge of students' ages, grades, school name or length of time the team has competed.
19. The student attorney who directly examines a witness is the only attorney who may raise objections when that same witness is being cross-examined. The student attorney who raises objections on direct examination must be the same attorney who then cross-examines that same witness. This same principle applies if a student attorney calls for a bench conference; i.e., it must be the attorney currently addressing the Court. The student attorney who handles the opening statement may not perform the closing argument.
20. Judging and scoring at the Regional, Semi-Final and Statewide Final Competitions are distinct from judging and scoring in some local competitions. As in a real trial, the judge will preside, hear objections and motions, instruct counsel, and determine which team prevailed based on the merits of the law. Two attorneys will independently score team performance at the trial, using the score sheet from the official Mock Trial Guide. At the conclusion of the trial and while in chambers, the judge will award the tie point without informing the attorney scorers. The Tie Point will only be added into the final score only in the case of a tie. The attorneys will meet and work out any differences in scoring so that the two attorneys present one score sheet to the judge, and eventually, the two teams. The judge retains the right to overrule any score on the score sheet. Both teams shall receive a copy of this score sheet, signed by the judge. Teams will not have access to the original, independent score sheets of the attorneys.
21. **Evidentiary materials that have been modified for use during trial (e.g., enlarged), must be made available during the trial for the opposing team's use. During witness identification exchanges, please alert the other team if you plan to use modified materials.**

## **PART II: HINTS ON PREPARING FOR A MOCK TRIAL COMPETITION**

*The following tips were developed by long-time Mock Trial Coaches.*

1. Every student, teacher and attorney participating in a team's preparation should read the entire set of materials (case and guide) and discuss the information, procedures and rules used in the mock trial competition. Students: you are ultimately responsible for all of this once Court is in session.
2. Examine and discuss the facts of the case, witness testimony and the points for each side. Record key information as discussion proceeds so that it can be referred to in the future.
3. Witness' credibility is very important to a team's presentation of the case. Witnesses: move into your roles and attempt to think as the person you are portraying. Read over your affidavits many times and have other members of your team ask you questions about the facts until you know them.
4. Student attorneys: you should have primary responsibility for deciding what possible questions should be asked of each witness on direct and cross-examination. Questions for each witness should be written down and/or recorded. Write out key points for your opening statements and closing arguments before trial; then, incorporate additional points that arose during the competition for inclusion in your closing argument to highlight the important developments that occurred during the trial. Concise, summary, pertinent statements

which reflect the trial that the judge just heard are the most compelling and effective. Be prepared for interruptions by judges who like to question you, especially during closing arguments.

5. The best teams generally have student attorneys prepare their own questions, with the Teacher and Attorney Coaches giving the team continual feedback and assistance. Based on these practice sessions, student attorneys should continue revising questions and witnesses should continue studying their affidavits.
6. As you approach your first round of competition, you should conduct at least one complete trial as a dress rehearsal. All formalities should be followed and notes should be taken by everyone. Evaluate the team's presentation together. Try to schedule this session when your Attorney Coach can attend.
7. **Some of the most important skills for team members to learn are:**
  - Deciding which points will prove your side of the case and developing the strategy for proving those points.
  - Stating clearly what you intend to prove in an opening statement and then arguing effectively in your closing that the facts and evidence presented have proven your case.
  - Following the formality of court; e.g., standing up when the judge enters or whenever you address the Bench, and appropriately addressing the judge as "Your Honor," etcetera.
  - Phrasing direct examination questions that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions).
  - Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, learn to limit additional questions, as they often lessen the impact of previously made points.
  - Thinking quickly on your feet when a witness gives you an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at you.
  - Recognizing objectionable questions and answers, offering those objections quickly and providing the appropriate basis for the objection.
  - Paying attention to all facets of the trial, not just the parts that directly affect your presentation. All information heard is influential! Learn to listen and incorporate information so that your presentation, whether as a witness or an attorney, is the most effective it can be.
  - The Mock Trial should be as enjoyable as it is educational. When winning becomes your primary motivation, the entire competition is diminished. **Coaches and students should prepare AT LEAST as much for losing as they do for winning/advancing.** Each member of the team—student or coach—is personally responsible for his/her behavior prior to, during, and at the close of the trial. There are schools and individuals across the state that are no longer welcome to participate based on previous behavior.

### **Part III: TRIAL PROCEDURES**

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as with the events that generally take place during the competition and the order in which they occur. This section outlines the usual steps in a "bench" trial—that is, without a jury.

1. The Opening of the Court
  - a. Either the clerk of the Court or the judge will call the Court to order.



- b. When the judge enters, all participants should remain standing until the judge is seated.
- c. The case will be announced; i.e., “The Court will now hear the case of \_\_\_\_\_ v. \_\_\_\_\_.”
- d. The judge will then ask the attorneys for each side if they are ready.

2. Opening Statements (5 minutes maximum)

a. Prosecution (criminal case)/ Plaintiff (civil case)

After introducing oneself and one’s colleagues to the judge, the prosecutor or plaintiff’s attorney summarizes the evidence for the Court which will be presented to prove the case. The Prosecution/ Plaintiff statement should include a description of the facts and circumstances surrounding the case, as well as a brief summary of the key facts that each witness will reveal during testimony. The Opening Statement should avoid too much information. It should also avoid argument, as the statement is specifically to provide facts of the case from the client’s perspective.

b. Defense (criminal or civil case)

After introducing oneself and one’s colleagues to the judge, the defendant’s attorney summarizes the evidence for the Court which will be presented to rebut the case (or deny the validity of the case) which the plaintiff has made. It includes facts that tend to weaken the opposition’s case, as well as key facts that each witness will reveal during testimony. It should avoid repetition of facts that are not in dispute, as well as strong points of the plaintiff/ prosecution’s case. As with the Plaintiff’s statement, Defense should avoid argument at this time.

3. Direct Examination by the Plaintiff/Prosecutor (7 minutes plus 2 minutes for Voir Dire)

The prosecutor/ plaintiff’s attorney conducts direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the prosecution’s/plaintiff’s case will be presented. The purpose of direct examination is to allow the witness to relate the facts to support the prosecution/plaintiff claim and meet the required burden. It also allows counsel for each side to establish the credibility of each of their witnesses. (If opposing counsel chooses to voir dire a witness, 2 minutes are permitted, in addition to the 7 minutes allowed for direct examination.)

General Suggestions:

- Ask open-ended questions, rather than those that draw a “yes” or “no” response. Questions that begin with “who,” “what,” “where,” “when,” and “how” or “explain…” and “describe…” are helpful during direct examination.
- Questions should be clear and concise, and should help guide your witness through direct examination. Witnesses should not narrate too long, as it will likely draw an objection from opposing counsel.
- Do not ask questions that “suggest” a specific answer or response.

4. Cross-Examination by the Defendant’s Attorneys (5 minutes)

After the attorney for the prosecution/plaintiff has completed the questioning of a witness, the judge then allows the defense attorney to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of the opposing witness. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through cross-examination. (If an attorney chooses to voir dire a witness, 2 minutes are permitted, in addition to the 5 minutes allowed for cross examination. These 2 minutes are typically allotted during the witness’ direct examination.)

General Suggestions:

- Use narrow, leading questions that “suggest” an answer to the witness. Ask questions that require “yes” or “no” responses.
- In general, it is never a good idea to ask questions to which you do not know the answer – unexpected responses can be costly and may leave you unprepared and off-guard.

- Never ask “why.” You do not want to give a well-prepared witness an opportunity to expand upon a response.
  - Avoid questions that begin with “Isn’t it a fact that...”, as it allows an opportunistic witness an opportunity to discredit *you*.
5. Direct Examination by the Defendant’s Attorneys (7 minutes plus 2 minutes for Voir Dire)  
Direct examination of each defense witness follows the same pattern as above which describes the process for prosecution’s witness. (See #3 above for suggestions.)
  6. Cross-Examination by the Prosecution/ Plaintiff (5 minutes)  
Cross-examination of each defense witness follows the same pattern as above for cross-examination by the defense. (See #4 above for suggestions.)
  7. Re-Direct Examination by the Plaintiff/ Prosecution (3 minutes and/or 3 questions)  
The Plaintiff’s/Prosecution’s attorney may conduct re-direct examination of the witness to clarify any testimony that was cast in doubt or impeached during cross-examination. (Maximum of three minutes or three questions.)
  8. Re-Cross Examination by the Defense Attorneys (3 minutes and/or 3 questions)  
The defense attorneys may re-cross examine the opposing witness to impeach previous testimony. (Maximum of three minutes or three questions.)
  9. Voir Dire Examination by Either the Plaintiff/ Prosecution or the Defense Attorneys (2 minutes)  
Voir Dire is the process of asking questions to determine the competence of an alleged expert witness. Before giving any expert opinion, the witness must be qualified by the court as an expert witness. The court must first determine whether or not the witness is qualified by knowledge, skills, experience, training or education to give the anticipated opinion. After the attorney who called the witness questions him/her about his/her qualifications to give the opinion, and before the court qualifies the witness as an expert witness, the opposing counsel shall (if he/she chooses to do so) have the opportunity to conduct a brief cross-examination (called “voir dire”) of the witness’ qualifications.
  10. Closing Arguments (Attorneys) (5 minutes)  
For the purposes of the Mock Trial Competition, the first closing argument at all trials shall be that of the Defense.
    - a. Defense  
A closing argument is a review of the evidence presented. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not substantiate the elements of a charge or claim, stresses the facts and law favorable to the defense, and asks for a finding of not guilty (or not at fault) for the defense.
    - b. Prosecution/ Plaintiff  
The closing argument for the prosecution/plaintiff reviews the evidence presented. The prosecution’s/plaintiff’s closing argument should indicate how the evidence has satisfied the elements of a charge, point out the law applicable to the case, and ask for a finding of guilty, or fault on the part of the defense. Because the burden of proof rests with the prosecution/plaintiff, this side has the final word.
  11. The Judge’s Role and Decision  
The judge is the person who presides over the trial to ensure that the parties’ rights are protected and that the attorneys follow the rules of evidence and trial procedure. In mock trials, the judge also has the function of determining the facts of the case and rendering a judgment, just as in actual bench trials.

## **PART IV: SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE**

In American trials, 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 evidence will probably be allowed by the judge. **The burden is on the attorneys to know the rules, to be able to use them to present the best possible case, 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 Competition, the 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 you think proper. No matter which way the judge rules, attorneys 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. An objection which is not contained in these rules shall not be considered by the Court. 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 in considering such objections.

### **2. RELEVANCY**

- RULE 201: RELEVANCY. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence. It is that which helps the trier of fact decide the issues of the case. However, if the relevant evidence is unfairly prejudicial, confuses the issues, or is a waste of time, it may be excluded by the Court.

Example of a Relevant Question: "Chris, have you ever gone into a mosh pit before?"

Example of an Irrelevant Question: "Chris, what dance classes have you taken?"

Objection:

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

- RULE 202: CHARACTER. Evidence about the character of a party or witness (other than his or her character for truthfulness or untruthfulness) may not be introduced unless the person's character is an issue in the case.

Objection:

*"Objection. Evidence of the witness' character is not proper given the facts of the case."*

### **3. WITNESS EXAMINATION**

#### **A. DIRECT EXAMINATION (attorney calls and questions witness)**

- 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, on the other hand, is one that implies, suggests or prompts the witness to answer in a particular manner -- typically a "yes" or "no" answer.

Example of a Direct Question:

The Plaintiff's Counsel asks Casey, "Were you and Chris together throughout the concert?"

Example of a Leading Question:

The Plaintiff's Counsel asks, "Casey, isn't it true that you and Chris were not together for a portion of the concert?"

Objection:

*"Objection: Counsel is leading the witness."*

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 an entire story. Narrative questions are objectionable.

Example of Narrative Question:

"Dr. Gallagher, tell the Court about your education and medical experience."

Objection:

*"Objection. Question asks for narration."*

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

- RULE 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all 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.
- 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 witness)**

- RULE 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions that tend to evoke a narrative answer should be avoided in most instances.
- 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.

Example: On direct examination, a witness is not questioned about a given topic, and the opposing attorney asks a question about this topic on cross examination.

Objection:

*“Objection. Counsel is asking the witness about matters which did not arise during direct examination.”*

RULE 306: IMPEACHMENT. On cross-examination, the attorney may impeach a witness (show that a witness should not be believed) by (1) asking questions about prior conduct that makes the witness’ credibility (truth-telling ability) doubtful, or (2) asking questions about previous contradictory statements. These kinds of questions can only be asked when the cross-examining attorney has information that indicates that the conduct actually happened.

**C. RE-DIRECT EXAMINATION**

RULE 307: LIMIT ON QUESTIONS. After cross-examination, up to three (3), but no more than three (3), questions may be asked by the direct examining attorney, and 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 the re-direct.)

**NOTE:**

If the credibility or the 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’ 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.

**D. RE-CROSS EXAMINATION**

RULE 308: LIMIT ON QUESTIONS. Three (3) additional questions, but no more than three (3), may be asked by the cross-examining attorney, and 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 the 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.”*

**4. HEARSAY**

**A. THE RULE**

RULE 401: HEARSAY. Hearsay is a statement, other than one made by the declarant while testifying at the trial, offered in evidence to prove the truth of the matter asserted made outside of the courtroom. Statements made outside of the courtroom are usually not allowed as evidence if they are offered in court to show that the statements are true. The most common hearsay problem occurs when a witness is asked to repeat what another person stated to him or her. **For the purposes of the Mock Trial Competition, if a document is stipulated, you may not raise a hearsay objection to it.**

Example: Ryan states, “I heard several of the concert patrons talking about how Chris was acting out towards my security guards.”

Objection: *“Objection. The statement is hearsay, Your Honor.”*

Possible Response to the Objection: “Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show....”

## **B. EXCEPTIONS**

**RULE 402:** ADMISSION AGAINST INTEREST. A judge may admit hearsay evidence if it was said by a party in the case and contains evidence which goes against the party’s side.

**RULE 403:** STATE OF MIND. A judge may admit hearsay evidence if a person’s state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person’s state of mind.

**RULE 404:** BUSINESS RECORDS. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method of circumstances of preparation indicate lack of trustworthiness, shall be admissible. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and callings of every kind, whether or not conducted for profit.

**RULE 405:** EXCITED UTTERANCE. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

## **5. 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.

Example: “Taylor, based on your security guard experience, do you believe you and your colleagues handled the situation as appropriately as possible?”

Objections:

*“Objection. The witness has no personal knowledge that would enable him/her to answer this question/ make this statement.”*

*“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. An expert must be qualified by the attorney for the party for whom the expert is testifying. This means that before the expert witness can be asked for expert opinion, the questioning attorney must bring out the expert’s qualifications, education and/or experience.

Example: (Prior to being qualified as an expert) “Dr. Smith, explain the injury sustained by Chris.”

Objection: *“Objection. Counsel is asking the witness to give an expert opinion for which the witness has not been qualified.”*

RULE 503: VOIR DIRE. (“To speak the truth.”) After an attorney who has called a witness questions him/her about his/her qualifications, and before the court qualifies the witness as an expert, the opposing counsel shall have the opportunity, if he/she chooses, to conduct voir dire. After the voir dire examination has been conducted, the cross-examining attorney should advise the court as to whether there are any objections to the witness being qualified as an expert witness and/or whether there are any objections to the witness’ expertise to give the specific opinion the opposing counsel is trying to elicit from this witness.

Example:

(after questioning by an attorney to create a foundation for his/her witness to be qualified by the Court as an expert witness): “At this time, your Honor, I request that the Court accept and qualify the witness as an expert in the field of ....”

Objection:

*“Your Honor, we would like permission to voir dire the witness.”*

## 6. PHYSICAL EVIDENCE

RULE 601: INTRODUCTION OF PHYSICAL EVIDENCE. Physical evidence may be introduced only **if it is contained within the casebook** and 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 has been stipulated. 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.

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 (for example):

- a. Show the exhibit to opposing counsel.
- b. Show the exhibit and have it marked by the clerk/judge. “Your Honor, please have this marked as Plaintiff’s Exhibit 1 for identification.”
- c. Ask the witness to identify the exhibit. “I now hand you what is marked Plaintiff’s Exhibit 1. Would you identify it, please?”
- d. Ask the witness about the exhibit, establishing its relevancy.
- e. Offer the exhibit into evidence. “Your Honor, we offer Plaintiff’s Exhibit 1 into evidence at this time.”
- f. The Judge will ask opposing counsel whether there is any objection, rule on the objection if there is one, and admit or not admit the exhibit into evidence.
- g. If the exhibit is a document, hand it to the clerk/judge.

NOTE: After an affidavit has been marked for identification, a witness may be asked questions about it without its introduction into evidence.

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

RULE 701: DIRECT EXAMINATION. On direct examination, the witness is limited to the facts and evidence provided in the casebook. If a witness testifies in contradiction of a fact given in the witness’ statement, opposing counsel should impeach (prove untrue) the witness’ testimony during cross-examination. If the witness goes beyond the facts given, such that they directly conflict with the stipulated facts or witness affidavits, a bench conference may be requested by opposing counsel, at which time the counsel may object to invention of facts. (It should be noted that the granting of a bench conference

is a discretionary decision of the judge. A request for a bench conference might not be granted.)

Example:

“Casey, how many times have you and Chris gone into a mosh pit before this particular concert?”

Casey replies: “Oh, at least a dozen times.”

Objections:

*“Objection, your honor, the witness is creating facts which are not in the record.”*

*“Objection. The witness is inventing facts that directly contradict case material.”*

*“Your Honor, the witness is intentionally creating facts which could materially alter the outcome of the case.”*

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’ statements of the direct examination, the witness may respond with any answer which does not materially alter the outcome of the trial. An answer which is contrary to the witness’ affidavit may be impeached by the cross-examining attorney. If the witness invents facts material to the case, a bench conference may be called and, if granted, an objection made to the invention of facts.

## 8. SPECULATION

RULE 801: Speculation, or someone’s idea about what *might* have occurred, is generally not permitted. A witness may not jump to conclusions that are not based on actual experiences or observations, as this is of little probative value. Some leeway is allowed for the witness to use their own words, and greater freedom is allowed with expert witnesses.

Objection:

*“Objection. This calls for speculation on part of the witness.”*

## 9. PROCEDURE RULES

RULE 901: PROCEDURES FOR OBJECTIONS. An attorney may object anytime the opposing attorney has violated the Rules of Evidence.

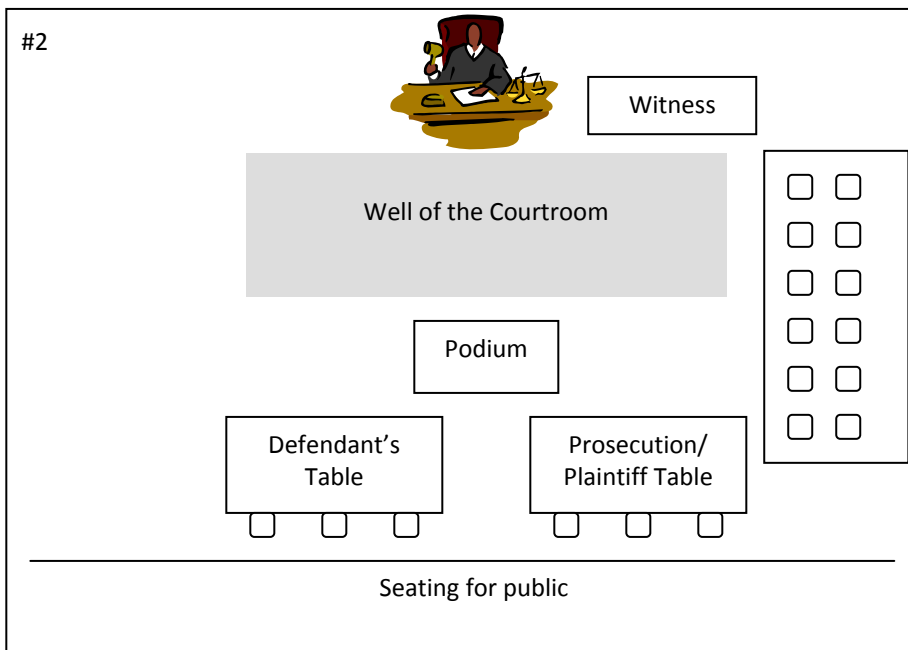
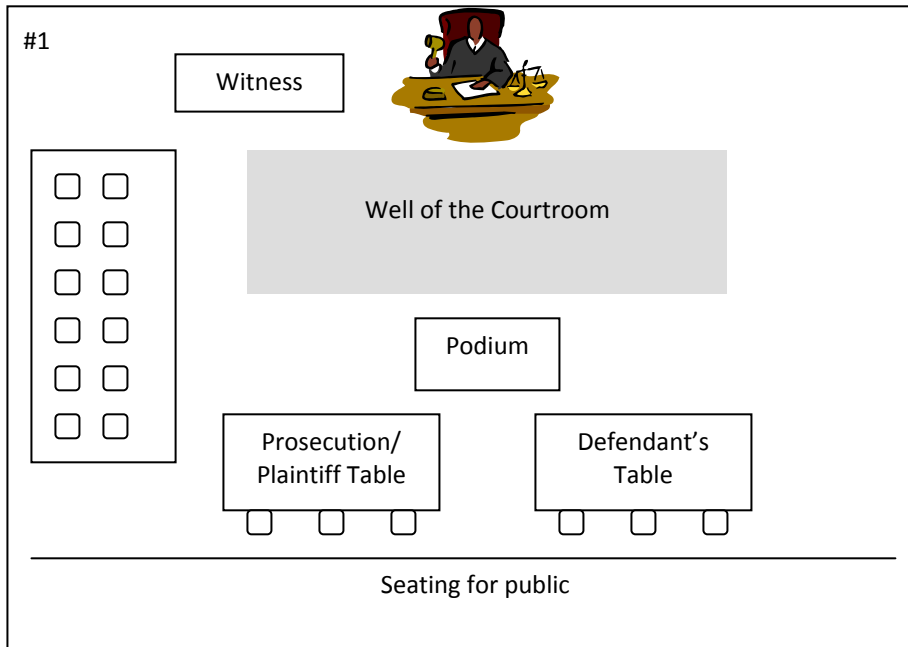
NOTE: The attorney who is objecting should stand up and do so at the time of the violation. When an objection is made, the judge will usually ask the reason for it. Then the judge will turn to the attorney who asked the question and that attorney will usually have a chance to explain why the objection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

RULE 902: MOTIONS TO DISMISS. Motions for dismissal at the end of the prosecution’s case are NOT permitted.

RULE 903: CLOSING ARGUMENTS. Closing arguments must be based on the evidence and testimony presented during the trial. Offering new information at this point is prohibited.



# Courtroom Diagram



Note: The layout of courtrooms varies widely from courthouse to courthouse. Prosecution/Plaintiff and defense tables are usually dictated by where the jury box is situated (if there is a jury box). In most instances, prosecution/plaintiff sits closest to the jury, and the defense sits at the far table. This is based on the premise that the defendant is innocent until proven guilty, and so is removed (as far as possible) from the scrutiny of the court.

IN THE CIRCUIT COURT FOR THE STATE OF MARYLAND  
IN AND FOR MONTGOMERY COUNTY

CHRIS WILLIAMS,  
PLAINTIFF

v.

SWATHMORE PAVILION, INC. ET AL.,  
DEFENDANTS

**STATEMENT OF STIPULATED FACTS**

On June 29, 2013, twenty-two-year-old Chris Williams, a senior at Frostburg State University in Frostburg, Maryland, along with several friends, attended a concert at the outdoor center at Swathmore Pavilion. Playing there that night was the band Mischievous Gnome.

In attendance at the concert were approximately 5,000 people. Not atypical for heavy metal rock bands, a dance floor, also known as a mosh pit, developed in front of the stage shortly after the band began their performance. Plaintiff and friends participated in the dancing/mosh pit activities. At some point, the Plaintiff began crowd surfing, something s/he had done or seen others do several times before at other concerts.

It is at this point in the events that Plaintiff and Defendants allege different facts.

According to Plaintiff, the crowd carried Plaintiff to the edge of the mosh pit area where Plaintiff was brought down over the barrier by security guards of Swathmore Pavilion. Plaintiff fell to the ground while being brought down by the security guards. Plaintiff was able to stand up immediately and Plaintiff alleges that there was no pain or injury during the fall. Plaintiff knew they were security guards because each of the security guards was wearing a pink shirt that was labeled "Security" on the back of the shirt.

Plaintiff alleges that security guards escorted Plaintiff by holding each arm out of the Pavilion, up a flight of steps and through the exit. Plaintiff alleges that once outside, Plaintiff was pushed from behind to the ground where Plaintiff landed in mud. Plaintiff alleges that up until this point, Plaintiff did not struggle with the security guards whatsoever. Plaintiff alleges that the two security guards then pulled Plaintiff's arms together behind the back and pulled up, causing excruciating pain. Then, according to Plaintiff, the security guards picked Plaintiff up by arms and legs and carried the Plaintiff about ten feet when the security guards drove Plaintiff's head into the ground. Plaintiff claims that it was this maneuver by the security guards that caused the Plaintiff to suffer a severe spinal cord injury causing Plaintiff to be a quadriplegic. At this point, Plaintiff admits to struggling with the security guards and yelling "you broke my neck!" repeatedly. Plaintiff alleges that following this maneuver, Plaintiff was picked up again and carried and while being carried by the arms and legs, Plaintiff's head was bobbing and Plaintiff lost feeling in his/her body and breathing became difficult. Plaintiff alleges that after being carried for some distance, the security guards dropped Plaintiff into a puddle of mud.

Defendants allege that Plaintiff was trying to get up on the stage, something that is not allowed. The security guards grabbed both Plaintiff's arms and set Plaintiff down on his/her feet to get the Plaintiff away from the stage. Upon setting Plaintiff's feet on the ground, Plaintiff began kicking, screaming, and trying to assault the security guards. The security guards grabbed Plaintiff by the arms and escorted Plaintiff through the mosh pit area towards the exit, as Plaintiff continued to scream at the security guards.

Security guards pulled Plaintiff's arms behind his/her back and walked Plaintiff up the steps, out the exit, and onto the grass. It is there, as the security guards were escorting the Plaintiff by each arm, that Plaintiff began resisting

the security guards by trying to free his/her arms. One of the security guards lost control of the Plaintiff's left arm as they got to a hill, and Plaintiff slipped and fell down head first, and the other security guard who still had control of the Plaintiff's right arm fell on top of the Plaintiff. At this point, two other security guards joined in to help, and the four security guards secured Plaintiff's arms and legs and carried the Plaintiff, facing head down, past the gates of the Pavilion. At some point during the escort, Plaintiff's body stopped moving. The four security guards placed Plaintiff's body onto the grass gently. Once Plaintiff's body was on the grass, the four security guards returned to the Pavilion, leaving Plaintiff on the grass.

### **Jury Instructions**

The Plaintiff, Chris Walken Williams is alleging that on June 29, 2013, the Defendant, Swathmore Pavilion, and or the Defendant's agent(s) acted negligently in that they lacked the training, knowledge, experience and supervision during a concert on the Defendant's property; and that, because of the Defendant's negligence, the Plaintiff has suffered a permanent physical disability, and excruciating mental and physical pain, and is entitled to relief.

The Defendant states and avers that they did not do anything inappropriate; that the staff employed that evening was fully and properly trained, and properly supervised. They further claim that if for some reason they are the cause of the injuries to the Plaintiff, that the Plaintiff was contributorily negligent and/or that the Plaintiff, by and through Plaintiff's actions, assumed the risk of injury or the Assumption of Risk and are therefore not liable for Plaintiff's injuries.

Maryland Jury Instructions offer the following guidance for the trier of fact(s) in determining whether the Defendant was negligent and whether the Plaintiff was contributorily negligent, and/or assumed the Assumption of Risk:

#### **19:1- Definition-Negligence**

Negligence is doing something that a person using reasonable care would not do, or not doing something that a person using reasonable care would do. Reasonable care means that caution, attention or skill a reasonable person would use under similar circumstances.

#### **19:3- Foreseeable Circumstances**

A reasonable person changes conduct according to the circumstances and the danger that is known or would be appreciated by a reasonable person. Therefore, if the foreseeable danger increases, a reasonable person acts more carefully.

#### **19:4- Liability for Negligent Hiring**

An employer has a duty not to employ any person who poses an unreasonable risk to other persons who would foreseeably come into contact with that employee because of the employment relationship. An employer who breaches this duty is responsible for any foreseeable injuries or damages caused by the conduct or actions of any such employee.

#### **19:7- Violation of Statute**

The violation of a statute, which is a cause of plaintiff's injuries or damages, is evidence of negligence.

#### **19:8- Res Ipsa Loquitor**

Ordinarily, the fact that an accident happened does not mean that it was caused by negligence. However, if each of the following circumstances is more probable than not, you may conclude that there was negligence:

- (1) the event would not ordinarily happen without negligence;
- (2) the cause of the event was within the defendant's exclusive control;
- (3) no action by anyone else, including the plaintiff, was a cause of the event.

Should you find that it was more probable than not that the defendant was negligent, the defendant is then called upon for a satisfactory explanation and may explain to your satisfaction that there was no negligence on the defendant's part that was a cause of the event.

19:10- Definition- Causation

For the plaintiff to recover damages, the defendant's negligence must be a cause of the plaintiff's injury. There may be more than one cause of an injury, that is, several negligent acts may work together. Each person whose negligent act is a cause of an injury is responsible.

19:11- Contributory Negligence- Generally

A plaintiff cannot recover if the plaintiff's negligence is a cause of the injury. The defendant has the burden of proving by a preponderance of the evidence that the plaintiff's negligence was a cause of the plaintiff's injury.

19:13- Assumption of Risk

A plaintiff cannot recover if the plaintiff has assumed the risk of the injury. A person assumes the risk of an injury if that person knows and understands the risk of an existing danger or reasonably should have known and understood the risk of an existing danger, and voluntarily chooses to encounter the risk.

19:14- Last Clear Chance

A plaintiff who was contributorily negligent may nevertheless recover if the plaintiff was in a dangerous situation and thereafter the defendant had a fresh opportunity of which defendant was aware to avoid injury to the plaintiff and failed to do so.

**STIPULATIONS**

The parties have stipulated to the authenticity and factual accuracy of, and agreed that the following items, are not in dispute:

- Exhibit A: Swathmore Pavilion Photo
- Exhibit B: Sketch of Swathmore Pavilion
- Exhibit C: Medical Report
- Exhibit D: Spine Anatomy
- Exhibit E: Chris Williams's X-Ray (06/21/2013)
- Exhibit F: Chris Williams's X-Ray (06/29/2013)

**WITNESSES TO APPEAR BEFORE THE COURT**

**Witnesses for the Plaintiff**

Chris Walken Williams  
Casey Lane Parker  
Dr. Jamie Gallagher, Expert for the Plaintiff\*

**Witnesses for the Defense**

Taylor Worsher  
Ryan Dempsey  
Dr. Morgan Smith, Expert for the Defense\*

Two witnesses are labeled as expert but must be voir-dired and admitted by the Judge if a team wishes for the witness to testify as such.

**Affidavit of: Chris Walken Williams - Plaintiff**

1 My full name is Chris Walken Williams. I was born on July 4<sup>th</sup>, 1990. I reside at 1311 E. First Street,  
2 Frostburg, Maryland. I was a senior at Frostburg State University, but I am on medical leave right now while going  
3 through physical therapy. I am completely paralyzed from the neck down and require the assistance of my mother,  
4 sister, other family members and friends to care for me. Right now, I need someone awake by my side 24 hours a  
5 day so I do not accidentally cut off my air supply.

6 Before the incident on June 29, I was your average college senior. I was majoring in Math Sciences and I  
7 was hoping to continue on with my education to obtain a master's degree in education. Math comes pretty easily  
8 to me. When I was in middle school I started tutoring elementary students. One of the parents of a student of  
9 mine, Mr. Casey Parker Sr., said I was so good at tutoring, and that I should go into business teaching math. So he  
10 became my business partner and we started my business "WTM" or Walken to Math. It seems silly now, but when  
11 I was 13, it sounded like a cool play on words. Our tutoring business now has over 500 kids from Baltimore City,  
12 Baltimore County, Anne Arundel and Howard Counties. I hope that I will be able to get back to it soon, but for now,  
13 Mr. Parker and his son/daughter, Casey Lane Parker, are running the business.

14 I loved sports growing up, especially lacrosse. It seemed like one big math problem to me. While I was  
15 kind of small at 4'9" to play the sport as an attacker (the player that scores goals), I was quick, I was smart with the  
16 ball and I was always able to calculate the correct angles to get my shots in. In my last game as a senior in high  
17 school, I set a national record of 456 career goals. I was recruited by every D1 school until they met me and saw  
18 how short I was. So no one would take a high school All American with a weighted 4.21 GPA to play lacrosse.  
19 Frostburg took me on an academic scholarship and I walked onto the team.

20 This summer, I went through all of the practices and drills. I had a full physical for the school's insurance  
21 policy on me, and was cleared to play. On the morning of June 29, 2013, the coach named me the team captain. I  
22 still remember speaking to the members of the media with my family, friends, coaches and players by my side. At  
23 the time, I thought it was the best day of my life. After the news junket, coach gave the entire team the weekend  
24 off. We did not need to report back until Monday morning. I didn't know that I wouldn't be in camp and that  
25 instead, I'd be fighting for my life in my third operation.

26 After the press junket, I had lunch with my mom, sister, Casey, and Casey's dad, Mr. Parker. My dad died  
27 when I was 12, so Mr. Parker had been a father figure to me. Casey and I wanted to celebrate by going to a concert  
28 at the Swathmore Pavilion in North Bethesda. We contacted a bunch of our high school friends who wanted to  
29 celebrate with us. Our favorite band, Mischievous Gnome was playing that night. They are not that popular  
30 anymore, but in 2009 they would have sold out the place.

31 We met at the pavilion and tailgated for a while. I do not drink because I play sports, and most of my  
32 friends don't drink either because they are underage or play sports. We hung out in the parking lot for a few hours  
33 under the blazing heat. We all got sunburned pretty badly. When the show opened at 7, we went inside. We  
34 always get in first because my friends and I love the mosh pit. Everyone knows, if you do not get in early, you may

**Affidavit of: Chris Walken Williams - Plaintiff**

35 never get to the pit. The first few bands were pretty lame, but by 9pm, the Gnomes came on. That's when my life  
36 changed.

37           Within 10 minutes of Mischievous Gnome coming on stage, I was in the mosh pit slam-dancing. I know I  
38 shouldn't have been doing that as it could jeopardize my lacrosse career, but it was one last time. I am not sure  
39 what came over me, but a few minutes into their second song, I went up on top of the crowd and started crowd  
40 surfing. It was such a rush, I never did it like that before. I had crowd surfed before when people grabbed me, but I  
41 never jumped on a crowd like I did that time. Before I knew it, the pit had pushed me all the way to the front of the  
42 stage.

43           At the front of the stage, a group of security guards pulled me off the crowd and dropped me to the  
44 ground. I yelled at them that that wasn't necessary. One of them yelled back that I was drunk. I told the guard that  
45 I wasn't drinking and s/he yelled that I was so drunk, my entire body was red. S/He and another guard then picked  
46 me up and escorted me out of the venue, and we were followed by another two guards. While it was happening, I  
47 thought it was kind of funny. We saw them grab people and escort them to the back of the pavilion and just leave  
48 them alone, so I just went along for the ride. But Instead of taking me to the back of the pavilion, they kept  
49 walking and went through the gates so we were no longer inside.

50           Once outside the gates, we went up a couple steps and they pushed me down. I immediately stood back  
51 up and they said, "Do you have a problem?" and I replied, "Yes, my friends are in there and I am out here." That  
52 was all I said and the next thing I know, the same guard said to me, "You have a problem now!" The four of them  
53 proceeded to put my arms behind my back and slammed me down on the ground on my head. I could hear and  
54 feel the bones in my neck breaking. I started yelling at them that they broke my neck, but they just kept beating  
55 me up.

56           The next thing I knew, they picked me up by my arms and my legs and started pulling forward. When they  
57 picked me up, my head dropped causing the bones in my neck to slip over top of each other, cutting my spinal cord  
58 and rendering my body paralyzed from the shoulders down. My entire body went limp. Then they carried me a  
59 long distance away and dropped me face down in a mud puddle. The main guard, Taylor Worsher said, "tell your  
60 friends this is what they get when they mess with us" and all four of them walked away. The next time I was  
61 conscious was on July 4<sup>th</sup>. I was at Shock Trauma and the fireworks woke me up. My doctor was there and that's  
62 when I found out that I would never walk again.

63 Chris Walken Williams  
64 Chris Walken Williams

**Affidavit of:      CASEY LANE PARKER – Witness for Plaintiff**

1            My full name is Casey Lane Parker. I was born on July 3<sup>rd</sup>, 1993. I reside at 111 Darby Hall, Frostburg State  
2 University, Frostburg, Maryland. I am a freshman at Frostburg State University. I went there to be with my  
3 longtime friend and boss of sorts, Chris Williams. Unfortunately, I did not get to go to school with Chris because of  
4 what happened at Swathmore, but I hope s/he will be able to go back and finish sometime soon.

5            I first met Chris when I was in 5<sup>th</sup> grade. Chris was known as the smartest kid ever to graduate from  
6 Bethesda Elementary School. S/he was volunteering at the school for people like me who were having trouble with  
7 math. My dad is an engineer and he wanted me to follow in his footsteps. Unfortunately, I was in the lowest math  
8 group until I met Chris. Because of Chris, I now understand math and I am going to Frostburg on a partial academic  
9 scholarship. In fact, I am so good at math that I am working part-time as the Managing Tutor for the company my  
10 dad started for Chris. I manage the free on-line tutoring course we call Walken Academy.

11           I didn't play any sports, but I always hung around Chris. S/he was like an older sibling to me. My dad and  
12 Chris became very close after Chris's dad died. He kept pushing us to be our best, but in a good way.

13           On June 28<sup>th</sup>, Chris called me and my dad and asked us to be at the school gym the next morning. Chris  
14 told us there was something really cool happening. We were there with Chris's mom, sister and the rest of the  
15 lacrosse team when the coach named Chris one of the starting attackers and the Captain for the 2014 season. It  
16 was a great day. Chris told me that s/he could not have made it without me and my dad. After the announcement,  
17 we all went to an early brunch. My dad asked what we were going to do to celebrate and I recommended that we  
18 go to a concert from our favorite high school band. My dad said Chris could stay at our place and we all headed  
19 home.

20           We went on Fivesquare, Headbook, Critter and stuff and told all our high school friends to hang out with  
21 us. It was supposed to just be fun because our favorite band was Mischievous Gnome and it was their first concert  
22 in three years. We met to the pavilion near the gates because we wanted to be first in line to get to the dancing  
23 area. Sometimes it can get a little crazy trying to get to the area, so we all got there early. We don't drink or do  
24 anything bad at concerts. We just like to dance. The first two groups were Justine Cyrus and Molly Beibers. They  
25 were awful, but we hung out and danced anyway.

26           When Mischievous Gnome came on around 9, the dance floor was overcrowded. We all got separated a  
27 bit, but I caught a glimpse of my friends every now and then. Near the end of the Gnome's first set, I saw Chris  
28 near the front of the dance floor. I was trying to work my way over to him/her, but it was pretty crowded. The next  
29 thing I saw was two security guards jumping off the stage into the area between the dance floor and the stage. I  
30 pushed my way to the front and by the time I got there, I saw two guards beating Chris while s/he was on the  
31 ground. They kept hitting Chris on his/her back and neck.

32           I yelled at them to stop, but they wouldn't listen. I tried to go over the barricade to help Chris, but two  
33 other security guards pushed me back into the crowd and told me I would get the same thing if I came over. As I  
34 fell back, I could see the guards carrying Chris away. Things seemed cool once they had control of Chris and I saw  
35 them escorting him/her towards the back where they always take people to chill out. I waited a few minutes, but

**Affidavit of:      CASEY LANE PARKER – Witness for Plaintiff**

36    when I did not see Chris running back towards the dance floor, I got a little nervous, so I grabbed a couple friends  
37    and we worked our way to the back of the pavilion where security would take people to cool off if they got  
38    overheated from dancing. We didn't see Chris, so we split up. I was at the back of the fence line when I looked to  
39    my right and saw Chris and the guards outside the fence line. I saw the guards pick up Chris by the arms and legs  
40    and drag him/her forward with his/her head down. I could see that Chris's body was limp as they carried him/her  
41    away from the fence, and dropped him/her face down in a mud puddle. Then they walked away.

42            By the time I reached Chris, some lady said she had called 911 and to stay away. I ignored her and lifted  
43    Chris's face out of the mud and waited for the ambulance. I told them I was Chris's little brother/sister, and they  
44    let me ride in the front of the ambulance to the hospital. I called my dad and Chris's mom. Once at the hospital,  
45    they would not let me go to back with Chris, so I didn't get to see him/her for about another week.

46            Chris is super nice and always listens to authority. I didn't see Chris do anything wrong. Those muscle  
47    head guards just took advantage of Chris because s/he isn't as big as other people. They are nothing more than a  
48    bunch of bullies.

49    *Casey Lane Parker*

50    Casey Lane Parker



**Medical Expert Report of: DR. JAMIE GALLAGHER – Witness for the Plaintiff**

1 My name is Dr. Jamie Gallagher. I am the Chief Medical Officer for the Mayo Clinic in Rochester,  
2 Minnesota. The Mayo Clinic has been consistently recognized as one of the top three hospitals in the world for  
3 several decades. In addition to my duties as the Chief Medical Officer, I am also the Chief Neurosurgeon and  
4 continue to maintain a practice to this day. That means that I am also responsible for the care provided by all the  
5 doctors in the Neuro-Rehabilitation discipline. I have held both of these positions for the past ten years.

6 I began my medical career with a Bachelor of Science in Biology from the Massachusetts Institute of  
7 Technology [MIT] in 1983. I graduated first in my class and then attended Harvard Medical School where I also  
8 graduated first in my class. I spent an additional three years specializing in neuro-medicine. I completed a two year  
9 internship at Harvard Medical Hospital and a three year rotation as the Head Resident Surgeon in Neurosurgery  
10 and Neuro-Rehabilitation, before taking my practice to the Mayo Clinic where I rose through the ranks to my  
11 present position.

12 I have written extensively within my field and have been published around the world in all of the best  
13 medical journals a total of 33 times. I have been admitted as an expert in Neurosurgery on 57 occasions for the  
14 plaintiff and 22 occasions for the defense in both federal and state courts throughout the United States. I have  
15 been admitted as an expert in Neuro-Rehabilitation on thirteen occasions, with seven of those occasions for the  
16 defense. The current rate for my services is a flat fee of \$10,000 for a thorough analysis of the record along with  
17 my written medical report. That is the fee regardless of the time it takes me to complete the analysis and the  
18 report. For testimony, my rate is \$1,000.00 per hour, with a minimum of five hours, plus expenses. Over the past  
19 ten years, the consulting side of my practice has averaged less than 1% of my time and salary.

20 In preparation for this medical opinion and report, I reviewed all of the evidence that may or may not be  
21 presented in court. This evidence consisted of the medical reports, and affidavits of all of the witnesses, including  
22 Dr. Morgan Smith. I reviewed the incident reports, photographs and all items that have been introduced as  
23 potential evidentiary items. On a trip to Maryland in September, I visited the Swathmore Pavilion to have a better  
24 understanding of the path that was taken by the security personnel. I toured the site under an agreement between  
25 the parties, and Dr. Smith was present during the tour. All of my opinions herein are within a reasonable degree of  
26 medical certainty.

27 I first became involved in this case when I was asked to consult by Chris Williams's team of doctors at  
28 Shock Trauma on July 3, 2013. I was flown in from Minnesota to meet the team on a hospital courtesy transfer.  
29 Medical insurance pays for these types of transfers, so at the time, I was being paid by the insurance company. I  
30 was asked to assess the seriousness of the injuries and determine whether there was a course of treatment that  
31 would save his/her life and, if successful, permit Chris to walk again someday. I met with Chris's doctors, Chris's  
32 family, Mr. Casey, and Casey Parker, and reviewed the x-rays and MRI's that were taken at the hospital.

33 My first assessment was that Shock Trauma provided the finest care that can ever be expected in these  
34 types of cases. The doctors and surgeons were first rate and I was highly impressed by all of the doctors and nurses  
35 caring for Chris. I am embarrassed to say that my own hospital would not have been able to provide the same level

**Medical Expert Report of: DR. JAMIE GALLAGHER – Witness for the Plaintiff**

36 of care and I am taking the lessons I learned back to the Mayo Clinic for immediate implementation. Dr. Scalia is an  
37 amazing man with an amazing team. Despite this observation, I was able to quickly determine from hundreds of  
38 similar cases, that Chris would never walk again. I gave Chris's chance of survival less than 10% if removed from the  
39 feeding tubes and ventilator. I prescribed a certain course of medical intervention to improve those chances to  
40 50%. Shock Trauma followed that prescription, and I believe that Chris will live a full life, albeit in a wheelchair. I  
41 assessed Chris's chances of walking again at zero percent.

42 Medically speaking, Chris has been diagnosed with a permanent injury of quadriplegia. This means that  
43 from the neck down, Chris has no control over any extremities. Chris will never walk, have use of his/her arms, nor  
44 function completely on his/her own ever again. Chris will need dozens of operations to fuse his/her back and neck  
45 to ensure that s/he never asphyxiates. With the help of others and specialized equipment, Chris will be able to  
46 function in society. Chris is fully cognizant of his/her surroundings. Unfortunately, while Chris does not have the  
47 use of extremities, s/he can still feel pain and will need a steady regimen of pain medication for the remainder of  
48 life. Chris's chances of improvement are negligible.

49 After my consultation in July, I returned to Minnesota. I was contacted by Chris's attorneys and asked if I  
50 was willing to be an expert in this case. I agreed. Using all of the evidence available, I determined that the version  
51 of events described by Chris is the most likely cause of the broken neck and paralysis. The reason for this can best  
52 be seen on the x-rays that were taken before the accident at his/her physical just a few days before and the x-rays  
53 taken while Chris was at Shock Trauma.

54 You can see from the first x-ray that Chris had a perfectly healthy neck and back before the incident.  
55 Before I do that, let me show you what I am talking about with a diagram of the neck and back (Exhibit D). Starting  
56 at the top, there are seven sets of bones known as the cervical vertebra which are commonly called C-1 at the top,  
57 to C-7 at the bottom. The top vertebra, or C-1, is the Atlas. The second vertebra, C-2, is the Axis. Together, C-1 and  
58 C-2 form the joint connecting the skull and the spine. The next set of bones is called the thoracic vertebra  
59 consisting of 12 sets of bones commonly called T-1 at the top (closest to C-7), to T-12 at the bottom followed by  
60 the Lumbar, Sacrum and Coccyx. Together, these bones form the spine.

61 Now, looking at Exhibit E, this is the x-ray that was taken a week before the incident at the pavilion for  
62 Chris's physical. You can see the first cervical vertebrae or C-1, through C-7, and continuing to the next set of  
63 bones, T-1 to T-12, you can clearly see that there are no separations or breaks of any kind. It is a perfectly healthy  
64 neck and back. Now, when you look at Exhibit F, you can see on this x-ray that there is a separation of bones  
65 starting at the base of the skull at C-1 working its way down several vertebrae to T-1. In all, there are eight bones  
66 that broke in Chris's neck. Additionally, you can see C-5 has a distinct separation from C-6. It is here where the  
67 Supraspinus Ligament was cut by the bones, rendering Chris a quadriplegic.

68 From my training, knowledge and experience, this type of break is consistent with someone's forehead  
69 being placed on the ground and the body moving forward past the base. According to the security guards, Chris  
70 was fighting and struggling with them and one of them eventually fell on him/her. If this were the case, you would

**Medical Expert Report of: DR. JAMIE GALLAGHER – Witness for the Plaintiff**

71 not see this type of bone separation. You would see these same bones separated in every direction - left, right, up,  
72 down. It is just impossible to believe the security guards' statements about how Chris was injured.

73 I should also note that the chart provided by the hospital showed Chris in an acute state. Chris's vitals  
74 were down and s/he was barely stable. While the chart states upon admission that Chris was "apparently  
75 intoxicated", the blood work showed a count of zero ETOH in his/her blood stream and no indications of the use of  
76 any drugs, other than drugs that were given by the paramedics and doctors or nurses at Shock Trauma.

77 In conclusion, after a thorough review of all of the evidence presented, it is in my opinion and to a degree  
78 of medical certainty, that Chris was assaulted by the security personnel in an aggressive manner so as to be the  
79 sole cause of the injuries sustained by Chris and that Chris Williams played no role in the injuries sustained.

80 

81 Dr. Jamie Gallagher

**Affidavit of: TAYLOR WORSHER, Security Guard - Witness for the Defense**

1 My name is Taylor Worsher. I was born on August 6, 1965 in Washington, DC. I currently work for  
2 Swathmore Pavilion in North Bethesda, Maryland. I have worked for Swathmore for eight years as a senior  
3 member of the security team. Prior to working at Swathmore, I graduated from Bethesda-Chevy Chase High  
4 School and attended Montgomery College for two years, focusing on Criminal Justice. After two years, I worked at  
5 various Washington, DC venues as part of their security teams for the past 15 years. My duties as a member of the  
6 Swathmore security team vary depending on what artist or performer is at Swathmore. For example, if we have a  
7 classical performer, our duties are typically less involved and include standing in designated positions to monitor  
8 the crowd on the off chance that we need to intercede. We also are responsible for providing security for the  
9 performers as they arrive and leave the venue. On another night, our duties will be more involved. We might  
10 have to break up fights, remove overly intoxicated individuals, and protect the performers from patrons climbing  
11 onto the stage and the equipment from being damaged.

12 On the evening of June 29, 2013, I was in my designated section near the stage to protect the nearby  
13 equipment and prevent the members of the mosh pit from climbing onto the stage. Mischievous Gnome was  
14 playing, and like other heavy-metal rock bands, there was a significant mosh pit area that was full. With head  
15 bangers, we typically do not intercede unless someone is violent and posing a risk to himself, others, the band, or  
16 equipment. The patrons of the concert wore similar type clothing – many with t-shirts of different heavy metal  
17 bands.

18 As I was watching the crowd in front of me, I saw someone crowd-surfing towards the front of the stage. I  
19 later found out that this crowd-surfer was Chris Williams. I was right next to a barricade that prevents the  
20 audience from getting too close to the stage. Williams placed a foot on the barricade. It looked as if Williams was  
21 trying to go over the barricade, up onto the stage. I went up and told Williams to get down, and I, along with one  
22 other guard, helped Williams down from the crowd and barricade. After placing Williams on his/her feet, Williams  
23 put his/her hands on the stage as if s/he was going to jump up. So I grabbed Williams by the arm. Another guard  
24 did the same. As soon as we placed our hands on Williams, s/he violently swung his/her arms, and kicked and  
25 punch me and the other guard. We grabbed Williams's arms tighter and began to escort Williams out of the mosh  
26 pit area. While escorting Williams, he/she was screaming and trying to resist, but because we were in front of the  
27 speakers, I was unable to determine what he/she was saying.

28 Typically when we have a disorderly patron, we escort the person out of the immediate area to allow the  
29 patron to calm down and the majority of the time the person is calm enough to go back into the performance.  
30 Very rarely do we need to escort the person outside and not allow the person to return.

31 After leaving the mosh pit area we loosened our grip on Williams. Williams immediately turned and  
32 swung his/her arms, as if trying to hit us. Based on Williams's resistance and attempts to assault me and fellow  
33 security guards, we decided to restrain Williams. When restraining someone who is considered dangerous, we are  
34 taught to bend their arms at the elbow and hold their arms behind their backs. We each took an arm and held  
35 Williams accordingly. We proceeded up the steps to the lawn area. While walking, Williams continued to try to

**Affidavit of: TAYLOR WORSHER, Security Guard - Witness for the Defense**

36 resist by pushing back on our arms and trying to wiggle arms free. As we began walking up the hill on the grass,  
37 Williams got a burst of energy. The other security guard lost hold of Williams's other arm. As Williams moved  
38 quickly, Williams slipped in the muddy grass and fell head-first into the ground. I was still holding Williams's right  
39 arm so as Williams began to fall, I, too, slipped and fell on top of Williams back. After falling, I pulled myself up  
40 onto my knees and saw Williams moving, trying to get up. I grabbed hold of Williams's right wrist and forearm to  
41 take control again.

42 At this point, the other guard who had lost hold of Williams's left arm prior to the fall had grabbed  
43 Williams's arm again. Two other guards joined us to help with the escort since Williams had already caused a lot of  
44 trouble. We each grabbed a limb and carried Williams's out. After we had carried Williams's out of the gates of  
45 the Pavilion, we put Williams down on the grassy area. Me and the other three security guards then turned  
46 around and went back into the Pavilion and left Williams there.

47 Taylor Worsher

48 **Taylor Worsher**

**Affidavit of: RYAN DEMPSEY, General Manager of Swathmore Pavilion - Witness for the Defense**

1 My name is Ryan Dempsey. I currently work for Swathmore Pavilion in North Bethesda, Maryland. I have  
2 worked as Swathmore's General Manager for 17 years. I oversee the entire operation of the facility. I am  
3 responsible for hiring all employees and each member of the security team.

4 Before the Mischievous Gnome concert, I spoke with the agent for Mischievous Gnome who had  
5 requested that chairs were removed from the stage front area. The agent also requested that no alcohol be sold  
6 at the concert. Per the request, I sent communication out to restrict alcohol from being sold at the concert and  
7 the chairs in front of the stage were removed. Additionally, I instructed the security team of how much  
8 interference I expected from them to control the crowd. I informed the security team that so long as patrons were  
9 not harming themselves, others, or posed a risk to the equipment or band, that the security team was to let the  
10 crowd have fun. I spoke with Taylor Worsher and confirmed that I wanted only experienced security team  
11 members handling the crowd that night. I wanted security members who had experience with mosh pits and head  
12 bangers so that the security guards would allow the crowd to have fun, but know when to intervene or not. The  
13 goal was to not physically handle anyone unless the person was out of control.

14 On the night of June 29, 2013, I stayed at work to make my rounds during the concert. During my walk  
15 through the Pavilion, I check on security guards, concessions, and other staff to make sure everything is in order.  
16 On my way around the perimeter of the Pavilion as I was walking towards the southwest gate, I heard commotion  
17 and saw four members of the security team struggling to carry someone by his/her arms and legs out of the gate.  
18 The person was kicking and thrashing his/her body, trying to break free from the security's hold. As I got closer, I  
19 saw that the person had kicked so hard that the security guards carrying his/her legs got kicked in the chest hard. I  
20 was also able to hear that the person was screaming profanities at the security team and threatening to beat them  
21 up once s/he was free. By the time I reached the security team they were setting the person down slowly onto the  
22 grass. Then, the security guards walked away to go back to their positions within the Pavilion.

23 After making sure my security team was okay, I turned around and saw the patron lying on the ground. At  
24 this point, the person was not moving very much, clearly exhausted from so much fighting. Concerned that the  
25 person might be injured or possibly taken an illegal drug, I called 911 and waited nearby until the paramedics  
26 arrived. After the paramedics arrived, I went back to patrolling the Pavilion.

27 At work the following business day, I met with each of the security guards involved with the incident  
28 individually. I asked for them to recount what they saw. I then wrote up an incident report per ordinary protocol.  
29 We did an internal investigation following the incident. Based on my observations of the incident and the  
30 information from each of the security guards, each security guard was cleared of any wrongdoing.

31 Ryan Dempsey

32 **Ryan Dempsey**

**Medical Expert Report of: DR. MORGAN SMITH – Witness for the Defense**

1 My name is Dr. Morgan Smith. I am currently the Chief Medical Officer and Chief Neurosurgeon at Johns  
2 Hopkins Hospital, and a consultant for the Craig Hospital in Denver, Colorado. Johns Hopkins Hospital has been  
3 ranked as the top hospital in the world for several decades in Neurology & Neurosurgery. Craig Hospital has been  
4 ranked as one of the top ten rehabilitation hospitals in the country for 24 consecutive years, and was recently  
5 named the #1 hospital for rehabilitation. Craig Hospital is the world-renowned rehabilitation hospital that  
6 exclusively specializes in spinal cord injuries and traumatic brain injuries. As John's Hopkins General Hospital's  
7 Chief, I am responsible for the care patients receive from doctors and nurses and oversee all of the work our  
8 doctors perform. As the Chief Neurosurgeon, I operate and care for all of the major spinal cord and traumatic  
9 brain injuries of patients from all over the country. As Craig Hospital's consultant, I can be reached for expert  
10 opinions for patients with particularly grievous or unique injuries.

11 I began my career in medicine at the University of Cambridge, where I graduated with honors with a  
12 Bachelor of Science in 1983. The University of Cambridge is the number two undergraduate college in the world. I  
13 immediately continued my education at Harvard Medical School where I graduated with a Bachelor of Medicine  
14 and Bachelor of Surgery, both magna cum laude. While there, I focused on Neurosurgery and Rehabilitation. After  
15 medical school, I completed a two-year residency at Johns Hopkins Hospital, where I have continued advancing my  
16 career.

17 I teach neurosciences at the Johns Hopkins University School of Medicine and have been invited to be a  
18 guest lecturer in every top 25 medical university in the world. I have written several books including Anatomy of  
19 Neurosurgery which is used exclusively in every medical school in the United States. I have been admitted as an  
20 expert in Neurosurgery on 58 occasions for the defense and 23 occasions for the plaintiff in both federal and state  
21 courts throughout the United States. I have been admitted as an expert in Neuro-Rehabilitation on twelve  
22 occasions, with seven of those occasions for the plaintiff.

23 The current rate for my services is dependent on the matter. An initial evaluation up to five hours is a flat  
24 fee of \$5,000. This covers the review of the record, medical reports, x-rays, MRI and anything else medical. From  
25 here I give a preliminary report. Based on that report, about 30% of my clients ask for a more in depth analysis.  
26 That analysis is based on an hourly rate of \$1,500 an hour. If I need to testify in a court, my rate goes to \$2,000 an  
27 hour plus expenses, but I only charge for the time I am on the stand. It is a lot of money, but the hope is that most  
28 clients will find a way to settle a matter, rather than incur high expenses. Over the past ten years, the consulting  
29 side of my practice has averaged about 1.5% of my time and salary.

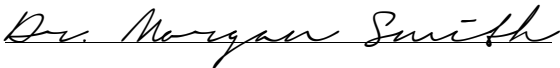
30 In this particular case, I was contacted by the insurance carrier for Swathmore Pavilion and asked to do an  
31 assessment. I did so in July and gave my assessment then that the injuries sustained in this case could not have  
32 happened, unless Chris Williams was wildly out of control. Before reaching this conclusion, I reviewed exhibits A-F  
33 as well as the affidavits Chris Williams, Taylor Worsher, and Ryan Dempsey wrote. I looked at Casey Parker's  
34 Affidavit, but I did not see anything of value in his/her statement as s/he did not really see anything. I also met

**Medical Expert Report of: DR. MORGAN SMITH – Witness for the Defense**

35 briefly with the doctors at Shock Trauma when I reviewed the records. On September 15, I conducted a site visit of  
36 Swathmore Pavilion while accompanied by the architect and lawyers by both sides.

37           There is good reason to understand why Chris Williams is responsible for the injuries s/he sustained.  
38 According to both sides of this case, Chris was in a place s/he should not have been. Security officers were  
39 escorting Chris out of the venue. There is no doubt that during this escort, Chris was hurt and sustained the injuries  
40 that bring us to this cause of action. However, according to Chris, his/her head was banging on the ground and that  
41 it was from this banging that s/he suffered his/her life altering injuries. This is simply not the case and this can be  
42 proven by looking at Exhibit F.

43           Every person has sets of vertebra that form the spine. Inside the spine is the Supraspinus Ligament,  
44 which, if cut, causes instant and permanent quadriplegia. The Supraspinus Ligament is not easily cut and would  
45 take significant effort for the ligament to be cut all the way through. Exhibit F shows us that the bones in the  
46 vertebra known as C-1 through C-7 and L-1 are horribly disfigured. This shows that in addition to lateral  
47 movement, as the plaintiff suggests is the cause of his condition, that there was horizontal movement as well.  
48 Between the horrible disfigurement of the bones and the fact that the Supraspinus Ligament was cut all the way  
49 through suggests there was a significant and lengthy struggle. Furthermore, based on all of the evidence  
50 presented, it is in my opinion and to a degree of medical certainty that I have determined that if Chris was  
51 compliant with the officers, s/he would be walking today just like s/he did before he forced this injury upon  
52 him/herself.

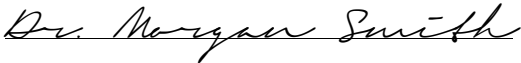
53 

54 Dr. Morgan Smith



**Addendum Medical Expert Report of: DR. MORGAN SMITH**

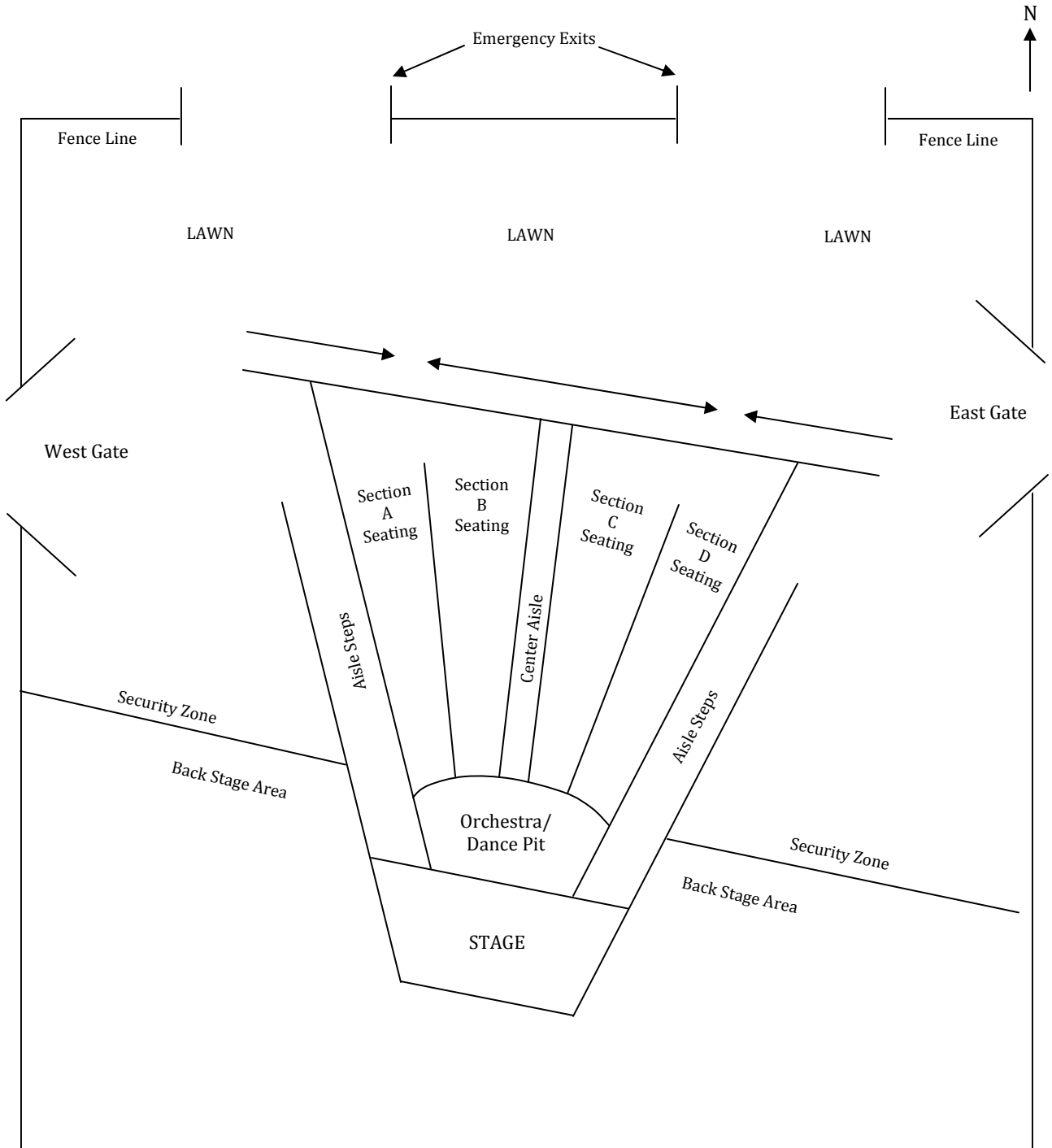
1 I am submitting this addendum to my initial report after having the chance to review the medical report  
2 written by Jamie Gallagher. At the time of my analysis, I did not look at Gallagher's report so that I could make my  
3 own independent findings without the opportunity to be swayed. I disagree completely with Gallagher's report for  
4 the reasons already outlined in my expert report. However it is important to note that Gallagher has always had a  
5 complex about being second best to me. While some people will say that Gallagher has an impressive resume, the  
6 truth is he/she has always been second fiddle. We went to the same high school, but I ended up marrying his/her  
7 high school sweetheart and we have three amazing kids. I went to the better schools and obtained the better jobs.  
8 He/she was always just one step behind. After my first two opportunities to be an expert witness, every single case  
9 after that, Gallagher was the opposing "so called" expert. If I said white, he/she said black. If I was plaintiff, he/she  
10 was defense and vice versa. Gallagher is an idiot who simply says anything to try to discredit me. You can see that  
11 by looking at his/her made up testimony in this case. The ligament was cut due to Chris Williams's aggressive and  
12 out of control behavior. There is no way the injury happened the way Gallagher says it did and by looking at Exhibit  
13 F, you can clearly see why.

14 

15 Dr. Morgan Smith



EXHIBIT B:  
SKETCH OF SWATHMORE PAVILION



CERTIFIED TO SCALE  
AJB ARCHITECTS, LLC  
LARS ULRICH  
OCTOBER 1, 2013

INITIAL PATIENT ASSESSMENT REPORT

DTOE: 06292013 2203

PATIENT INFORMATION

Name: Chris W. Williams Age: 22  
DOI: 06292013 TOI: UNK TOA: 2203  
REL: Unk NOK: Casey Parker (sibling)  
Alg: Unk KMC: Healthy Fe/Male - No Known Medical

MOI: MSP Flight Paramedic Edward Norris, Trooper 4, recovered patient at Swathmore Pavilion. Patient emitting strong odor of alcohol and believed to be intoxicated. Witnesses reported alcohol-induced self-inflicted injuries.

DTOE: 06292013 2214

VITALS UPON ARRIVAL

Blood pressure: 90/40  
Heart rate: 40  
Oxygen: 87%  
Weight: 98  
Height: 4'9"

DTOE: 06292013 2216

EXTERNAL EXAMINATION ON ARRIVAL

Intoxicated twenty-two year old arrived via MSP medevac. Superficial scratches present on forehead. Hematomas located on forehead, each arm, and each leg. Patient is unconscious, pale in color, and breathing shallow with flailing and stridor. Patient is unresponsive. Reflexes are unresponsive in lower extremities. Edema is present at neck and head. No other signs of injury to body.

DTOE: 06292013 2219

PLAN OF CARE ON ARRIVAL

Patient was intubated upon arrival due to low heart rate and blood pressure. Labs are ordered for blood alcohol and drug testing and complete blood count. CT and x-ray of entire body is ordered. Patient is admitted. Neurosurgery has been called in. Will need immediate surgery to stabilize neck injury.

## EXHIBIT C: MEDICAL/ASSESSMENT REPORT

DTOE: 06292013 2301LABS

Serum Ethanol	negative	
Cocaine	negative	
Other illegal subst.	negative	
Sodium Lvl	140 mmol/L	137-145
Potassium	4.2 mmol/L	3.5-5.1
Chloride	107 mmol/L	98-107
CO2	19 mmol/L	22-30
AGAP	10 mmol/L	5-15
Creatinine	0.72 mg/dL	0.52-1.04
Albumin Lvl	4.1 gm/dL	3.5-5.0
Globulin	3.0 gm/dL	1.3-4.7
A/G		
Ratio	1.2	1.0-3.8
Glucose Lvl Random	99 mg/dL	65-140
BUN	13 mg/dL	7-17
Bili Total	1.0 mg/dL	0.2-1.3
Calcium Lvl	9.2 mg/dL	8.4-10.2
Alk Phos	99 unit/L	38-126
Total Protein	6.5 gm/dL	6.3-8.2
AST	28 unit/L	3-34
ALT	32 unit/L	15-41
WBC	3.8 k/uL	4.9-13.2
RBC	4.01 million/uL	3.84-4.92
Hgb	11.5 gm/dL	10.2-12.7
Hct	35.1 %	31.2-37.8
MCV	80.5 FL	72.3-85.0
MCH	24.7 pg	23.7-28.6
MCHC	32.8 gm/dL	31.8-34.6
RDW	13.6 %	12.7-14.9
Platelet	243 k/uL	189-394
MPV	10.6 FL	8.9-11.0
NRBC aut	0 /100 wbcs	0-0
NRBC Abs	0.0 k/uL	0.0-0.3
Neutro %	30.7 %	22.4-69.0
Neutro Absolute	5.2 k/uL	1.1-9.1
Imm Gran %	0.2 %	0.1-0.3
Imm Gran Absolute	0.02 k/uL	0.01-0.03
Lymph %	48.2 %	18.1-68.6
Lymph Absolute	2.8 k/uL	1.3-5.8
Mono %	8.3 %	4.1-11.4
Monocyte Abs	0.3 k/uL	0.2-0.9
Eos %	1.0 %	0.0-3.3
Eosinophil Abs	0.4 k/uL	0.0-0.5
Basophil %	0.3 %	0.0-0.6
Basophil Abs	0.0 k/uL	0.0-0.1

DTOE: 07012013 0027

X-RAY AND CT SCAN OF SPINE, NECK, HEAD

X-ray and CT scan show detached vertebrae C1-L1 - vertebra are splintered. CT scan confirms severe edema surrounding the injured area including the neck, upper back, and head. Patient has mild contusions to the forehead.

DTOE: 08182013 0731

OUTCOME

Patient was transferred to a rehab facility on 08/18/2013. Patient suffered multiple broken vertebrae. Patient's vertebrae were fused together during two extensive surgeries. Patient is considered a quadriplegic. Will need full-time nursing care for breathing care and basic needs. Will continue in physical therapy to prevent atrophy and to control pain in extremities. Extent of paralysis is severe. Outcome was discussed with patient and patient's family.

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Definition of Codes:

DTOE: Date Time of Entry  
DOI: Date of Incident  
TOI: Time of Incident  
TOA: Time of Arrival  
REL: Religion  
NOK: Next of Kin  
Alg: Allergies  
KMC: Known Medical Condition  
MOI: Mechanism of Injury

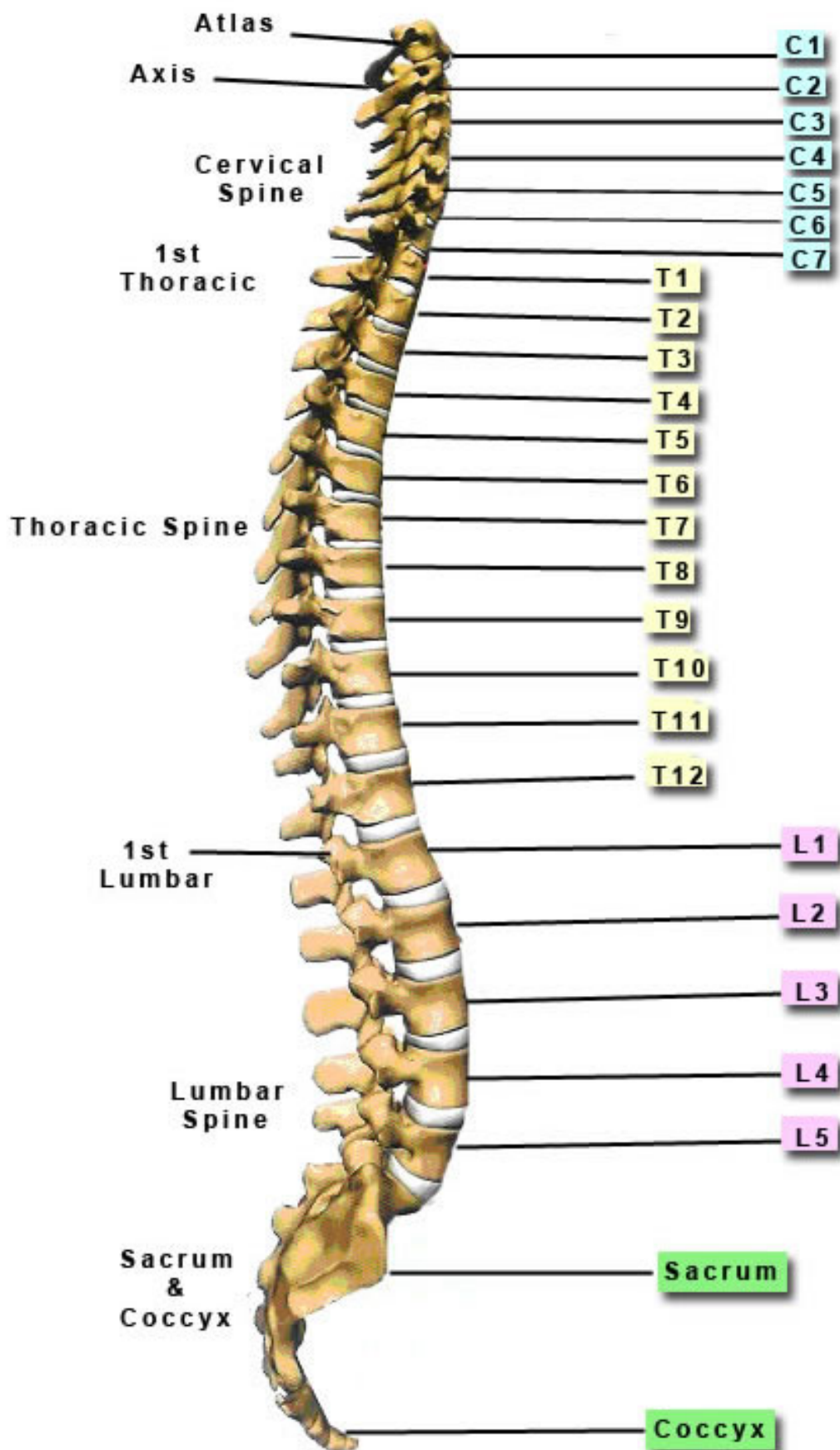




EXHIBIT E  
DTOE 06212013/ WILLIAMS, CHRIS





EXHIBIT F  
DIOE 06292013/ WILLIAMS, CHRIS

**Doe v. O.C. Seacrets, Inc.**  
United States District Court for the District of Maryland  
August 7, 2012, Decided; August 7, 2012, Filed  
Civil Action No. WMN-11-1399

**Judges:** William M. Nickerson, Senior United States District Judge.

**OPINION**

**MEMORANDUM**

Before the Court is a motion for summary judgment filed by Defendant O.C. Seacrets, Inc. (Seacrets or Defendant) ECF No. 33. The motion is fully briefed. Upon review of the briefs, exhibits, and applicable case law, the Court determines that no hearing is necessary, Local Rule 105.6, and that the motion will be denied.

**I. FACTUAL BACKGROUND**

Defendant Seacrets operates the largest bar/entertainment complex in Ocean City, Maryland. It is located at 117 W. 49th Street, which is at the end of West 49th Street. At the time of the events giving rise to this action, the bar had a capacity of 3500 to 4000 persons [2] and on a summer holiday weekend would have several thousand patrons. This case arises from the brutal assault and rape suffered by Plaintiff after she was ejected from Seacrets in the early morning hours of May 24, 2008.

\* \* \*

Plaintiff and four of her girlfriends, Jaslyn Kraemer, Diana Branco, Crystal Lamb, and Rebecca Brady, travelled from Pennsylvania to Ocean City, Maryland to celebrate the Memorial Day weekend. They were to be joined on Saturday morning by another friend, Jack Callahan. After checking into their hotel on the afternoon of May 23, the five friends unpacked and, late in the evening, decided to go to Seacrets. Plaintiff had been to Seacrets on one prior occasion during the day, but was not familiar with the layout of the facility. None of her friends had been to Seacrets previously. The friends decided to walk the five blocks from their hotel to Seacrets. One of Seacrets' security cameras shows them arriving at 11:06 p.m. They initially went [4] to a "tiki bar" segment of the facility where a reggae band was playing loudly. Plaintiff ordered a Red Bull and vodka drink and then went for a walk around the facility with Branco. Plaintiff has no memory of anything after this point.

Branco testified that she and Plaintiff rejoined their friends at the tiki bar. Shortly after 1:00 a.m., Plaintiff handed her purse to Lamb and moved away from the group, carrying with her just her cell phone and three dollars. The hotel room key that Plaintiff had taken with her to Seacrets was in her purse along with the rest of her cash. Plaintiff's friends were aware that Plaintiff had missed a telephone call from her then boyfriend, Phillip Kibby, and assumed that she was going to a quieter place to return the call. Her friends were also aware that Plaintiff was intoxicated. See Lamb Dep. at 18. \* \* \*

At about 1:04 a.m., a security camera in another [6] part of Seacrets captures Plaintiff visibly swaying and staggering. She then actually falls sideways to the floor at the feet of one of Defendant's employees, William Arvin. Arvin helps Plaintiff to her feet and they appear to talk briefly. Plaintiff stands near several Seacrets employees for a few minutes and continues to sway and would have fallen again several times if not caught by the Seacrets staff. Arvin and another employee escort Plaintiff out of the bar. A finder of fact could readily conclude upon reviewing the video footage that Plaintiff was highly intoxicated at this point in time.

Although Arvin has no independent recollection of interacting with Plaintiff that evening, upon review of the videotape, he confirms that he would have been ejecting Plaintiff from the bar for being too intoxicated. In order to maintain its license to sell alcoholic beverages, Seacrets is required to eject patrons who are intoxicated. Worcester County Alcoholic Beverage License Rules and Regulations 32.D.9 (providing that an establishment's alcoholic beverage license can be suspended or revoked if the establishment "permit[s] any intoxicated or disorderly person to remain or loiter on the licensed [7] premises"). Consistent with that regulation, Seacrets has adopted policies and trains its staff concerning the ejection and refusal to readmit intoxicated patrons. Plaintiff concedes she was intoxicated and does not challenge Defendant's decision to eject her from the premises.

After escorting Plaintiff out of the bar area, Arvin left Plaintiff with another Seacrets employee, Corey Dietrich. Dietrich stood with Plaintiff from about 1:08 a.m. until 1:11 a.m. when he began to escort her through a rope barrier to an area outside the main entrance to the complex. This exit is referred to as the "White Gates" exit. By 1:15 a.m., Dietrich had taken Plaintiff to a bench where they sit down together briefly. Dietrich stands up at 1:16 a.m. but remains in close proximity to Plaintiff until 1:22 a.m., when he begins to walk away. Plaintiff's cell phone records indicate that while Dietrich was with her at the bench, Plaintiff made a call to Kraemer at 1:16 a.m., and received a four minute call at 1:17 a.m. from her then boyfriend, Kibby, who was in Pennsylvania. Videotape from

55 inside Seacrets shows Kraemer dancing next to the stage when the call would have been placed and thus it must be  
56 assumed [8] that the call to her simply went to her voicemail. After Dietrich departs but while Plaintiff remains  
57 sitting on the bench, Plaintiff's phone records indicate that she receives a phone call from Branco, and makes a one  
58 minute phone call to Kibby. Despite the phone records that indicate a call from Branco, videotape from inside  
59 Secrets shows Branco standing near the bar neither speaking into nor listening to her phone.

60 Kibby, however, does remember speaking to Plaintiff that morning, but his testimony about his  
61 conversation (or conversations) with her is somewhat confusing. At one point in his deposition, Kibby states that he  
62 called Plaintiff, she did not answer, and then she called back and was crying and saying that she is outside of  
63 Seacrets, they will not let her back in the bar, and her belongings are inside with Lamb. Kibby Dep. at 12. Later in his  
64 deposition, after being told that the phone records show two calls, he states, "I remember having a conversation  
65 with her. If I had a conversation [9] with her the first time and then she called me back - I remember the second one  
66 saying she could not get in, they would not let her back in the bar." Id. at 18 (emphasis added). When asked about  
67 the first conversation, he testified it was a casual conversation: "'H[e]y, how are you doing? How is your night.'" Id.  
68 at 18.

69 Plaintiff argues in her opposition that Dietrich was close to Plaintiff during the phone call in which she was  
70 crying "so he knew from hearing her conversation with Kibb[y] that Plaintiff had been unable to reach her friends  
71 inside the bar or retrieve her belongings." ECF No. 39 at 13. Defendant argues that Dietrich would have only  
72 overheard the casual conversation in which Plaintiff raised no concerns. ECF No. 40 at 12. Given that Kibby was  
73 deposed more than three years after the conversation(s) he is being asked to remember, it is not surprising that he  
74 is less than certain about the details. Regardless, it is not clear from Kibby's deposition testimony what Dietrich may  
75 have overheard.

76 At about 1:27 a.m., Plaintiff stands up and walks towards two police officers who were standing ten or  
77 fifteen feet from the bench on which she was sitting. The police officers appear [10] to be in the process of placing a  
78 handcuffed individual in a patrol wagon. She stands near them briefly, and then sits back down on the bench at  
79 about 1:28 a.m. At about 1:31 a.m., Plaintiff stands up again and walks around in the vicinity of the benches for  
80 about a minute. She still appears to be stumbling and very unsteady. At about 1:33 a.m. an unknown male  
81 approaches the bench on which Plaintiff is sitting and sits down next to her. After several minutes pass, at about  
82 1:41 a.m., Dietrich walks over to the bench, leans over to Plaintiff and appears to be talking to her for about 22  
83 seconds. Dietrich then walks away. About two minutes later, the unknown male stands but remains close to the  
84 bench. Plaintiff then stands about half a minute later and at about 1:44 a.m. the two walk down 49th Street, away  
85 from Seacrets and towards the main highway. The unknown male appears to be supporting Plaintiff as they walk. As  
86 they walk away, Dietrich is standing about 15 to 20 yards away with other Seacrets employees and is facing in the  
87 general direction of Plaintiff and the unknown male. Plaintiff's whereabouts for the next thirty minutes is unknown.

88 Plaintiff does make and receive cellphone calls during that thirty minute period. At 1:56 a.m., Lamb called  
89 Plaintiff. Lamb testified, however, that due to the noise, she was unable to hear what Plaintiff was saying beyond the  
90 fact that she was outside of Seacrets. Lamb Dep. at 23. Lamb told Plaintiff that she would be out to meet her as soon  
91 as she could. Plaintiff called Lamb at 2:11 a.m. and then called Jack Callahan at 2:12. There is nothing in the record  
92 concerning the second call to Lamb. Callahan does recall receiving this call and describes it as "a fairly normal  
93 conversation" in which they talked about him coming down the next day. Callahan Dep. at 14. While Plaintiff  
94 conveyed that she was outside Seacrets, nothing she said gave him any concern. Id. at 14-15.

95 At about 2:15 a.m., Plaintiff comes back into the view of the same surveillance camera outside the White  
96 Gates exit which showed her departure thirty minutes earlier. As she walks towards Seacrets, she passes through a  
97 parking lot at 111 W. 49th Street (the 111 Lot) onto a parking lot at 113 W. 49th Street (the 113 Lot). The 111 Lot is a  
98 parking lot used by Seacrets' patrons. The 113 Lot is used by those staying in the Kona Bay Condominiums, which are  
99 immediately adjacent to Seacrets. After passing through the 113 Lot, Plaintiff passed to the left of a parked Ocean  
100 City Police car and large pontoon boat sitting at 115 W. 49th Street. The boat was part of a Seacrets promotional  
101 giveaway. Although on the other side of the pontoon boat, Plaintiff was within a few yards of the bench on which  
102 she earlier sat. Plaintiff is followed through the parking lots by a second unknown male. He catches up to Plaintiff at  
103 about 2:16 a.m. while she is standing in front of 113 W. 49th Street, and behind the pontoon boat. This second  
104 unknown male (the assailant) is the individual who ultimately assaulted and [13] raped Plaintiff. Shortly after the  
105 assailant caught up with Plaintiff, she receives a telephone call from Callahan at 2:17 a.m. Unlike the call a few  
106 minutes earlier, in this call Plaintiff is very upset and crying. Callahan can hear a man with a foreign accent in the  
107 background and Plaintiff is asking him to leave her alone. Plaintiff is sounding more and more frightened. This call  
108 lasted about four minutes but, after a point, Plaintiff stopped responding to Callahan's questions and he then heard

109 a noise that sounded like the phone was dropped or taken away and then the phone went dead.

110 At about this same time, Plaintiff's friends are being ushered out through an exit on the other side of the  
111 complex, hundreds of yards from where Plaintiff was located. Seacrets officially closes at 2:00 but Defendant  
112 acknowledges it takes some time to clear out the facility. A security camera shows Plaintiff's friends exiting at 2:18  
113 a.m. As they are exiting, the women tell a Seacrets employee that they are looking for their friend and he responds,  
114 "she probably just met up with some friends, go home, she'll meet you there." Kraemer Dep. at 50. Concerned for  
115 Plaintiff's safety, Callahan calls Kraemer [14] and Branco to tell them to try to find Plaintiff but testifies that they  
116 were "pretty intoxicated," so he "wasn't getting anywhere with them." Callahan Dep. at 19. Callahan also called  
117 Lamb who he described as "pretty sober." Id. He told Lamb, "you need to call the police and find [Plaintiff], you  
118 know, something is wrong." Id. at 21. Lamb tried unsuccessfully to call Plaintiff. The friends stand in the parking lot  
119 onto which they exited for about a half an hour and then they walk back to their hotel assuming that they would find  
120 Plaintiff there. While her friends were exiting on the other side of the complex, Plaintiff remains standing with the  
121 assailant in the corner of the 113 Lot for several minutes. While they are standing there, at 2:18 a.m., an Ocean City  
122 policeman returns to the parked police car by which Plaintiff just walked. He turns on his emergency lights and  
123 drives off a few seconds later. Plaintiff opines that the policeman could not have seen her or the assailant as the  
124 view was blocked by a parked SUV and the pontoon boat.

125 At about 2:19 a.m., Plaintiff and the assailant move to the other side of the 113 Lot and stand next to a  
126 white Honda. In the view of Plaintiff's [15] counsel, the videotape shows a "flurry of activity between Plaintiff and  
127 her attacker which is consistent with a violent assault" which begins around 2:22 a.m. ECF No. 39 at 17. Police later  
128 find blood stains on the white Honda and Plaintiff's shoes and an earring on the ground near the vehicle. At about  
129 2:26 a.m., the assailant briefly leaves Plaintiff and circles around behind the structure at 113 W. 49th Street. During  
130 the approximately one minute that he is away, a third unknown male walks by the place where Plaintiff was left,  
131 stops for about eight seconds and then continues walking. The assailant returns to Plaintiff and, at about 2:28 a.m.,  
132 he and the Plaintiff are seen moving behind the building at 113 W. 49th Street. It is behind that building that Plaintiff  
133 is raped.

134 Based upon this series of events, Plaintiff asserts two distinct causes of action against Seacrets in her  
135 Amended Complaint. In Count One, Plaintiff asserts a claim of "Negligent Ejectment." Again, Plaintiff does not deny  
136 that Seacrets had the right, if not the obligation, to eject her because of her level of intoxication. Instead, Plaintiff  
137 posits that, once Seacrets ejected her, there arose a duty derived from [16] various sources under which Defendant  
138 was required to make reasonable efforts to reunite her with her friends and belongings. In Count Two, Plaintiff  
139 asserts a claim of "Premises Liability." While the 113 Lot might not technically have been a part of Seacrets'  
140 premises, Plaintiff contends that, because Seacrets voluntarily undertook to provide security for the 113 Lot, it can  
141 be held liable for failing to properly perform that assumed duty. Seacrets has moved for summary judgment as to  
142 both claims.

143 \* \* \*

### 144 **III. DISCUSSION**

145 The Court initially notes that, while Seacrets in its motion suggests that Count I simply duplicates Count II, see ECF  
146 No. 33-1 at 20, Plaintiff's two causes of action are separate and distinct and primarily relate to two different periods  
147 of time. The acts or omissions of Seacrets employees upon which Plaintiff bases her negligent [18] ejectment claim  
148 are those actions taken or not taken before the thirty minute period in which Plaintiff's whereabouts were unknown.  
149 If those acts or omissions gave rise to a claim of negligent ejectment, Seacrets would be liable under that claim had  
150 Plaintiff never returned to the vicinity of Seacrets but was attacked at some other location. In contrast, Plaintiff's  
151 premises liability claim in Count II looks primarily at the acts or omissions of Seacrets employees from the time she  
152 returned to the vicinity of Seacrets until she was pulled behind the building on 113 W. 49th Street. For Seacrets to be  
153 liable under this second claim, Plaintiff's status as one who had been ejected from the complex is not critical. If there  
154 is liability under this theory, a patron could recover if she had been ejected from Seacrets or simply exited  
155 voluntarily. With that distinction in mind, the Court will examine each claim separately.

#### 156 **A. Negligent Ejectment**

157 While Defendant argues that there is no cause of action in Maryland for negligent ejectment, the claim is  
158 essentially just a negligence claim framed in a particular context. To establish a claim of negligence under Maryland  
159 law, a plaintiff must show: "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the  
160 defendant breached the duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury  
161 proximately resulted from the defendant's breach of the duty." Shields v. Wagman, 350 Md. 666, 714 A.2d 881, 884  
162 (Md. 1998) (internal quotations omitted). Defendant challenges Plaintiff's ability to establish each of these elements

163 except the third, *i.e.*, that she suffered actual injury.

164 **1. Duty to Use Reasonable Care When Ejecting Customers**

165 To establish a duty owed to her in this context, Plaintiff cites three sources. First, Plaintiff points to the  
166 "affirmative conduct" on the part of Defendant of ejecting her. [20] She argues that while there is "no duty to come  
167 to the assistance of a person in difficulty or peril there is at least a duty to avoid affirmative acts making his situation  
168 worse," and that by separating her from her friends and belongings, Defendant made her situation worse. ECF No.  
169 39 at 19 (quoting *Furr v. Spring Grove State Hosp.*, 53 Md. App. 474, 454 A.2d 414, 420 (Md. Ct. Spec. App. 1983)).  
170 Plaintiff also finds support from Prosser and Keeton for a duty in this context arising from a defendant's affirmative  
171 conduct:

172 There may be no duty to take care of a man who is ill or intoxicated, and unable to look out for himself; but  
173 it is another thing to eject him into the danger of a street or railroad yard; and if he is injured there will be liability.  
174 But further, if the defendant does attempt to aid him, and takes charge and control of the situation, he is regarded  
175 as entering voluntarily into a relation which is attended with responsibility.  
176 *Id.* (quoting W. Page Keeton *et al.*, Prosser & Keeton on the Law of Torts § 56 at 378 (5th ed. 1984)).

177 While this Court is aware of no Maryland decision addressing the duty based upon the affirmative act of  
178 ejecting a bar patron, courts in other jurisdictions have [21] recognized such a duty arising out of general negligence  
179 principles. In *Cunningham v. Happy Palace, Inc.*, 157 Ore. App. 334, 970 P.2d 669 (Or. Ct. App. 1998), a bar patron  
180 who had been driven to the bar by her daughter and dropped off became very intoxicated. While the plaintiff was  
181 waiting in line to make a telephone call, presumably to call her daughter to get a ride home, a bouncer employed by  
182 the defendant told her she had to leave the bar and escorted her outside. The bouncer did not permit her to make a  
183 telephone call, nor did he arrange for a cab to take her home. The plaintiff began hitchhiking home and was picked  
184 up by three men who drove her to a remote location and raped her.

185 Like Defendant here, the defendant in *Cunningham* argued that it could not be held responsible for injuries  
186 suffered by the plaintiff as a result of her voluntary intoxication. Plaintiff countered that she was not arguing simply  
187 that her intoxication made her injury foreseeable but rather, "when defendant affirmatively acted to eject her from  
188 the premises and thereby prevented her from securing safe passage home, defendant set in motion the events that  
189 led to her injury." *Id.* at 671. The trial court granted the defendant's [22] motion on the plaintiff's negligent  
190 ejection claim.

191 Reversing that decision, the Oregon Court of Appeals held, "[t]he dispositive issue in this case is whether, by  
192 forcing plaintiff to leave the bar before she could telephone her daughter for a ride home, it was foreseeable that  
193 defendant was placing plaintiff in harm's way. If it were reasonably foreseeable that plaintiff would come to harm as  
194 a result of criminal acts by others, then defendant can be held liable for that harm." *Id.* at 671. *See also, Sinisgalli v.*  
195 *O'Rourke*, 51 Conn. Law Rptr. 137, (Conn. Super. Ct. 2010) (holding that tavern owner had a duty to take "reasonable  
196 steps not to injure [plaintiff] or place her in a situation of foreseeable risk of being injured as part of the ejection  
197 process"); *Thrasher v. Leggett*, 373 So.2d 494, 497 (La. 1979) (holding that bar owner has a duty to avoid affirmative  
198 acts which increase the peril to an intoxicated patron but, in the case before it, finding that this duty was not  
199 breached).

200 As a closely related basis for imposing a duty on Seacrets in this context, Plaintiff points to the Restatement  
201 (Second) of Torts § 314A and the general duty of business owners owed [23] to business invitees. Section 314A  
202 provides:

203 (1) A common carrier is under a duty to its passengers to take reasonable action

204 (a) to protect them against unreasonable risk of physical harm, and

205 (b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until  
206 they can be cared for by others.

207 (2) An innkeeper is under a similar duty to his guests.

208 (3) A possessor of land who holds it open to the public is under a similar duty to members of the public who enter in  
209 response to his invitation.

210 (4) One who is required by law to take or who voluntarily takes the custody of another under circumstances such as  
211 to deprive the other of his normal opportunities for protection is under a similar duty to the other.

212 Restatement (Second) of Torts, § 314A (emphasis added). Maryland courts have expressly adopted § 314A as  
213 Maryland common law. *See Southland Corp. v. Griffith*, 332 Md. 704, 633 A.2d 84, 91 (Md. 1993) ("we adopt § 314A  
214 of the Restatement, and in particular embrace the proposition that an employee of a business has a legal duty to  
215 take affirmative action for the aid or protection of a business invitee who is in danger while on the business's  
216 premises, [24] provided that the employee has knowledge of the injured invitee and the employee is not in the path

217 of danger").

218 At least one court has applied Section 314A(3) to impose a duty on tavern owners "to exercise reasonable  
219 care and to take reasonable action as to their patrons, including a general duty to exercise reasonable care in  
220 ejecting [the plaintiff] from [their establishment]." Hoff v. Elkhorn Bar, 613 F. Supp.2d 1146 (D.N.D. 2009). In Hoff, a  
221 bar patron became so intoxicated that he was unable to keep his balance and fell on several occasions in the bar.  
222 After he became disruptive, he was ejected from the bar into sub-zero weather wearing only a light coat. The  
223 ejected patron began to walk away from the bar, slipped and fell, striking his head on the pavement and  
224 subsequently died of injuries sustained in the fall. In denying the defendant tavern's motion for summary judgment,  
225 the federal district court held that there was a genuine dispute of fact as to whether the defendant exercised  
226 reasonable and ordinary care in ejecting the plaintiff and whether injury or death was foreseeable as a result of the  
227 ejection. Id. at 1160.

228 Plaintiff argues that a third source of a duty owed to her [25] by Seacrets is found in Seacrets' own policies  
229 regarding the treatment of intoxicated patrons. Seacrets is an establishment that frequently has to eject patrons for  
230 high levels of intoxication, sometimes as many as 40 customers a night. Arvin Dep. at 10. Due perhaps to the  
231 frequency of those ejections, Seacrets has developed a detailed policy regarding how those ejections are to be  
232 handled. In many respects, Seacrets' policy simply reflects the duty flowing from the two sources cited above.

233 According to Corey Dietrich, the Seacrets door staff person who interacted most with Plaintiff, Seacrets  
234 trains its employees "to do everything possible to get ejected patrons home safely." Dietrich Dep. at 27. Seacrets  
235 corporate designee, Scott Studds, elaborated on Seacrets' policies regarding ejected patrons: "basically, the main  
236 policy is exhaust every option of what you can do to help this person." Studds' 10/7/2012 Dep. at 10-11. Seacrets  
237 staff will call cabs for patrons and, if the patron is a woman, will only put them in a cab where they know the driver  
238 or the driver is a woman. Id. If someone is ejected and then seen "leaving with someone that we're not sure that  
239 they know . . . [n]ames [26] are taken down, ID's are checked again. . . . If it's someone [] that we see walk out and  
240 we're not convinced they're with that person, we'll check into it. . . . [W]e try to determine that these people are  
241 together; in fact, they know each other; they didn't just meet; that type of thing." Id. at 13-14. Seacrets expects its  
242 door staff to "be of as much assistance as possible" to those patron who are ejected. "[T]o make sure that these  
243 people are getting home safe . . . you need to check who they're leaving with. . . ." Id. at 57.

244 Regarding reconnecting the ejected patron with the rest of his or her party, Seacrets staff is instructed to  
245 "exhaust every option." Id. at 15. If the friends are not with the patron when it is determined that he or she should  
246 be ejected, Seacrets staff will get a description of the friends and search the property. Arvin Dep. at 26. If the initial  
247 search is unsuccessful, staff members are trained to put the names and descriptions of the friends out to the radios  
248 that are carried by all Seacrets staff. Studds 10/7/2011 Dep. at 16. In addition, if patrons have cellphones but are not  
249 in a condition to use them, Seacrets staff will look for "in [27] case of emergency" numbers or last called numbers  
250 and call those numbers in an attempt to alert the rest of the party that their friend has been ejected from the  
251 complex. Id. at 11. Finally, if patrons ask a question as to where a friend from whom they have been separated might  
252 be, staff are told to "direct these people out front of the white gates exit because that's the main area where people  
253 who are waiting will be waiting, on the benches." Coley Dep. at 25-26.

254 Plaintiff argues that by voluntarily adopting policies directed at assisting ejected patron to safely reconnect  
255 with their party or otherwise safely return to their lodgings, Seacrets is liable if it fails to follow those policies.  
256 Plaintiff suggest that imposing liability on this basis is particularly appropriate where police officers who patrol the  
257 area around Seacrets and who were present at the time Plaintiff was ejected are familiar with Seacrets' policies.  
258 There is at least some evidence in the record that if police officers see a Seacrets staff [28] person interacting with  
259 an intoxicated individual, the police "will just let Seacrets try to handle their own problems." Deposition of Sergeant  
260 Douglas Smith at 30.

261 The Court concludes that Seacrets clearly had a duty to use reasonable care not to place Plaintiff in a  
262 position of foreseeable risk when it ejected her from its premises. That duty arose both from Plaintiff's status as a  
263 business invitee on Seacrets' premises and from Seacrets' affirmative conduct that potentially worsened her  
264 situation. The Court views Seacrets' purported policies not so much as an additional source of that duty, but more as  
265 an expression of what reasonable care might be in this circumstance.

## 266 **2. Breach of Duty**

267 It is also clear from the record that a reasonable jury could conclude that Seacrets breached its duty. Both  
268 Arvin and Dietrich observed Plaintiff in a highly intoxicated state. She fell to the floor right in front of them and  
269 clearly would have fallen several more times if not caught by Seacrets staff. She is still visibly stumbling and swaying  
270 even as she walks down 49th Street and appears to be relying on the first unknown male to keep her upright.

271 A jury could conclude that, despite Plaintiff's [29] highly intoxicated state, Seacrets followed none of the  
272 policies it purports to have adopted for the safety of ejected customers. A jury could conclude that Seacrets made no  
273 effort to find Plaintiff's friends to alert them that she had been ejected. A jury could conclude that neither Dietrich  
274 nor any other Seacrets employee made any effort to follow the policy of confirming that the first unknown male was  
275 actually someone known by Plaintiff. If Dietrich's 22 second interaction with Plaintiff was his attempt to follow that  
276 policy, it was neither thorough nor effective. In addition, contrary to Seacrets' announced policy, Seacrets door staff  
277 that interacted with Plaintiff's friends as they exited did not instruct them to look for Plaintiff at the benches outside  
278 the White Gates exit.

279 Seacrets attempts to factually distinguish the case at bar from cases like Cunningham and Hoff. While  
280 Seacrets may be correct that its conduct was not as egregious as that of the defendants in Cunningham or Hoff, a  
281 jury could still conclude that Seacrets' conduct was unreasonable under the circumstances. A jury might conclude, as  
282 Defendant suggests, that because Plaintiff had her cellphone and thus the potential to contact her friends Dietrich  
283 had no further responsibility to see to her safety. That is certainly a factor to be considered in evaluating the  
284 reasonableness of Seacrets' response. But the Court finds it is not determinative. The jury might determine that a  
285 reasonable response would have included confirming that Plaintiff had been able to use the phone to make  
286 arrangements to reconnect with her party.

287 Seacrets also argues that Plaintiff failed to provide expert testimony in support of her negligent ejection  
288 claim, declaring that "Plaintiff's proffer of 'expert' testimony that an individual in her condition is at a higher risk for  
289 victimization of crime [31] is without foundation." ECF No. 40. Seacrets also complains that Vicky Martin, a 26-year  
290 veteran of the Ocean City Police Department, was not identified as an expert and thus the Court cannot consider her  
291 testimony that a highly intoxicated woman separated from her friends and belongings after being ejected would  
292 "absolutely" be at a higher risk of criminal victimization. Martin Dep. at 48. On this particular point, the Court finds  
293 expert testimony unnecessary. Seacrets' own policies, particularly as articulated by Studds, reflect the common  
294 sense notion that a highly intoxicated woman, alone and out on the streets late at night, faces a threat of  
295 victimization.

### 296 **3. Proximate Causation**

297 Under Maryland law, there are two subparts to the element of proximate cause: "cause in fact" and "legal  
298 cause" of the injury. Royal Ins. Co. of America v. Miles & Stockbridge, P.C., 133 F. Supp. 2d 747, 757 (D. Md. 2001). A  
299 defendant's negligence is a cause in fact of the plaintiff's injury when the injury would not have occurred "but for"  
300 the defendant's conduct. Id. "Legal causation is established if, at the time of the tortfeasor's negligent act, the  
301 tortfeasor should have foreseen the general field [32] of danger, not necessarily the specific kind of harm to which  
302 the injured party would be subjected as a result of the defendant's negligence." Id. (internal quot. omitted).

303 Here, a jury could reasonably conclude that Plaintiff would not have been attacked had Defendant followed  
304 its procedures and did more to facilitate Plaintiff reconnecting with her friends. Furthermore, it could conclude that  
305 Defendant should have foreseen the kind of harm that befell Plaintiff. As noted above, Seacrets' policies as well as  
306 common sense recognize the potential harm to an intoxicated individual, particularly a young woman, left without  
307 any means by which to safely return to her hotel.

308 Defendant suggests that the criminal act of the assailant was a superseding cause of Plaintiff's injury,  
309 making any dispute of facts regarding Defendant's negligence irrelevant. ECF No. 33-1 at 34. That argument fails for  
310 the same reasons. While the subsequent intentional tort or crime of a third party can break the chain of causation  
311 and relieve a negligent actor from liability, such an intentional tort or crime does not do so when the actor at the  
312 time of his negligent conduct realized or should have realized that [33] his negligent conduct could create a  
313 situation which offered an opportunity to the third party to commit such a tort or crime. Tucker v. KFC Nat'l Mgmt.  
314 Co., 689 F. Supp. 560, 564 (D. Md. 1988).

### 315 **B. Premises Liability**

316 The viability of Plaintiff's premises liability claim in Count II is a close call. Plaintiff's claim is premised on the  
317 conclusion that the assailant's attack on Plaintiff was initiated on Lot 113. Plaintiff further posits that, while Lot 113  
318 is not a part of the Seacrets entertainment complex, Seacrets voluntarily assumed responsibility for providing  
319 security for the parking lots in the vicinity of the complex, including Lot 113. Plaintiff then concludes that  
320 Defendant's improper performance of that voluntary act was the proximate cause leading to the attack.

321 Defendant first questions whether the attack was initiated on Lot 113 as claimed by Plaintiff or was initiated  
322 instead behind the building on 113 W. 49th Street where Plaintiff was eventually raped. The distinction is significant  
323 in that Plaintiff seems to concede that Defendant did not assume responsibility for providing security in the area  
324 behind that building. Defendant suggests and the Court would concur that the poor quality of the video image and

325 the distance of Plaintiff and the assailant from the security camera makes it difficult to conclude that a "[v]ery fast  
326 and violent assault" took place when and where Plaintiff argues it did. While there were several individuals in the  
327 vicinity of the alleged attack, there is no visible sign that anything drew their attention to Plaintiff or the assailant.  
328 While there is no audio to the recording, from the lack of reaction of people nearby, it does not appear that there  
329 were any screams or noise associated with the attack. Also, that the third unknown male walked by Plaintiff and  
330 appears to have had some interaction with her but then just walks away, seems inconsistent with the conclusion  
331 that she had already [35] been brutally attacked.

332 Notwithstanding, Plaintiff points to the blood found on the Honda in Lot 113 and her shoes and earring  
333 found nearby as evidence that she was initially attacked at that location. The Court, drawing inferences in Plaintiff's  
334 favor as it must at this stage in the litigation, concludes that a jury could find that the attack commenced on Lot 113.

335 Seacrets does not contest that it voluntarily assumed some responsibility for providing security for the  
336 parking lots surrounding its facility, including Lot 113. Coley, Seacrets' head of security, testified that it is Seacrets'  
337 practice to have four employees stationed outside the White Gates exit and near the benches from about 1:00 a.m.  
338 until the time that most patrons have exited the bar. Coley Dep. at 37-39. He further testified that there often is an  
339 additional presence of security personnel in the area. Id. at 43-44. These staff persons are to "make efforts to  
340 maintain visibility" in the surrounding parking areas, including Lot 113, and "[e]verywhere, their surrounding areas,  
341 they should have a good idea of what's going on." Studs 3/1/12 Dep. at 51. If any of these employees detected a  
342 security incident in the 113 [36] Lot, they would be expected to intervene or otherwise react. Coley Dep. at 41.  
343 While Seacrets officially closes at 2:00 a.m., it generally takes 15 to 30 minutes for the bar and parking lots to clear  
344 and security staff generally remain in position until the lots are cleared and the employees are recalled into the  
345 facility by their supervisors. Id. at 39.

346 One could interpret these policies as Seacrets voluntarily undertaking to monitor Lot 113 and to intervene  
347 when necessary. Under Maryland law, "even if no duty existed to employ the particular level of security measures  
348 provided by the defendants, improper performance of such a voluntary act could in particular circumstances  
349 constitute a breach of duty." Scott v. Watson, 278 Md. 160, 359 A.2d 548, 555 (Md. 1976). Seacrets does not contest  
350 that general principle of law but maintains that this duty extends only to business invitees. When Plaintiff walked  
351 back towards Seacrets and entered Lot 113 after having been somewhere else for 30 minutes, it was more than an  
352 hour after she had been ejected and 15 minutes after Seacrets officially closed. On that basis, Seacrets concludes  
353 that her status was that of a trespasser or, at most, [37] a bare licensee. As a trespasser, the duty owed to her under  
354 Maryland law would be limited. To a trespasser, "[n]o duty is owed, except to refrain from willfully or wantonly  
355 injuring or entrapping the trespasser." Wagner v. Doehring, 315 Md. 97, 553 A.2d 684, 687 (Md. 1989). If a licensee,  
356 the duty owed to her would also be limited: the only duty owed is "to refrain from willful or wanton misconduct  
357 toward [her] or to use reasonable care to avoid injury if and when it was discovered that [s]he was in danger." Ortiz  
358 v. Greyhound Corp., 275 F.2d 770 (4th Cir. 1060).

359 Seacrets relies on the Maryland Court of Appeals decision in Levine v. Miller, 218 Md. 74, 145 A.2d 418 (Md.  
360 1958), for the proposition that "[a] business visitor ceases to be such after the expiration of a reasonable time in  
361 which to accomplish the business purpose of the visit. Whether he becomes a trespasser or bare licensee, depends  
362 upon whether the possessor does or does not express consent to his remaining thereafter." (quoting 145 A.2d at  
363 421). In Levine, a girl was granted permission to use a recreation room in an apartment complex managed by  
364 defendant for a specific period of time. She returned to the room several hours [38] later without the knowledge or  
365 permission of the defendant and was injured. The Court held that upon re-entering the room, she exceeded her  
366 permissive invitation and thereby became a trespasser or, at the most, a licensee to whom the owner owed no duty  
367 except to abstain from willful or wanton misconduct and entrapment. 145 A.2d at 421.

368 \* \* \*

369 In denying the motion, this Court noted that Maryland has "adopted the Restatement view defining a  
370 'business visitor' as 'one "invited or permitted to enter or remain . . . for a purpose directly or indirectly connected  
371 with business dealings between [39] them.'" Bass, 982 F. Supp. at 1044. This Court concluded that "a reasonable  
372 jury could conclude that Mr. Bass's return to the Roy Rogers parking lot was at least indirectly connected with his  
373 business purpose of purchasing chicken, and that Mr. Bass remained within the scope of his invitation to do business  
374 with Roy Rogers when he was hurt." Id. This Court also noted that Maryland courts have recognized invitee status  
375 upon proof of an "implied invitation": "there are many cases in which an invitation has been implied from the  
376 circumstances, such as custom, the acquiescence of the owner in habitual use, the apparent holding out of the  
377 premises to a particular use by the public, or simply the general arrangement or design of the premises." Id. This  
378 Court found that it was also a factual question for a jury if the plaintiff was led to believe that the plaintiff's use of



379 the parking lot was intended by the defendant. *Id.* Here, Plaintiff had been a patron of Seacrets earlier that evening  
380 and her friends were [40] still in Seacrets with her hotel key. She was returning towards the spot where Seacrets  
381 employees had placed her to wait for her friends. A reasonable jury could find that her purpose in returning to that  
382 location was sufficiently related to Defendant's business that she retained her invitee status.

383 A jury could also conclude that Seacrets did not properly perform the security function it voluntarily  
384 assumed. If the jury is convinced that Plaintiff was being attacked for more than ten minutes in Lot 113, it could also  
385 conclude that Seacrets security personnel were derelict in their duty to monitor Lot 113. Had they been alert,  
386 observed the attack, and intervened, the harm suffered by Plaintiff would have been greatly diminished. While  
387 Plaintiff has several substantial hurdles to cross to establish her premises liability claim, the Court cannot deem  
388 those hurdles insurmountable at this stage in the litigation. Accordingly, Defendant's motion for summary judgment  
389 will be denied as to this claim as well.

#### 390 **IV. CONCLUSION**

391 For the reasons stated above, Seacrets' motion for summary judgment will be denied in its entirety. A separate order  
392 will issue.

393 /s/ William M. Nickerson

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394  
395 Troxel v. Iguana Cantina, LLC, 201 Md. App. 476

396 Court of Special Appeals of Maryland

397 October 3, 2011, Filed

398 No. 820, September Term, 2010

399 **[483]** Opinion by Kehoe, J.

400  
401 This case arises out of a claim filed by appellant, James E. Troxel, in the Circuit Court for Baltimore City in  
402 which he sought damages for injuries he allegedly received on the dance floor of a nightclub called Iguana Cantina  
403 located near the Inner Harbor in Baltimore City. Troxel sued the following defendants: (1) Iguana Cantina, LLC, the  
404 entity that operated the club, (2) Timothy S. Bennett, the club's manager, (3) Lockwood Associates, LLC, the club's  
405 landlord, (4) Parkway Corporation, the managing entity for Lockwood Associates, and (5) the senior principals of  
406 Parkway Corporation: Joseph S. Zuritsky (Chairman and Chief Executive Officer), Robert A. Zuritsky (President and  
407 Chief Operating Officer) and Richard Elsworth (General Manager). The circuit court granted summary judgment in  
408 favor of the defendants. Troxel filed this appeal, presenting the following questions, which we have reordered and  
409 reworded below:

- 410 1. Did the trial court err in granting appellees' summary judgment motion on the ground that Troxel's
- 411 cause of action sought damages against the appellees on a theory of "dram shop" liability?
- 412 2. Did the trial court err in granting appellees' summary judgment motion on the ground that Troxel failed
- 413 to present any evidence to sustain a negligence claim?

414 We conclude that the trial court erred in granting appellees' motion for summary judgment. Appellant's cause of  
415 action exists independently of a claim for dram shop liability and the evidence of negligence is sufficient to survive a  
416 motion for summary judgment. We reverse and remand to the circuit court for proceedings consistent with this  
417 opinion.

#### 418 **Factual and Procedural Background**

##### 419 **A. The Complaint**

420 Troxel alleges that appellees maintained "extremely dangerous conditions at Defendant Iguana's premises  
421 which put patrons of Defendant Iguana at risk of physical harm." Troxel further asserts that "Plaintiff would not have  
422 suffered the [484] beating he experienced on September 25-26, 2008" if it were not for "Defendant Iguana's failure  
423 to provide security for protection of its customers and its failure to use reasonable efforts to control its patrons . . . ."  
424 Troxel concludes that "Defendants breached the duty of care that they owed to patrons of Defendant Iguana, and  
425 that breach of duty by the Defendant is a substantial and proximate cause of the injuries and damages that Plaintiff  
426 suffered at the Iguana Cantina in the early morning of September 26, 2008."

##### 427 **B. The Incident at Iguana Cantina on the Morning of September 26, 2008**

428 The physical altercation that gave rise to this lawsuit occurred on the morning of September 26, 2008 at  
429 Iguana Cantina. At the time, the club was owned and operated by Iguana Cantina, LLC and under a lease with  
430 Lockwood Associates, LLC. Timothy S. Bennett was the general manager of the nightclub.

431 Every Thursday night, including the night of this altercation, Iguana Cantina hosted a "college night"  
432 promotion that permitted adults between the ages of 18 and 21 to attend the nightclub. Troxel, 20 years old at the

433 time, attended that evening, arriving at approximately 10:00 pm on September 25, 2008. At approximately 12:30 am  
434 on the following morning, he was involved in an altercation with several unidentified males on the dance floor.  
435 Troxel has no recollection of the incident, but he alleges, based on deposition testimony from other patrons at the  
436 bar, that three or more young males punched and beat him to the floor and continued kicking him into  
437 unconsciousness. When Iguana Cantina security personnel saw Troxel's body on the floor, they carried him out of  
438 the club.

439 Appellees present a different version of the altercation. Appellees assert that the physical altercation  
440 started because "Troxel, intoxicated and apparently unprovoked, pushed a woman named Marie Zoscak to the  
441 ground in the area of the dance floor." Appellees contend that Troxel was only punched once or twice and kicked  
442 several times while on the ground. [485] The altercation, according to appellees, lasted no more than a minute.

443 In either scenario, it is undisputed that Baltimore City police stationed outside Iguana Cantina soon came to  
444 Troxel's aid and called for an emergency medical team. Troxel was initially treated at Harbor Hospital but was soon  
445 transferred to the University of Maryland Shock Trauma Center. Troxel alleges that, as a result of the beating, he  
446 suffers from permanent physical and neurological injuries.

#### 447 **C. Iguana Cantina's "College Night" Promotion and its Relation to Violence**

448 In order to establish a potential duty on behalf of Iguana Cantina to protect him against violence, Troxel  
449 scrutinizes the "college nights" that were hosted by Iguana Cantina. On these "college nights," which were first held  
450 at least as early as May 2005, patrons were charged a flat fee of \$12 to enter the club. Anyone 21 years of age or  
451 older was given a red cup and a wrist band, and anyone under 21 years of age was given a clear cup. The flat fee  
452 gave those patrons with red cups and wrist bands access to alcoholic beverages and unlimited refills from the bar.  
453 Patrons with clear cups were entitled to unlimited non-alcoholic drinks.

454 Before the night of September 25, 2008, Iguana Cantina had a history of violent incidents occurring within  
455 its premises. According to records from the Baltimore Police Department, in 2006, there were reports of eight  
456 aggravated assaults, one robbery and one potential rape, all of which occurred within the premises of Iguana  
457 Cantina. In 2007, Iguana Cantina saw a sharp decline in reports of violent incidents within its premises (only two  
458 incidents were reported). This decrease in reported violence corresponded with a promise made by David Adams —  
459 a representative of Iguana Cantina who described his duties as training the security staff and coordinating with the  
460 police department on security measures — to the Board of Liquor License Commissioners for Baltimore City (the  
461 "Baltimore City Liquor Board") that it would no longer hold "college night" promotions as of August 17, 2006 [486].  
462 Iguana Cantina did indeed suspend its "college night" promotions for a period of time following August 17, 2006.  
463 This hiatus was brief, however, and Iguana Cantina resumed the "college night" promotions by the end of 2007.  
464 Around the same time, instances of reported violence at Iguana Cantina increased. During the twelve months  
465 preceding the beating of Troxel in September 2008, police reports documented four aggravated assaults, one  
466 robbery, one assault on a police officer, and one incident where a police officer was required to use his taser to  
467 subdue a suspect. Again, all of these incidents occurred within the premises of Iguana Cantina.

468 In addition to police reports, Troxel introduced evidence of violence at Iguana Cantina through affidavits and  
469 deposition testimony. Zachary Belcher, a former Iguana Cantina security guard who worked at the nightclub  
470 from March 2005 through June 2008, said in his affidavit that in his experience as a security guard at Iguana  
471 Cantina:

472 More incidents of violence occurred . . . on college nights because of the large crowds and the larger  
473 [numbers] of underage patrons who were present and who were obtaining alcoholic beverages while in  
474 Iguana. The result was more intoxicated young people who started fights and got ejected, and it was  
475 common knowledge among the security guards and Iguana's management that there was more violence  
476 in Iguana on college nights. My own experience was that on college nights there was never less than one  
477 fight per night, and I experienced up to five fights per night on college nights.

478 According to Belcher, Timothy Bennet, the club's manager, arranged for the marketing of Iguana Cantina's 18-and-  
479 older "college night" promotions on local Baltimore-area college and university campuses. Belcher stated that,  
480 during those college-night promotions:

481 [A] lot of underage patrons were . . . able to obtain alcoholic beverages inside Iguana. Underage patrons  
482 got wrist bands from 21-year old and older patrons as they left the club. They would also steal wrist bands  
483 by slipping them [487] off the arms of older patrons in the darkness and confusion of the crowds. Some  
484 underage patrons simply drank alcohol out of older friend's cups or poured alcoholic beverages from the  
485 older patron's red cup into their clear cups. It was common knowledge among my fellow employees and  
486 Iguana Cantina's management that underage drinking was occurring on college nights.

487 Similarly, Iguana Cantina security guard Charles E. Shannon, Jr. testified at his deposition that there were probably  
488 more fights that occurred on a "college night" than any other weekend night because of the younger people  
489 drinking. Another bar employee, Joshua W. Jones, testified at his deposition that he would normally see one fight  
490 per night at Iguana Cantina.

491 **D. Iguana Cantina's History with the Baltimore City Liquor Board**

492 From time to time Iguana Cantina was cited for violations of Maryland's state liquor law. Troxel alleges that  
493 these violations are significant because they underscore the relationship between violence at Iguana Cantina and the  
494 occurrence of the club's "college nights." For example, on August 25, 2005, the Baltimore City Liquor Board heard  
495 charges brought against Iguana Cantina's liquor licensees accusing Iguana Cantina of allowing customers under 21  
496 years of age to consume or possess alcoholic beverages on Iguana Cantina's premises at its "college night"  
497 promotions. The Board found Iguana Cantina guilty and fined it \$2500 for two violations of a provision of Maryland's  
498 Alcoholic Beverages Article, namely *Md. Code Ann. Art. 2B § 12-108(d)*. The Board's decision was eventually  
499 appealed to this Court. We affirmed the Board's determination that Iguana Cantina permitted underage  
500 consumption of alcohol by failing to prevent it. *Adams v. Bd. of Liquor License Comm'rs*, Slip Op., No. 67, September  
501 Term, 2006.

502 On July 13, 2006, the Baltimore City Liquor Board again heard charges brought against the licensees of  
503 Iguana Cantina for once again violating section 12-108(d) by permitting persons [488] under 21 years of age to  
504 consume alcoholic beverages at its "college night." At the hearing, David Adams, a representative of Iguana Cantina  
505 involved in implementing Iguana Cantina's security measures, testified on behalf of the nightclub. Adams spoke  
506 about the security difficulties involved in mixing an 18 to 20 year old crowd with a 21 and older crowd. Adams stated  
507 that security personnel had to be very diligent in preventing persons under 21 years old from beating the system.  
508 Adams admitted that he had grown tired of people trying to "beat my system" and that Iguana Cantina would be  
509 abandoning the "college night" promotions. Adams said "we will be 21 and over. I can't take any more . . . Iguana  
510 Cantina will be 21 and over, with their ID procedures videotaped, and, hopefully, I'll never have to come back before  
511 the liquor board." The Board found Iguana Cantina guilty of violating § 12-108(d) but it only imposed a fine of  
512 \$1,000, with its Chairman, Mark S. Fosler, telling Iguana Cantina that: "We mitigated that fine based on the fact that  
513 the licensee has agreed to stop doing under-21 promotions and having under-21 consumers and patrons as of  
514 August 17th. And we're glad that that's going to happen." Despite the representation from Adams, Iguana Cantina  
515 resumed its "college night" promotion by the end of 2007.

516 **E. The Summary Judgment Proceeding**

517 On March 2, 2010, Iguana Cantina and Timothy Bennett filed a motion for summary judgment. The motion  
518 asserted that Troxel's theory of the case "is tantamount to imposing dram shop liability on the operators of  
519 nightclubs in Maryland" and that "[s]uch liability simply does not exist in the state of Maryland." As asserted by  
520 Iguana Cantina and Bennett, Troxel's argument must also fail because there was "no evidence empirical or otherwise  
521 presented that hosting college night promotions substantially increase[d] the risk of injuries to other patrons."  
522 Ultimately, the motion argued that "[t]he proximate cause of Plaintiff's injuries was not the fact that Defendant  
523 Iguana Cantina held a college night event on the evening of the occurrence and permitted entrance to the [489]  
524 nightclub by adults between the ages of eighteen and twenty-one, but the fact that several young men whose  
525 identities and ages are not known and whose consumption of alcohol is unknown assaulted the Plaintiff shortly after  
526 he shoved a young woman to the ground." As a result, as posited by Iguana Cantina and Bennett, "[t]hese  
527 Defendants have no responsibility for the conduct of the assailants" and "judgment as a matter of law must be  
528 entered in favor of Defendants . . ."

529 The circuit court conducted a hearing on the motion for summary judgment on May 10, 2010. On June 16,  
530 2010, the trial court issued a memorandum opinion and order granting appellees' motion for summary judgment.  
531 The court concluded that Troxel's claim was "clearly an attempt to assert 'Dram Shop' liability and no such duty of  
532 'Dram Shop' liability exists under Maryland law." In addition, the circuit court concluded that there was simply no  
533 evidence to support a legal duty, a breach of that duty, or causation. The circuit court stated:

534 Though the Plaintiff disagrees, the Defendants Iguana and Bennett could not have known in advance that  
535 their hosting of college night would result in a physical altercation involving the Plaintiff or any other  
536 patron. There is no evidence that the Defendants could have controlled this dangerous condition or  
537 situation. Certainly, the fight which occurred was simply not the type of event or occurrence that could  
538 have been reasonably foreseeable. There is no evidence that the unknown persons who assaulted the  
539 Plaintiff had been drinking or the assailants were under 21 years old. This also stands as a bald assertion  
540 by the Plaintiff.

541 Even in the light most favorable to the Plaintiff, there is nothing to support the contention that the  
542 Defendants owed the Plaintiff a duty.

543 \* \* \* \*

544 [490] Since there is no evidence that Defendants Iguana or Bennett breached any duty owed to Plaintiff  
545 James Troxel and there is no evidence that any such breach proximately caused Plaintiff Troxel's injuries,  
546 there can be no legal claim to sustain.

547 Troxel filed a timely notice of appeal to this Court.

548 \* \* \*

#### 549 Discussion

550 The primary issue in this case is whether appellees, as owners, proprietors and managers of Iguana Cantina,  
551 can be held liable for the injuries inflicted by unknown third parties against Troxel, a business-invitee of the  
552 nightclub. Troxel [491] argues that, if viewed in the correct light, this case is a premises liability claim and not a  
553 dram shop claim, and the determination of whether Iguana Cantina was negligent in this context should be  
554 submitted to the jury. Appellees' principal arguments are that Troxel's claim should be rejected because his  
555 "argument is tantamount to asserting that . . . dram shop liability should be imposed . . . in the state of Maryland"  
556 and that, even if Troxel could assert a valid cause of action, "his claims would fail because Appellant has not  
557 produced any evidence that this duty not to hold 'college nights' was a proximate cause of his injuries." We agree  
558 with Troxel. We discuss in three parts.

559 In Part I of our analysis we discuss the differences between dram shop liability and premises liability, and  
560 explain why this case should be analyzed in the latter context. In Part II, we break down the elements of a premises  
561 liability claim (duty, breach, proximate cause, injury) and determine whether Troxel has presented facts sufficient to  
562 survive a motion for summary judgment. Finally, in Part III, we address a peripheral argument of appellees, that this  
563 Court should not consider certain documents tending to show that Iguana Cantina had knowledge of prior violent  
564 incidents occurring within its premises.

#### 565 I. Dram Shop Liability v. Premises Liability

566 There are two distinct causes of action that a plaintiff can bring to impose liability on a business for injuries  
567 sustained on or off the establishment's premises: a dram shop liability claim and a premises liability claim. Dram  
568 shop liability provides relief to plaintiffs who are injured as a result of the establishment's sale of alcohol. This type  
569 of liability is not recognized as a valid cause of action in Maryland. *Felder v. Butler*, 292 Md. 174, 183-84, (1981);  
570 *Veytsman v. New York Palace, Inc.*, 170 Md. App. 104, 123, (2006). Premises liability provides relief to plaintiffs who  
571 are subjected to dangerous conditions on an establishment's premises. This type of liability is recognized in  
572 Maryland and it exists whether alcohol is involved or not. The distinction [492] between these two causes of action  
573 is critical in this case. We discuss each more fully.

574 A dram shop act is "[a] statute allowing a plaintiff to recover damages from a commercial seller of alcoholic  
575 beverages for the plaintiff's injuries caused by a customer's intoxication." *Black's Law Dictionary* 531 (8th ed. 2007).  
576 More specifically:

577 Dram shop acts are a departure from the common law rule that the act of drinking, and not the service of  
578 liquor, was the cause of any resulting injury. Under a dram shop act, a person injured by an adult who was  
579 served while intoxicated, or by a minor who was served alcohol, whether intoxicated or not, has a cause  
580 of action against the tavern that served the alcohol.

581 \* \* \* \*

582 The stated purpose behind many dram shop acts is to provide innocent parties with a cause of action  
583 against those persons who are in the best position to prevent the tortfeasor's intoxication, namely, the  
584 providers of the alcohol. By placing the burden of economic loss on the vendors of alcohol, the dram shop  
585 act provides an extremely effective incentive for those vendors to do everything in their power to avoid  
586 making illegal sales, and at the same time it [493] provides a remedy to members of the public who are  
587 injured as a result of illegal liquor sales.

588 *James F. Mosher, 1 Liquor Law Liability* § 2.01 at 2-2 and 2-3 (2010). Dram shop liability, then, holds tavern keepers  
589 liable for personal injuries based on the tavern keeper's illegal *sale* of intoxicating liquor. Potential liability attaches  
590 once the illegal transaction is made and the alcohol changes hands. Generally, a statutory dram shop cause of action  
591 requires: (1) a server of intoxicating beverages; (2) a recipient of alcohol who is either an intoxicated person or a  
592 minor; and (3) an injury which is proximately caused by the intoxication. *Id.*

593 The second type of claim that a plaintiff can bring against a business owner is a premises liability claim. This  
594 cause of action is based on common law principles of negligence and derives from an establishment's lack of

595 supervision, care, or control of the premises. Restatement (Second) of Torts § 344 (1965). "The rule today is usually  
596 generalized to include all landowners who open their land to the public for business and to require them to use  
597 reasonable care even to protect against criminal acts of third persons." Dan B. Dobbs, 2 The Law of Torts § 324 at  
598 876 (2001). Under this type of theory, a tavern owner will have a duty to protect his patrons, and thus be liable for  
599 negligence, if: "(1) the [owner] controlled [a] dangerous or defective condition; (2) the [owner] had knowledge or  
600 should have had knowledge of the injury causing condition; and (3) the harm suffered was a foreseeable result of  
601 that condition." *Veytsman*, 170 Md. App. at 116 (quoting *Hemmings*, 375 Md. at 537).

602 The distinction between a dram shop claim and a premises liability claim was considered by the Supreme  
603 Court of Delaware in *Diossi v. Maroney*, 548 A.2d 1361 (1988). The plaintiff, an employee of a parking valet service,  
604 was struck by an automobile operated by an intoxicated guest at a debutante party hosted at the defendants' home.  
605 "[T]he plaintiff, in resisting summary judgment, argued that his claim against the [defendants] was not based merely  
606 on the illegal provision of alcoholic beverages to minors but on the [defendants'] [494] failure to protect him from a  
607 dangerous condition on their property." *Id.* at 1363. The trial court granted defendants' motion for summary  
608 judgment, concluding that "there is no cause of action against a person who serves alcoholic beverages to another  
609 who thereafter commits a tort." *Id.* The Supreme Court of Delaware reversed. While the Supreme Court agreed with  
610 the trial court that "intoxication appears to be a contributing cause to the personal injuries which are alleged," and  
611 that "a private right of action premised upon 'Dram Shop' principles should not be judicially created" in Delaware,  
612 the Supreme Court stated that this does not "foreclose[] the liability of everyone who serves alcohol to an  
613 intoxicated person." *Id.* at 1364. "Under settled Delaware law, the [defendants] owed the plaintiff a duty to exercise  
614 reasonable care to protect him from foreseeable dangers that he might encounter while on the premises." The  
615 Supreme Court reasoned as follows:

616 The facts of this case permit [a theory of liability] which arises from the common law duty of a property  
617 owner to a business invitee. In our view, the focus of liability in this case is on the exposure of a business  
618 invitee to a dangerous activity which the property owner permitted to exist on his land. The fact that the  
619 activity arose out of the furnishing of intoxicating liquor does not preclude the fixing of liability,  
620 notwithstanding the limitation of such claims against commercial dispensers. *Id.* at 1365.

621 In his amended complaint, Troxel asserts a premises liability claim. The complaint alleges (1) that appellees  
622 "retained control" of "the extremely dangerous conditions at Defendant Iguana's premises," (2) that appellees were  
623 "on notice of Defendant Iguana's entertainment-tavern business model and its reliance on 18 to 21 year old 'college-  
624 night' promotions, and the danger that business model posed for patrons of Defendant Iguana," and (3) that "the  
625 damages [Troxel] suffered . . . were entirely foreseeable." As a matter of law, this type of claim may attach  
626 regardless of whether the assailants purchased or consumed alcohol on appellees' premises. [495] The gravamen of  
627 the cause of action is that the injury resulted from appellees' failure to protect patrons from a dangerous condition,  
628 and not from the furnishing of alcohol. Indeed, in Maryland, cases that involve an injury to a business invitee on the  
629 premises of a restaurant, hotel, or bar are routinely analyzed in the premises liability context. See *Veytsman*, 170  
630 Md. App. 104, 123, 906 A.2d 1028 (2006); *Corinaldi v. Columbia Courtyard, Inc.*, 162 Md. App. 207, 218, 873 A.2d 483  
631 (2005); *Moore v. Jimel, Inc.*, 147 Md. App. 336, 809 A.2d 10 (2002). Appellees are incorrect to characterize Troxel's  
632 claim as an assertion of dram shop liability. The circuit court in this case should have analyzed these facts using a  
633 premises liability framework.

## 634 **II. The Negligence Claim**

635 We now turn to whether Troxel presented sufficient evidence, when construing the facts and reasonable  
636 inferences drawn from the facts in the light most favorable to Troxel, to sustain a premises liability negligence claim.  
637 A properly pleaded claim of negligence includes four elements. The plaintiff must show: (1) that the defendant was  
638 under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the defendant's  
639 breach of the duty proximately caused the loss or injury suffered by the plaintiff, and (4) that the plaintiff suffered  
640 actual loss or injury.<sup>3</sup> *Corinaldi*, 162 Md. App. at 218. "Whether a plaintiff has presented sufficient evidence of the  
641 elements of negligence is generally a question for the fact finder, but the existence of a legal duty is a question of  
642 law to be decided by the court." *Id.* We must first determine as a matter of law whether Iguana Cantina owed a duty  
643 to Troxel. If a duty exists, we must then decide whether Troxel presented sufficient factual evidence on his  
644 negligence claim to survive a motion for summary judgment.

### 645 **[496] A. Duty**

646 Duty in a negligence claim is an obligation to conform to a particular standard of conduct toward another.  
647 *Veytsman*, 170 Md. App. at 113. The duty may arise from a "special relationship" between the parties. *Id.* at 114. A  
648 special relationship between a business owner and patron, giving rise to a duty to exercise due care to protect the

649 patron, generally arises when three circumstances are present: "(1) the owner controlled [a] dangerous or defective  
650 condition; (2) the owner had knowledge or should have had knowledge of the injury causing condition; and (3) the  
651 harm suffered was a foreseeable result of that condition." *Id.* at 115-16. The trial court in this case decided that  
652 "there is nothing to support the contention that the Defendants owed the Plaintiff a duty." We disagree.

653 The landmark decision in Maryland on whether a duty exists in a premises liability case is set out in *Scott v.*  
654 *Watson*, 278 Md. 160, 359 A.2d 548 (1976). Scott was shot and killed by an unknown assailant in the underground  
655 parking garage in his apartment building. *Id.* at 162. In the months immediately preceding Scott's death, records  
656 from the Baltimore City Police Department indicated that numerous violent incidents were reported to have been  
657 committed on or near the apartment premises. *Id.* at 164. Scott's estate brought a wrongful death action against the  
658 apartment complex claiming that it "had breached a duty owed to Scott as one of [its] tenants to protect him from  
659 criminal acts of third parties committed in common areas within [its] control, and that the breach of duty  
660 proximately caused Scott's death." *Id.* at 161. The Court of Appeals, called upon to answer several questions certified  
661 to it by the United States District Court of Maryland, stated that, as a general rule, "[i]f the landlord knows, or should  
662 know, of criminal activity against persons or property in the common areas, he then has a duty to take *reasonable*  
663 measures, in view of the existing circumstances, to eliminate the conditions [497] contributing to the criminal  
664 activity." *Id.* at 169 (emphasis in original).

665 In *Corinaldi*, 162 Md. App. 207, 873 A.2d 483, we discussed the teachings of *Scott* in setting out three  
666 general theories on which a landowner may be held liable when someone is injured by third party criminal activities  
667 on the premises. Under the first theory, a duty is imposed on the landowner to eliminate conditions that contribute  
668 to criminal activity if the landowner had prior knowledge of *similar criminal activity* — evidenced by past events —  
669 occurring on the premises. *Id.* at 223. In the second scenario, a duty is imposed on the landowner to prevent criminal  
670 conduct of a specific assailant if the landowner is aware of the violent tendencies of *that particular assailant*. *Id.* at  
671 224. The third category involves the imposition of a duty on a landowner if the landowner had knowledge of events  
672 *occurring immediately before* the actual criminal activity that made imminent harm foreseeable. *Id.*

673 Troxel asserts that the facts of this case fit into the first of the three categories discussed in *Corinaldi*.  
674 Indeed, in this case, like the first category of landowner liability depicted in *Corinaldi*, "[t]he asserted duty [is] based  
675 on knowledge of prior similar incidents" and "the plaintiff's claim [is] based on an asserted duty to eliminate  
676 conditions that contributed to the criminal activity, such as providing security personnel, lighting, locks, and the  
677 like." *Id.* at 223.

678 A similar factual scenario — where a plaintiff attempted to hold a bar liable for criminal activity that  
679 occurred on the premises (again, the first of the three categories discussed in *Corinaldi*) — was before this Court in  
680 *Moore v. Jimel, Inc.*, 147 Md. App. 336, 809 A.2d 10 (2002). That case involved a woman who was assaulted in the  
681 restroom of a bar in the Fells Point neighborhood of Baltimore City. *Id.* at 337. The woman sued the bar for  
682 "negligently having failed to provide the security owed to her as a business invitee." *Id.* The Court reiterated the rule  
683 set out in *Scott*, that "when it can be illustrated that the landlord had knowledge of increased [498] criminal activity  
684 on the premises, a duty is imposed on the landlord to undertake reasonable measures to keep the premises secure."  
685 *Id.* at 348. In *Moore*, however, the woman failed to produce any evidence of prior criminal activity. The Court  
686 concluded that "[b]ecause there was no evidence of any prior crime having been committed against a customer on  
687 the premises, there was no foreseeability of risk so as to create a special duty in that regard." *Id.* at 349. The Court  
688 affirmed the granting of summary judgment in favor of the bar owner. *Id.*

689 Viewing the record as a whole and giving Troxel the benefit of inferences that can be reasonably drawn  
690 from the facts presented, the evidence of prior violence that was missing in *Moore* is present in this case. In 2006,  
691 the Baltimore Police Department reported eight aggravated assaults, one robbery and one potential rape that  
692 occurred within the premises of Iguana Cantina. During the twelve months leading up to September 2008, the  
693 Baltimore Police Department again reported four aggravated assaults, one robbery, and two assaults on police  
694 officers, all occurring inside Iguana Cantina. Zachary Belcher, a former Iguana Cantina security guard who worked at  
695 the nightclub from March 2005 through June 2008, stated in an affidavit that in his experience as a security guard at  
696 Iguana Cantina, he "experienced up to five fights per night on college nights." Another Iguana Cantina security guard,  
697 Charles E. Shannon, Jr., testified at his deposition that there were probably more fights that occurred on a "college  
698 night" than any other night.

699 A fact finder could reasonably infer from this evidence that appellees knew or should have known about a  
700 dangerous condition within its premises and therefore had an obligation to take reasonable steps to eliminate the  
701 dangerous condition under its control. Iguana Cantina, under the first theory of recovery outlined in *Corinaldi*, had a

702 legal duty to take reasonable measures to provide a safe environment for its patrons because of the history of  
703 violent incidents that occurred [499] on its premises in the years and months leading up to September 25, 2008.

704 This result is not unique to Maryland. A plethora of federal and state cases have found tavern keepers liable  
705 for personal injuries inflicted on patrons by the intentional acts of third persons on or about the premises. See  
706 *generally* Teshima, *supra*, 43 A.L.R. 4th 281 (collecting cases in which the plaintiffs brought their lawsuits as premises  
707 liability claims instead of — or, in addition to — dram shop claims). In most cases, courts impose a duty only when  
708 dangerous conditions or violent actions are deemed reasonably foreseeable. For example, if a club owner generally  
709 tolerates disorderly conduct or fails to provide adequate staff to police the premises, courts often view violent  
710 attacks as foreseeable results of inherently dangerous environments. See, e.g. *Allen v. Babrab, Inc.*, 438 So. 2d 356,  
711 357 (Fla. 1983) (toleration of disorderly conduct); *Stevens v. Jefferson*, 436 So. 2d 33, 35 (Fla. 1983) (same); *Hall v.*  
712 *Billy Jack's, Inc.*, 458 So. 2d 760 (Fla. 1984) (inadequate security measures); *Mata v. Mata*, 105 Cal. App. 4th 1121,  
713 130 Cal. Rptr. 2d 141 (Cal. Ct. App. 2003) (same). The tavern owner, as the person or entity in the best position to  
714 prevent violence on a day to day basis, is charged with a legal duty to take reasonable steps to ensure the safety of  
715 its patrons.

716 Two cases from other jurisdictions are particularly instructive on this point because of their factual  
717 similarities to our case. In *Loomis v. Granny's Rocker Nite Club*, 250 Ill. App. 3d 753, 620 N.E.2d 664, 189 Ill. Dec. 696  
718 (Ill. App. Ct. 1993), the plaintiff, a 19 year old male, was assaulted at a bar and sued the nightclub for negligently  
719 failing to provide adequate security to prevent the assault. *Id.* at 665. The assault occurred during the nightclub's  
720 weekly Wednesday night "fanny" contest, "which involves male and female volunteer contestants competing for  
721 cash prizes by dancing on the dance floor." *Id.* The fanny contest drew a rowdy crowd and many believed that  
722 underage drinking contributed to the rowdiness. *Id.* at 668. Evidence was presented that, given the large crowd,  
723 access to security personnel was difficult. *Id.* Loomis's claim against the nightclub [500] had two counts: a dram  
724 shop liability count and a negligence count. *Id.* at 665. The jury found for the nightclub on the dram shop count, but  
725 it found that the nightclub "was negligent in failing to have adequate security to stop a physical altercation on the  
726 nights of the fanny contests when it knew or should have known that such contests would result in a large and  
727 rowdy group of patrons." *Id.*

728 On appeal, the nightclub challenged (1) the trial court's determination that the nightclub owed a duty to  
729 protect Loomis from an assault by a third party and (2) whether the jury's verdict was manifestly against the weight  
730 of the evidence. *Id.* at 668. The Illinois appellate court affirmed the judgment of the circuit court. In upholding the  
731 trial court's imposition of a duty, the appellate court stated that "evidence was presented that the altercation was  
732 reasonably foreseeable by [the nightclub] and that defendant could have prevented it or could have at least  
733 interfered in the altercation prior to Loomis sustaining the injuries . . ." *Id.* The appellate court also found sufficient  
734 evidence in the record to uphold the jury's verdict that the defendant should be held liable for negligence. *Id.*

735 In *Hall v. Billy Jack's, Inc.*, the plaintiff was hit over the head with a pool cue by another patron in the  
736 parking lot of Billy Jack's Lounge. 458 So. 2d at 761. Hall sought damages against Billy Jack's for the assault on a  
737 negligence theory (Hall did not pursue a dram shop liability claim). *Id.* The jury awarded damages but the  
738 intermediate appellate court reversed, holding that no evidence supported a finding that Billy Jack's knew or should  
739 have known that Hall would be attacked without provocation. *Id.* The Supreme Court of Florida reversed, stating  
740 that although "a tavern owner is not required to protect the patron from every conceivable risk," the tavern owner  
741 owes "a duty to protect against those risks which are reasonably foreseeable." *Id.* The Court explained that  
742 "[f]oreseeability may be established by proving that a proprietor had actual or constructive knowledge of a  
743 particular assailant's inclination toward violence or by proving that the proprietor [501] had actual or constructive  
744 knowledge of a dangerous condition on his premises that was likely to cause harm to a patron." *Id.* The Court  
745 continued: "A dangerous condition may be indicated if, according to past experience (i.e. reputation of the tavern),  
746 there is a likelihood of disorderly conduct by third persons in general which might endanger the safety of patrons or  
747 if security staffing is inadequate." *Id.* at 762. The Florida Supreme Court remanded the case to the lower court on the  
748 foreseeability question, i.e., to determine whether Billy Jack's knew or should have known of a risk of harm that  
749 existed on its premises. *Id.*

750 The analyses of *Loomis* and *Hall* are consistent with those of *Scott*, *Moore* and *Corinaldi*. The circuit court  
751 erred when it concluded that Iguana Cantina did not owe a duty to Troxel.

## 752 **B. Breach**

753 A duty is breached when a person or entity fails to conform to an appropriate standard of care and, in doing  
754 so, fails to protect third persons against unreasonable risks. *B.N. v. K.K.*, 312 Md. 135, 141, 538 A.2d 1175 (1988). In  
755 *Todd v. Mass Transit Admin.*, 373 Md. 149, 816 A.2d 930 (2003), the Court of Appeals discussed the concept of a

756 breached duty of care in the context of third party criminal conduct. Todd sued the MTA for personal injuries that he  
757 sustained when he was attacked by other passengers on an MTA bus. *Id.* at 152. The circuit court granted summary  
758 judgment in favor of the MTA concluding that the MTA did not have a duty to take affirmative action to protect Todd  
759 from the attack. *Id.* at 154. The Court of Appeals reversed, concluding that "to determine, as a matter of law, that  
760 [the bus driver's] actions" ? i.e. pulling to the curb and pressing the bus's "panic button" four to five minutes after  
761 the assault commenced — "satisfied the required standard of care would be inappropriate." *Id.* at 166. The Court  
762 stated that a reasonable inference could be drawn that "had [the bus driver] stopped, pushed the panic button, and  
763 opened the bus doors immediately, the attackers could have fled at once." *Id.* at 169. The Court concluded that  
764 [502] "[w]hether [the bus driver's] failure to take this action before he did constituted a breach of MTA's duty of  
765 care is a question for the jury." *Id.*

766 Similarly, in this case, the evidence is sufficient to create a question for the fact finder as to whether Iguana  
767 Cantina breached its duty to Troxel. Fred Del Marva, an expert witness retained by Troxel, submitted an affidavit  
768 stating that he was professionally qualified to comment on the industry standards of care in serving alcoholic  
769 beverages to customers at nightclubs and to provide expert opinions on the causes and effects stemming from  
770 alcohol service. Del Marva stated that Iguana Cantina's "college night" promotions "created a substantial risk of  
771 injury to business-invitee patrons" and that "violent behavior such as brawls, beatings, and the like are the fully-  
772 expected consequence of underage alcoholic consumption in crowded night club environments."

773 Moreover, Del Marva stated that Iguana Cantina could have taken simple steps to minimize the risk of  
774 injury within its premises. Pertinent to our discussion, Del Marva commented that

775 [e]levated platforms, used by security, to monitor crowded dance floors is an effective crowd control  
776 method that should have been, but was not, implemented by Iguana Cantina, and Iguana Cantina's  
777 security personnel were not trained or stationed so that they could observe what was occurring in the  
778 mixed-age dancing crowds and react quickly to stop fights or acts of violence or to intervene to provide  
779 assistance in other events causing injury to Iguana Cantina's patrons.  
780

781 A fact finder could reasonably conclude that Iguana Cantina, given the history of criminal conduct occurring within  
782 its premises, breached its duty to provide adequate security to [503] protect its patrons from violent attacks. It is a  
783 reasonable inference that Iguana Cantina should have had more security guards patrolling the nightclub, or should  
784 have had security guards stationed in more strategic locations, or should have abandoned the "college night"  
785 promotion altogether. We conclude that whether Iguana Cantina's security measures constituted a breach is a  
786 question ripe for the fact finder.

### 787 C. Causation

788 In their brief, appellees argue that causation cannot be established because Troxel failed to present any  
789 evidence "that the patrons who assaulted him (1) were underage, (2) had consumed alcoholic beverages on  
790 Appellee Iguana Cantina's premises, (3) were, in fact, intoxicated and (4) assaulted him because they were  
791 intoxicated." However, in order for Troxel to prove causation in a premises liability context, he need not prove any of  
792 the four facts enumerated by appellees. Rather, Troxel must show that it was more likely than not that appellees'  
793 conduct was a substantial factor in producing his injuries and that his injuries were a foreseeable result of appellees'  
794 conduct. *Pittway Corp. v. Collins*, 409 Md. 218, 244, 246, 973 A.2d 771 (2009). The proper focus in a premises liability  
795 claim — as much as appellees try to shift [504] the conversation — is on the acts and omissions of the landowner,  
796 not the individual assailant. Thus, we turn to a consideration of whether a jury could reasonably conclude that  
797 Iguana Cantina's acts or omissions proximately caused Troxel's injuries.

798 It is a basic principle that "[n]egligence is not actionable unless it is a proximate cause of the harm alleged."  
799 *Pittway*, 409 Md. at 243. "To be a proximate cause for an injury, 'the negligence must be 1) a cause in fact, and 2) a  
800 legally cognizable cause.'" *Id.* at 243. Causation-in-fact concerns the threshold inquiry of whether a defendant's  
801 conduct actually produced an injury. *Pittway*, 409 Md. at 244. Where it is possible that two or more independent  
802 negligent acts brought about the injury, we use the substantial factor test. *Id.* Under this [505] test, causation-in-  
803 fact may be found if it is more likely than not that the defendant's conduct was a substantial factor in producing the  
804 plaintiff's injuries. *Id.*; *Restatement (Second) of Torts* § 431 (1965).

805 Once causation-in-fact is established, "the proximate cause inquiry turns to whether the defendant's  
806 negligent actions constitute a legally cognizable cause of the complainant's injuries." *Pittway*, 409 Md. at 245.

807 This part of the causation analysis requires us to consider whether the actual harm to a litigant falls within  
808 a general field of danger that the actor should have anticipated or expected. Legal causation is a policy-  
809 oriented doctrine designed to be a method for limiting liability after cause-in-fact has been established.



810 The question of legal causation most often involves a determination of whether the injuries were a  
811 foreseeable result of the negligent conduct.

812 *Id.* at 245-46 (internal citations omitted). Moreover, injuries that result from a highly extraordinary event will not be  
813 deemed foreseeable; in such a case, a court may declare the intervening force to be a superseding cause of the  
814 plaintiff's injuries. *Id.* at 247; *Restatement (Second) of Torts* § 435(2) cmt. c (1965). To determine whether an event is  
815 a superseding cause, we consider both the foreseeability of the harm suffered by the plaintiffs as well as the  
816 foreseeability of any potential intervening acts. *Pittway*, 409 Md. at 253.

817 Thus, whereas the causation-in-fact analysis is guided by the substantial factor test, the legal causation  
818 analysis is grounded in foreseeability. *Id.* at 252. In either case, "[i]t is well established that, unless the facts admit of  
819 but one inference . . . the determination of proximate cause . . . is for the jury." *Id.* at 253 (citations and quotations  
820 omitted). Only in cases where reasoning minds cannot differ does proximate cause become a question of law. *Id.*  
821 In *Griffith v. Southland Corp.*, 94 Md. App. 242, 617 A.2d 598 (1992), *aff'd on other grounds*, 332 Md. 704, 633 A.2d  
822 84 [506] (1993), "an off-duty police officer became the victim of a savage beating while attempting to restore order  
823 on the premises of a 7-11 store owned by the appellee, The Southland Corporation." *Id.* at 245. Under Griffith's  
824 version of the facts, the clerk behind the counter at the 7-11 twice refused to summon assistance by calling 911 and  
825 only on the third occasion after Griffith's son dialed 911 did she assist by giving the operator the store's address. *Id.*  
826 at 247. "About two minutes later, a county police car arrived; appellant was then lying on the ground and the three  
827 assailants were attempting to leave the 7-11 parking lot in their vehicle. The entire episode occurred over a period of  
828 about seven minutes." *Id.* at 247-48. The trial court issued summary judgment on behalf of The Southland  
829 Corporation. *Id.* at 248.

830 This Court reversed the judgment of the trial court and concluded that the Southland Corporation could be  
831 liable for its employee's failure to summon assistance. We concluded that the employee's "refusal to act was an  
832 event in the nature of a 'hidden danger.'" *Id.* at 253. On the issue of proximate cause, this Court rejected appellee's  
833 argument "that Griffith's injuries were suffered at the hands of the three teens whose conduct was an independent  
834 superseding cause." *Id.* at 250. We stated that "[n]egligence which constitutes a proximate cause of an injury need  
835 not necessarily be the sole cause" and that "proximate cause . . . is an issue to be decided at trial by the trier of fact."  
836 *Id.* Upon remand, we concluded that it should be determined "whether Southland's employee did, indeed,  
837 telephone the police when requested to do so and whether, if the employee did not make the call, that failure was  
838 the proximate cause of Griffith's injuries." *Id.* at 246.

839 \* \* \*

840 The analysis used in *Griffith* \*\*\* applies to this case. Here, on the issue of cause-in-fact, a jury could  
841 reasonably conclude that Iguana Cantina's failure to provide adequate security was a substantial factor in bringing  
842 about Troxel's [509] injuries. Reasoning minds could disagree on whether Troxel's injuries could have been  
843 prevented if appellees provided safer security measures, i.e., more security guards, more strategically placed  
844 security stations, or more adequately trained security personnel. Certainly, that the harm was brought about by  
845 unknown assailants does not, by itself, relieve appellees of liability. This was the exact type of risk that Iguana  
846 Cantina was charged with a duty to protect against. Thus, contrary to appellees' assertions, they cannot be relieved  
847 from liability for Troxel's injuries simply because he was attacked by unknown patrons.

848 On the question of legal causation, when viewing all facts, and all reasonable inferences drawn from the  
849 facts, in a light most favorable to Troxel, the evidence suggests that his injuries were the foreseeable result of a  
850 typical night at Iguana Cantina. It was foreseeable from the previous incidents of violence that a large, rowdy crowd  
851 might accumulate in Iguana Cantina; that a physical altercation might occur on the dance floor; that it might be  
852 difficult to detect a physical altercation without certain security measures in place; and that a person like Troxel  
853 might suffer a physical injury as a result of violence inflicted by third persons at the nightclub. A jury could  
854 reasonably conclude that these college nights facilitated such an environment of disorder and violence that the  
855 injuries sustained by Troxel were foreseeable.

856 This causation analysis is consistent with the decisions in *Scott v. Watson*, 278 Md. 160, 359 A.2d 548  
857 (1976), and *Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship*, 375 Md. 522, 534-35, 826 A.2d 443 (2003). In each  
858 case, the Court of Appeals relied on Section 448 of the *Restatement (Second) of Torts* (1965), which reads as follows:

859 The act of a third person in committing an intentional tort or crime is a superseding cause of harm to  
860 another resulting therefrom, although the actor's negligent conduct created a situation which afforded an  
861 opportunity to the third person to commit such a tort or crime, *unless* the actor at the time of his  
862 negligent conduct *realized or should have realized the likelihood that such a situation might be created*,  
863 and that a [510] third person *might avail himself of the opportunity to commit such a tort or crime*.

864 *Restatement (Second) of Torts* § 448 (1965) (emphasis added); *Scott*, 278 Md. at 172-73; *Hemmings*, 375 Md. at 559-  
865 60. The Court of Appeals in *Scott* concluded that allowing "the landlord's negligence to be a proximate cause of the  
866 plaintiff's injury," as imagined by § 448 of the Restatement, "would seem to be a fair solution of the causation  
867 problem in this context." *Scott*, 278 Md at 172-73. As interpreted by the *Scott* Court, under § 448 of the  
868 Restatement, a breach of duty by the defendant will result in his liability in the third party criminal activity context  
869 only if the conduct was foreseeable and "the breach enhanced the likelihood of the particular criminal activity which  
870 occurred." *Id.* at 173.

871 In light of the facts before it, the circuit court erred in determining — on a motion for summary judgment —  
872 whether Troxel's injuries were proximately caused by appellees' failure to maintain a safe premises.  
873 Based on the above discussion of duty, breach and proximate cause (and noting that both parties agree that Troxel  
874 has indeed suffered significant injury), we conclude that Troxel's negligence claim should have survived a motion for  
875 summary judgment.

### 876 **III. The Admissibility of Evidence of Prior Dangerous Incidents at Iguana Cantina**

877 Appellees argue that Troxel "relies on mostly inadmissible and misleading documents in attempt[ing] to  
878 fashion an argument that numerous violent and criminal incidents occurred at Iguana Cantina." Specifically,  
879 appellees are concerned about "a listing of 'incidents' prepared by an unknown individual, Baltimore City Crime  
880 Maps, Calls for Service reports, incident reports, a newspaper article, and an e-mail." *Id.* Appellees argue that "such  
881 documents should not be considered on appeal" because "[n]one of these documents were supported by affidavit or  
882 deposition testimony or were authenticated by, or testified about, by any witnesses, particularly, [511] by anyone  
883 employed by the Baltimore City Police Department." *Id.*

884 Ordinarily, an appellate court should review a grant of summary judgment only on the grounds relied upon  
885 by the trial court. *Blades v. Woods*, 338 Md. 475, 478, 659 A.2d 872 (1995). Likewise, if issues are presented to the  
886 trial court, but not decided by the trial judge, the issues generally cannot be raised on appeal. *Burdette v. LaScola*, 40  
887 Md. App. 720, 733, 395 A.2d 169 (1978). We may nevertheless exercise our discretion, pursuant to Rule 8-131(a), to  
888 consider a matter not addressed by the trial court if doing so would aid the trial court on remand or prevent another  
889 appeal. *Montgomery County Bd. of Educ. v. Horace Mann Ins. Co.*, 154 Md. App. 502, 518-19, 840 A.2d 220 (2003).

890 Here, the trial court did not rule on the admissibility or relevancy of the documents, nor did it base any  
891 portion of its decision, oral or written, on a finding that the documents could not be considered. No action by the  
892 parties or by the trial court has stricken the documents from the record. We see no compelling reason to abide by  
893 appellees' request. Even if we wanted to follow appellees' instruction to ignore certain documents in the record, we  
894 would not know which documents to ignore; appellees have failed to object to specific exhibits in the record or  
895 provide specific reasons for their objections. The burden does not rest on this Court to go through the record, item  
896 by item, to determine which sections of which documents are admissible and which are not. Accordingly, we have  
897 considered the full record that was presented to the circuit court.

898 **[512] THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS VACATED AND THE CASE REMANDED TO IT**  
899 **FOR FURTHER PROCEEDINGS CONSISTENT WITH THE OPINION.**

900

901 Harrison v. Montgomery County Bd. of Education, 295 Md. 442

902 Court of Appeals of Maryland

903 March 2, 1983, Decided

904 No. 17, September Term, 1982

905

906 Judges: Murphy, C. J., and Smith, Eldridge, Cole, Davidson and Rodowsky, JJ., and W. Albert Menchine, Associate

907 Judge of the Court of Special Appeals retired, specially assigned. Murphy, C. J., delivered the opinion of the Court.

908 Davidson, J., dissents and filed a dissenting opinion at page 463, *infra*.

909 Opinion by: MURPHY

### 910 **OPINION**

911 **[444]** The issue in this case is whether the common law doctrine of contributory negligence should be judicially  
912 abrogated in Maryland and the doctrine of comparative negligence adopted in its place as the rule governing trial of  
913 negligence actions in this State.

914 I.

915 On April 26, 1978, Michael Harrison, fourteen years old and an eighth-grade student at Gaithersburg Junior  
916 High School in Montgomery County, attended a required physical education class. Since the weather was bad, the  
917 class was held in the school gymnasium, with approximately sixty-three children participating in a "free exercise"

918 day. The teachers allowed the students to use any of several pieces of athletic equipment in the gym. Along with  
919 several other students, Michael practiced tumbling maneuvers on a crash pad (a cushion six to eight inches thick)  
920 located at the end of a wrestling mat. On the last of several attempts to complete a running front flip, Michael  
921 apparently lost control and was severely and permanently injured when he landed on his neck and shoulders. As a  
922 result of his injuries, [445] Michael is now a quadriplegic who requires constant supervision and attention.

923 Michael's mother, for herself and on Michael's behalf, filed suit in the Circuit Court for Montgomery County  
924 against the Montgomery County Board of Education and the three gym teachers present when the accident  
925 occurred. The suit, in three counts, alleged negligence on the part of all defendants in allowing Michael to engage in  
926 a dangerous activity without proper supervision; in failing to properly train Michael before permitting him to engage  
927 in the dangerous activity; and in failing to provide proper equipment to protect Michael while he engaged in the  
928 dangerous activity. Negligence on the part of the Board in failing to properly train the defendant teachers was also  
929 alleged in another count of the declaration.

930 At the ensuing jury trial, the defendants relied, in part, upon the doctrine of contributory negligence as a  
931 complete defense to the plaintiffs' claim. The plaintiffs, on the other hand, sought jury instructions that the doctrine  
932 of comparative negligence, and not contributory negligence, should be applied. Specifically, the plaintiffs sought  
933 three instructions: (1) a "pure" comparative negligence instruction to the effect that if Michael was negligent, and  
934 his negligence was a cause of his injury, the jury "must diminish his damages in proportion to the amount of  
935 negligence attributable to him"; (2) a "modified" form of comparative negligence that if Michael's negligence "was  
936 not as great as defendants' negligence, [he] may still recover damages but his damages must be diminished in  
937 proportion to the amount of negligence attributable to him"; and (3) another "modified" form of comparative  
938 negligence that if Michael was only slightly negligent, and the negligence of the defendants was gross in comparison,  
939 Michael could still recover "but his damages must be diminished in proportion to the amount of negligence  
940 attributable to him."

941 The trial judge (John F. McAuliffe) rejected the plaintiffs' proposed comparative negligence instructions.  
942 Instead, he instructed the jury, in accordance with the established law of Maryland, that if Michael was  
943 contributorily negligent, it would be a complete bar to the plaintiffs' claim. Judge [446] McAuliffe defined  
944 contributory negligence as "the failure of a plaintiff to act with that degree of care which a reasonably prudent  
945 person would have exercised for his own safety under the same or similar circumstances." The jury returned a  
946 verdict in favor of all defendants and the plaintiffs appealed to the Court of Special Appeals. We granted certiorari  
947 prior to decision by the intermediate appellate court to consider the significant issue of public importance raised in  
948 the case.

949 II.

950 The plaintiffs argue that the doctrine of contributory negligence is outmoded, unfair, has no place in  
951 modern tort law and should be abandoned in favor of comparative negligence. They contend that application of the  
952 contributory negligence doctrine worked a substantial injustice in this case which involves permanent damage to  
953 Michael's spinal cord. They say that Michael has extensive paralysis and is totally dependent on others for all of his  
954 physical needs, his chances of improvement being all but nonexistent. They contend that the evidence of negligence  
955 on Michael's part was slight, at best. The plaintiffs suggest that in light of the substantial evidence of the defendants'  
956 negligence, it is unfair and unjust that Michael must bear the burden of this devastating injury by himself. The  
957 plaintiffs maintain that thirty-eight states, Puerto Rico, the Canal Zone, the Virgin Islands, Guam, and virtually every  
958 common law and civil law nation, including England, have abandoned contributory negligence and have adopted a  
959 rule that apportions damages on the basis of respective fault. They argue that contributory negligence is a judicially  
960 created rule in Maryland, which this Court is empowered to and should now change. They urge our understanding  
961 that the doctrine is not only harsh and unjust, but that in a legal system which rests on liability for fault, it is an  
962 anomaly that fault on the part of the plaintiff can completely relieve the defendant of all liability. In support of their  
963 position, the plaintiffs draw attention to the barrage of criticism levelled by the legal [447] commentators against  
964 the "all or nothing" extreme required by application of the contributory negligence rule. Virtually all of these  
965 scholarly writings, plaintiffs suggest, advocate abolition of contributory negligence as being a harsh and arbitrary  
966 rule, one contrary to the basic notion of tort law that liability must be determined by fault. According to the  
967 plaintiffs, most of the commentators advocate adoption of the "pure" form of comparative negligence which  
968 apportions losses on the basis of fault, with each party bearing the portion of the loss directly attributable to his  
969 conduct. They rely, in particular, upon two articles in Volume 41 of the Maryland Law Review (1982): E. Digges and  
970 R. Klein, *Comparative Fault in Maryland: The Time Has Come*, at 276-299 and K. Abraham, *Adopting Comparative*  
971 *Negligence: Some Thoughts for the Late Reformer*, at 300-315.

972 Additionally, the plaintiffs rely upon cases in eight states which have judicially abrogated the doctrine of  
973 contributory negligence in favor of the rule of comparative negligence. See *Kaatz v. State*, 540 P.2d 1037 (Alaska  
974 1975); *Li v. Yellow Cab Co.*, 13 Cal.3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1975); *Hoffman v. Jones*, 280 So.2d 431  
975 (Fla. 1973); *Alvis v. Ribar*, 85 Ill.2d 1, 421 N.E.2d 886 (1981); *Goetzman v. Wichern*, Iowa, 327 N.W.2d 742 (1982);  
976 *Placek v. City of Sterling Heights*, 405 Mich. 638, 275 N.W.2d 511 (1979); *Scott v. Rizzo*, 96 N.M. 682, 634 P.2d 1234  
977 (1981); *Bradley v. Appalachian Power Co.*, 256 S.E.2d 879 (W. Va. 1979). Of these jurisdictions, seven have adopted  
978 the "pure" form of comparative negligence which permits a plaintiff to recover the portion of his damages caused by  
979 the defendant's fault, even though the plaintiff's fault might exceed that of the defendant. As reported in the Digges  
980 & Klein article, five other states have adopted this form of comparative negligence by statute, as has the proposed,  
981 but not yet adopted, Uniform Comparative Fault Act promulgated in 1977 by the National Conference of  
982 Commissioners on Uniform State Laws. The "modified" form of comparative [448] negligence, adopted in twenty-  
983 seven states, permits the plaintiff to recover if his fault is relatively small in contrast with that of the defendant.

984 In urging our adoption of the "pure" form of comparative negligence, the plaintiffs say that it is the fairest  
985 of the comparative fault systems. They suggest that we align ourselves with those states which, by judicial decision,  
986 have abandoned contributory negligence and adopted pure comparative negligence principles. They argue that  
987 circumstances have changed drastically since we originally adopted the contributory negligence doctrine in 1847;  
988 that comparative negligence is preeminently "lawyer's law," with which the Court is better qualified to deal than is  
989 the legislature; and that legislative inaction should not be viewed as tantamount to rejection of the comparative  
990 negligence doctrine. Finally, the plaintiffs urge that we not adopt the doctrine of pure comparative negligence on a  
991 purely prospective basis. They contend that no considerations of basic fairness preclude affording retroactive effect  
992 to the newly accepted doctrine, and particularly so in Michael's case, which arose in 1978.

993 Proper consideration of the issue in this case necessitates a brief review of the origin, adoption and  
994 development of the doctrines of contributory and comparative negligence.

#### 995 [449]

##### 996 (A) *Contributory Negligence*

997 The first reported case in the development of this doctrine was *Butterfield v. Forrester*, 11 East 60, 103 Eng.  
998 Rep. 926 (1809). In that English case, Butterfield left a public inn at dusk, mounted his horse and rode off "violently"  
999 down the street. Forrester, who was effecting some repairs to his house, had placed a pole in the roadway. Although  
1000 Butterfield could have seen and avoided the obstruction, he did not and was injured. The court there noted:

1001 "One person being in fault will not dispense with another's using ordinary care for himself. Two things  
1002 must concur to support this action, an obstruction in the road by the fault of the defendant, and no want  
1003 of ordinary care to avoid it on the part of the plaintiff." *Id.* at 61, 103 Eng. Rep. at 927.

1004  
1005 That this new doctrine was enunciated without citation to authority has been attributed to the extension  
1006 into the newly developed negligence action of the older and well accepted proximate cause principle that one could  
1007 not recover for damages which he caused to himself. Turk, *Comparative Negligence on the March*, 28 Chi.-Kent L.  
1008 Rev. 189, 195-97 (1950). American courts were receptive to the doctrine of contributory negligence, beginning with  
1009 *Smith v. Smith*, 19 Mass. (2 Pick) 621 (1824). Acceptance thereafter was so swift and widespread that one court was  
1010 led to proclaim that contributory negligence had been the "rule from time immemorial, and it is not likely to be  
1011 changed in all time to come." *Penn. R. Co. v. Aspell*, 23 Pa. 147, 149, 62 Am. Dec. 323, 324 (1854).

1012 [450] Many reasons have been advanced for the doctrine's rapid acceptance in this country. One of the  
1013 strongest was a distrust of the supposedly plaintiff-minded jury in the early nineteenth century, and a corollary  
1014 desire to limit the liability of newly developing industry. Application of the doctrine permitted courts to take cases  
1015 from suspected plaintiff-oriented juries, or to at least limit the jury's discretion. <sup>5</sup> The doctrine was compatible with  
1016 several unwritten policies of the common law at the time, *i.e.*, (a) the view that courts should not assist a wrongdoer  
1017 who suffered an injury as a result of his own wrongdoing, and (b) a passion for a simple issue that could be  
1018 categorically answered yes or no, or at least reduced to finding a single, dominant, "proximate" cause of every  
1019 injury. <sup>6</sup> Additional justification for the rule was found in theories of proximate causation, punishment of the  
1020 negligent plaintiff, encouragement to comply with the community's standard of care, and the alleged inability of  
1021 juries to measure the amount of damage attributable to the plaintiff's own negligence. See, *e.g.*, W. Prosser,  
1022 *Handbook of the Law of Torts* at 417-18 (4th ed. 1971).

1023 Maryland adopted the doctrine of contributory negligence in 1847 in *Irwin v. Spriggs*, 6 Gill 200. As in most  
1024 other jurisdictions, the doctrine was modified in this State by adoption of the last clear chance doctrine. In *N.C.R.R.*  
1025 *Co. v. State, Use Price*, 29 Md. 420, 436 (1868), the Court held: "The mere negligence or want of ordinary caution on

1026 the part of the deceased . . . would not disentitle the plaintiff to recover . . . if the defendant might, by the exercise  
1027 of care on its part, have avoided the consequences of the neglect or carelessness of the deceased." Some  
1028 commentators have attributed adoption of the doctrine of last clear chance to the asserted harshness of the  
1029 contributory negligence rule. See Digges & Klein, *supra*, 41 Md. L. Rev. at 276. Nothing in [451] *N.C.R.R. Co. v. State*,  
1030 *Use Price, supra*, lends any direct support to this hypothesis. Nor does another exception to the application of the  
1031 contributory negligence doctrine, *i.e.*, a case involving a plaintiff under five years of age (*see Taylor v. Armiger, 277*  
1032 *Md. 638, 649, 358 A.2d 883 (1975)*) -- indicate any general dissatisfaction with the contributory negligence doctrine.  
1033 Indeed, Maryland has steadfastly adhered to the doctrine since its adoption in 1847. Thus, at the time of trial in the  
1034 present case, it was the well-established law of this State that a plaintiff who fails to observe ordinary care for his  
1035 own safety is contributorily negligent and is barred from all recovery, regardless of the quantum of a defendant's  
1036 primary negligence. *Schweitzer v. Brewer, 280 Md. 430, 374 A.2d 347 (1977)*; *Menish v. Polinger Company, 277 Md.*  
1037 *553, 356 A.2d 233 (1976)*; *P. & C. R. R. Co. v. Andrews, 39 Md. 329 (1874)*. The rule was most recently applied by the  
1038 Court in *Moodie v. Santoni, 292 Md. 582, 441 A.2d 323 (1982)*.

1039  
1040 (B) *Comparative Negligence*

1041 Most commentators trace the roots of comparative negligence to Roman law. Woods, *Comparative Fault at*  
1042 *17*. In common law jurisdictions, the earliest application of the doctrine was in admiralty law where the rule which  
1043 evolved provided for an equal division of damages among parties at fault, rather than an apportionment based on  
1044 fault. Woods, *Comparative Fault at 18-20*. In England, the divided damages rule persisted in Admiralty until changed  
1045 by statute in 1911 to pure comparative negligence. *Id. at 20*. American courts followed the early English equally  
1046 divided damages rule until 1975, when, in *United States v. Reliable Transfer Co., 421 U.S. 397, 95 S. Ct. 1708, 44 L.*  
1047 *Ed. 2d 251 (1975)*, the Supreme Court adopted a comparative negligence rule in admiralty cases.

1048 Outside of admiralty law, one jurisdiction experimented with comparative negligence theory in the 19th century.  
1049 In [452] *Galena & Chicago Union R.R. Co. v. Jacobs, 20 Ill. 478 (1858)*, the Supreme Court of Illinois repudiated  
1050 contributory negligence and adopted a form of comparative negligence in its place. It said:

1051 "[T]he degrees of negligence must be measured and considered, and wherever it shall appear that the  
1052 plaintiff's negligence is comparatively slight, and that of the defendant gross, he shall not be deprived of  
1053 his action." *Id. at 497*.

1054 In *P. & C. R. R. Co. v. Andrews, 39 Md. 329 (1874)*, this Court expressly declined to adopt the comparative fault  
1055 doctrine. Referring to an Illinois decision, we said:

1056 "[A]s we understand it, [the decision] was actually rested upon a principle of law established in that State,  
1057 that where there has been contributing negligence, the negligence of both parties must be *compared*, and  
1058 if the plaintiff is guilty of negligence, which is slight as compared with that of the defendant, he may  
1059 recover. Such a principle has never been sanctioned in this State, but the exact contrary is the settled rule  
1060 here, (*N.C.R.R. Co. v. Geis, 31 Md. 366*), and the Illinois Court admit the doctrine is not supported by the  
1061 weight of authority elsewhere." *Id. at 351* (emphasis in original).

1062  
1063 Early in the 20th century, Maryland did incorporate a form of comparative negligence legislatively in several specific  
1064 areas. In "certain perilous occupations," a statute provided compensation for work-related injuries with divided  
1065 damages where there was negligence by both the worker and the employer. See ch. 139 of the Acts of 1902. This  
1066 statute was repealed when a comprehensive [453] Workmen's Compensation Act was adopted by ch. 800 of the  
1067 Acts of 1914. A "purer" form of comparative negligence was adopted by ch. 412 of the Acts of 1902 -- a public local  
1068 law applicable in Allegany and Garrett Counties to injured coal and clay miners. This statute was also repealed upon  
1069 adoption of a mandatory compensation plan, a forerunner of the later Workmen's Compensation Act. See ch. 153 of  
1070 the Acts of 1910.

1071 In 1908, Congress adopted comparative negligence in the Federal Employers Liability Act (FELA), a statute  
1072 covering injuries to railroad employees, *45 U.S.C. § 51 et seq.* A number of states enacted similar legislation. See  
1073 Turk, *Comparative Negligence on the March*, 28 Ch.-Kent L. Rev. at 334. In 1910, Mississippi enacted the first "pure"  
1074 comparative negligence statute applicable to all suits for personal injuries. *Miss. Code Ann. § 11-7-15 (1972)*.  
1075 Wisconsin, in 1931, was the first state to adopt a "modified" comparative negligence statute, in which a plaintiff  
1076 could not recover unless his negligence "was not as great as the negligence of the person against whom recovery is  
1077 sought." *Wis. Stats. § 895.045 (1966)*. Of the thirty-nine states which have now adopted some form of comparative  
1078 negligence, thirty-one have done so by statute while the remaining eight have done so by judicial decision.

1079 (C)

1080 That pure comparative negligence is favored by the legal commentators and text authorities appears clear.  
1081 As we earlier observed, one of the primary reasons advanced by the doctrine's advocates is that wrongdoers are  
1082 required to shoulder a proportionate share of the damages caused by their own negligence. An almost boundless  
1083 array of scholarly writings now exists on the subject of comparative negligence. These authorities have carefully  
1084 marshalled and [454] crystallized the reasons favoring adoption of a comparative fault system; at the same time,  
1085 they have set forth the reasons advanced in justification of the continuation of the contributory negligence doctrine.  
1086 In this regard, one of the main arguments against adopting comparative negligence principles is the claimed  
1087 difficulty, if not impossibility, of making an accurate apportionment of fault. Comparative negligence proponents,  
1088 however, point to the lack of any problem in this regard in the states which, by legislation or judicial decision, have  
1089 adopted the doctrine. Another criticism of comparative negligence is that in the doctrine's application most  
1090 negligence cases will ultimately be submitted to the jury (once a prima facie case of the defendant's negligence is  
1091 established) and recovery will be left in the unfettered discretion of the jury. The response to this criticism is that  
1092 juries already apply a "rough-cut" comparative negligence formulation, even when instructed that contributory  
1093 negligence is an absolute bar to the plaintiff's recovery. But while "jury equity" may result in a *de facto*  
1094 apportionment, the means by which this is allegedly accomplished have been condemned as destructive of the  
1095 integrity of the legal system.

1096 Proponents of comparative negligence suggest that there is great public disapproval of contributory  
1097 negligence, in particular by juries. Opponents counterclaim that there simply is no hue and cry among the populace  
1098 generally to abandon contributory negligence and replace it with comparative negligence. Critics of contributory  
1099 negligence point [455] to the doctrine's departure from the central principle of tort law that wrongdoers should  
1100 bear the losses they cause. On the other hand, it is observed that the defendant is also barred by his negligence from  
1101 collecting from the plaintiff, so that the contributory negligence rule is an equitable one, letting losses lie where they  
1102 fall in cases where both parties are negligent and both are injured.

1103 Focusing on the theoretical, it is said that the doctrine of contributory negligence inhibits many prospective  
1104 plaintiffs from suing, or at least encourages settlement of claims before trial. If comparative negligence was the  
1105 governing rule, the suggestion is advanced that the cases of such potential plaintiffs would reach the jury, and that  
1106 the flood of litigation thus unleashed would clog the courts, causing increased settlements with corresponding  
1107 increases in the cost of insurance to the public. Comparative negligence proponents assert, however, that there is no  
1108 proof that such results will flow from the application of comparative fault principles -- that factors other than the  
1109 particular negligence doctrine adopted and applied are responsible for docket congestion and for insurance rate  
1110 increases.

1111 Also to be considered is the effect which a comparative fault system would have on other fundamental  
1112 areas of negligence law. The last clear chance doctrine, assumption of the risk, joint and several liability,  
1113 contribution, setoffs and counterclaims, and application of the doctrine to other fault systems, such as strict liability  
1114 in tort, are several of the more obvious areas affected by the urged shift to comparative negligence. Even that  
1115 change has its complications; beside the "pure" form of comparative negligence, there are several "modified" forms,  
1116 so that abrogation of the contributory negligence doctrine will necessitate the substitution of an alternate doctrine.  
1117 Which form to adopt presents its own questions and the choice is by no means clear. *See Digges & Klein, supra*, 41  
1118 Md. L. Rev. at 282-84. That a change from contributory to comparative negligence involves considerably more than a  
1119 simple common law adjustment is readily apparent.

1120 [456] III

1121 As earlier indicated, most of the states which have adopted comparative negligence have done so by  
1122 statute in derogation of the common law. Prior to the enactment of such statutes, a number of courts in these states  
1123 had declined to judicially abrogate the contributory negligence doctrine and adopt comparative negligence in its  
1124 place, in each instance expressly deferring on policy grounds to their respective legislatures. *See Haeg v. Sprague,*  
1125 *Warner & Co.*, 202 Minn. 425, 281 N.W. 261 (1938); \*\*\* A number of courts in jurisdictions which, like Maryland,  
1126 retain the contributory negligence doctrine have also declined to adopt the comparative negligence doctrine,  
1127 holding as a matter of policy that any such change should be made by the legislature. *See, e.g., Golden v. McCurry,*  
1128 *392 So.2d 815 (Ala. 1980).*

1129 The eight state supreme courts which have adopted comparative negligence by judicial decision have  
1130 perceived an imperative need for immediate change. These courts have concluded that contributory negligence is an  
1131 unfair and outmoded doctrine and that comparative negligence is more equitable and more responsive to the  
1132 demands of society. These courts have found that because the contributory negligence doctrine was a judicially  
1133 created rule, the courts could [457] properly replace it with a proportionate fault system. The first of these

1134 decisions, *Hoffman v. Jones*, 280 So.2d 431, decided by the Supreme Court of Florida in 1973, expressed the view  
1135 that the change to comparative negligence was necessitated by the dictates of a "great societal upheaval." *Id.* at  
1136 435. *Li v. Yellow Cab Co.*, 13 Cal.3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 decided by the Supreme Court of California  
1137 in 1975, was the second of these decisions to reach this result. The court concluded that no legislative barrier existed  
1138 to judicial adoption of the comparative negligence doctrine. The Alaska Supreme Court in *Kaatz v. State*, 540 P.2d  
1139 1037 (1975), followed the lead of the Florida and California courts in adopting comparative negligence. Michigan  
1140 was the fourth state to judicially adopt the comparative negligence doctrine. In *Placek v. City of Sterling Heights*, 405  
1141 Mich. 638, 275 N.W.2d 511, decided in 1979, the Supreme Court of Michigan, in a detailed opinion, reasoned that  
1142 comparative negligence was a fairer doctrine than contributory negligence and adopted it. The court saw no need to  
1143 defer to the legislative process; it indicated that the court was better able to adopt and develop the doctrine of  
1144 comparative negligence than the legislature and to afford it prospective application. In 1979, West Virginia adopted  
1145 a "modified" form of comparative negligence, doing so without discussion of the propriety of judicial rather than  
1146 legislative action. See *Bradley v. Appalachian Power Co.*, 256 S.E.2d 879 (W. Va. 1979). In 1981, the Supreme Court of  
1147 New Mexico adopted comparative negligence; it found the arguments in favor of judicial deference to the legislature  
1148 to be unpersuasive. *Scott v. Rizzo*, 96 N.M. 682, 634 P.2d 1234 (1981). Illinois, in 1981, became the seventh state to  
1149 adopt comparative negligence by judicial decision. In *Alvis v. Ribar*, 85 Ill.2d 1, 421 N.E.2d 886, the Supreme Court of  
1150 Illinois, over two vigorous dissents, found that changed circumstances warranted the abandonment of contributory  
1151 negligence and the adoption of comparative negligence. In declining to defer to the legislature, the court noted that  
1152 contributory negligence was a judicially created doctrine, properly to be replaced by the court which created it. The  
1153 **[458]** court eschewed any need for judicial restraint in favor of legislative action; it noted that in those states which  
1154 legislatively had adopted proportional fault systems, the statutes were general and did not address collateral issues,  
1155 leaving the development of the doctrine to the courts. The court found that the failure of the Illinois legislature to  
1156 enact a comparative negligence statute, even though repeatedly implored to do so, could be attributed to the  
1157 legislature's belief that the judiciary was better able to adopt and develop the doctrine. In 1982, the Supreme Court  
1158 of Iowa by a sharply divided court (5 -- 4) abandoned contributory negligence in favor of pure comparative  
1159 negligence, citing as justification the reasons set forth in *Hoffman* and its progeny. *Goetzman v. Wichern*, Iowa, 327  
1160 N.W.2d 742 (1982).

1161 IV

1162 Maryland cases do not reflect any general dissatisfaction with the contributory negligence doctrine. Indeed,  
1163 the doctrine is a fundamental principle of Maryland negligence law, one deeply imbedded in the common law of this  
1164 State, having been consistently applied by Maryland courts for 135 years. Nor have we heretofore been confronted  
1165 with a claim of a pressing societal need to abandon the doctrine in favor of a comparative fault system. Until the  
1166 publication in 1982 of the Digges & Klein and Abraham articles in the Maryland Law Review, scant attention appears  
1167 to have been devoted by the bench and bar of this State to the relative merits of the contributory and comparative  
1168 negligence doctrines.

1169 When called upon, as here, to overrule our own decisions, consideration must be given to the doctrine of  
1170 *stare decisis* -- the policy which entails the reaffirmation of a decisional doctrine of an appellate court, even though if  
1171 considered for the first time, the Court might reach a different conclusion. *Deems v. Western Maryland Ry.*, 247 Md.  
1172 95, 231 A.2d 514 (1966). Under the policy of *stare decisis*, ordinarily, "for reasons of certainty and stability, changes  
1173 in decisional doctrine **[459]** are left to the Legislature." *Id.* at 102. As the Court observed many years earlier in  
1174 *DeMuth v. Old Town Bank*, 85 Md. 315, 320, 37 A. 266 (1897):

1175 "[I]t is, in the end, far better that the established rules of law should be strictly applied, even though in  
1176 particular instances serious loss may be thereby inflicted on some individuals, than that by subtle  
1177 distinctions invented and resorted to solely to escape such consequences, long settled and firmly fixed  
1178 doctrines should be shaken, questioned, confused or doubted. . . . It is often difficult to resist the  
1179 influence which a palpable hardship is calculated to exert; but a rigid adherence to fundamental principles  
1180 at all times and a stern insensibility to the results which an unvarying enforcement of those principles may  
1181 occasionally entail, are the surest, if not the only, means by which stability and certainty in the  
1182 administration of the law may be secured. It is for the Legislature by appropriate enactments and not for  
1183 the Courts by metaphysical refinements to provide a remedy against the happening of hardships which  
1184 may result from the consistent application of established legal principles."

1185 Accord, *Hauch v. Connor*, 295 Md. 120, 453 A.2d 1207 (1983). \* \* \*

1186 Notwithstanding the great importance of the doctrine of *stare decisis*, we have never construed it to inhibit  
1187 us from changing or modifying a common law rule by judicial decision where we find, in light of changed conditions

1188 or increased knowledge, that the rule has become unsound in the circumstances of modern life, a vestige of the  
1189 past, no longer suitable to our people. *Williams v. State*, 292 Md. 201, 438 A.2d 1301 (1981); *Adler v. American*  
1190 *Standard Corp.*, [460] \* \* \* As we said in *Felder v. Butler*, 292 Md. 174, 182, (1981), the common law is not static; its  
1191 life and heart is its dynamism -- its ability to keep pace with the world while constantly searching for just and fair  
1192 solutions to pressing societal problems. However, in considering whether a long-established common law rule --  
1193 unchanged by the legislature and thus reflective of this State's public policy -- is unsound in the circumstances of  
1194 modern life, we have always recognized that declaration of the public policy of Maryland is normally the function of  
1195 the General Assembly; that body, by Article 5 of the Maryland Declaration of Rights, is expressly empowered to  
1196 revise the common law of Maryland by legislative enactment. See *Felder v. Butler*, *supra*, 292 Md. at 183; *Adler v.*  
1197 *American Standard Corp.*, *supra*, 291 Md. at 45. The Court, therefore, has been particularly reluctant to alter a  
1198 common law rule in the face of indications that to do so would be contrary to the public policy of the State. See, e.g.,  
1199 *Condore v. Prince George's Co.*, *supra*, 289 Md. at 532.

1200 Consistent with these principles, we have on numerous occasions declined to change well-settled legal  
1201 precepts established by our decisions, in each instance expressly indicating that change was a matter for the General  
1202 Assembly. See, e.g., *Felder v. Butler*, *supra* (declining to alter the common law rule pertaining to tort actions against  
1203 licensed vendors of intoxicating liquors for injuries negligently caused by an intoxicated patron to an innocent third  
1204 party); *Murphy v. Baltimore Gas & Elec.*, 290 Md. 186, 428 A.2d 459 (1981) (declining to change common law  
1205 principles governing the duty of care owed a trespasser by a property owner); *Austin v. City of Baltimore*, 286 Md.  
1206 51, 405 A.2d 255 (1979) (declining to judicially abrogate the doctrine of governmental immunity in tort actions);  
1207 *Howard v. Bishop* [461] *Byrne Home*, 249 Md. 233, 238 A.2d 863 (1968) (declining to alter the common law rule of  
1208 charitable immunity from tort liability); *Matakieff v. Matakieff*, 246 Md. 23, 226 A.2d 887 (1967); *Courson v.*  
1209 *Courson*, 208 Md. 171, 117 A.2d 850 (1959) (declining to change the common law rule of recrimination in divorce  
1210 actions in favor of the doctrine of comparative rectitude); *Hensel v. Beckward*, 273 Md. 426, 330 A.2d 196 (1974);  
1211 *Creaser v. Owens*, 267 Md. 238, 297 A.2d 235 (1972) (declining to change the judicially created "boulevard law"  
1212 governing the duty and responsibility of a driver approaching a through highway from an unfavored road); *Stokes v.*  
1213 *Taxi Operators Assn.*, 248 Md. 690, 237 A.2d 762 (1968) (declining to alter the common law rule governing  
1214 interspousal immunity in tort actions); *White v. King*, 244 Md. 348, 223 A.2d 763 (1966) (declining to change the  
1215 common law rule of *lex loci delicti* in tort actions), *reaffirmed in Hauch v. Connor*, 295 Md. 120, 453 A.2d 1207  
1216 (1983); and *Cole v. State*, 212 Md. 55, 128 A.2d 437 (1957) (declining to modify the common law M'Naughten rule of  
1217 criminal responsibility by adding a new element thereto).

1218 These cases plainly reflect our initial deference to the legislature where change is sought in a long-  
1219 established and well-settled common law principle. The rationale underlying [462] these decisions is buttressed  
1220 where the legislature has declined to enact legislation to effectuate the proposed change. It is thus important in the  
1221 present case to note that in the period from 1966 through 1982, the General Assembly considered a total of twenty-  
1222 one bills seeking to replace the contributory negligence doctrine with a comparative fault system. None of these bills  
1223 was enacted. Although not conclusive, the legislature's action in rejecting the proposed change is indicative of an  
1224 intention to retain the contributory negligence doctrine. See, e.g., *Kline v. Ansell*, 287 Md. 585, 590-91, 414 A.2d 929  
1225 (1980). \* \* \*

1226 The comparative negligence doctrine is not, as we have already observed, a unitary doctrine but one which  
1227 has been adopted by other states in either a pure or modified form. Those who advocate one form of the doctrine  
1228 tend to be critical of the others. Whether to adopt either pure or modified comparative fault plainly involves major  
1229 policy considerations. Application of pure comparative negligence principles allows a plaintiff to recover his damages  
1230 regardless of fault, so long as it is less than one hundred percent, thus permitting a grossly negligent but severely  
1231 [463] injured plaintiff to recover substantial damages from a slightly negligent defendant with only minor injuries.  
1232 Adoption of such a system would favor the party who incurred the most damages, regardless of the amount of that  
1233 party's fault. Whether the "pure" proportional fault system is preferable to any of the several types of modified  
1234 comparative negligence (see, *supra*, footnote 3), or to the doctrine of contributory negligence, is plainly a policy  
1235 issue of major dimension. Which of these doctrines best serves the societal need is a debatable question. Not  
1236 debatable is the conclusion that a change from contributory negligence to any form of comparative negligence  
1237 would be one of great magnitude, with far-reaching implications in the trial of tort actions in Maryland.

1238 All things considered, we are unable to say that the circumstances of modern life have so changed as to render  
1239 contributory negligence a vestige of the past, no longer suitable to the needs of the people of Maryland. In the final  
1240 analysis, whether to abandon the doctrine of contributory negligence in favor of comparative negligence involves  
1241 fundamental and basic public policy considerations properly to be addressed by the legislature. We therefore



1242 conclude, as we did in *White v. King, supra*, where we declined to change the common law rule of *lex loci delicti*, that  
1243 while we recognize the force of the plaintiff's argument, "in the present state of the law, we leave any change in the  
1244 established doctrine to the Legislature." 244 Md. at 355.

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1247 Coleman v. Soccer Ass'n of Columbia, 69 A.3d 1149  
1248 Court of Appeals of Maryland  
1249 July 9, 2013, Filed  
1250 No. 9, September Term, 2012

1251 Opinion by: Eldridge

1252 **OPINION**

1253 Thirty years ago, in *Harrison v. Montgomery County Bd. of Educ.*, 295 Md. 442, 444, 456 A.2d 894 (1983),  
1254 this Court issued a writ of certiorari to decide "whether the common law doctrine of contributory negligence should  
1255 be judicially abrogated in Maryland and the doctrine of comparative negligence adopted in its place as the rule  
1256 governing trial of negligence actions in this State." In a comprehensive opinion by then Chief Judge Robert C.  
1257 Murphy, the Court in *Harrison*, 295 Md. at 463, 456 A.2d at 905, declined to abandon the doctrine of contributory  
1258 negligence in favor of comparative negligence, [2] pointing out that such change "involves fundamental and basic  
1259 public policy considerations properly to be addressed by the legislature."

1260 The petitioner in the case at bar presents the same issue that was presented in *Harrison*, namely whether this Court  
1261 should change the common law and abrogate the defense of contributory negligence in certain types of tort actions.  
1262 After reviewing the issue again, we shall arrive at the same conclusion that the Court reached in *Harrison*.

1263 I.

1264 The petitioner and plaintiff below, James Kyle Coleman, was an accomplished soccer player who had  
1265 volunteered to assist in coaching a team of young soccer players in a program of the Soccer Association of Columbia,  
1266 in Howard County, Maryland. On August 19, 2008, Coleman, at the time 20 years old, was assisting the coach during  
1267 the practice of a team of young soccer players on the field of the Lime Kiln Middle School. While the Soccer  
1268 Association of Columbia had fields of its own, it did not have enough to accommodate all of the program's young  
1269 soccer players; the Association was required to use school fields for practices. At some point during the practice,  
1270 Coleman kicked a soccer ball into a soccer goal. As he passed [3] under the goal's metal top rail, or crossbar, to  
1271 retrieve the ball, he jumped up and grabbed the crossbar. The soccer goal was not anchored to the ground, and, as  
1272 he held on to the upper crossbar, Coleman fell backwards, drawing the weight of the crossbar onto his face. He  
1273 suffered multiple severe facial fractures which required surgery and the placing of three titanium plates in his face.  
1274 Coleman instituted the present action by filing a complaint, in the Circuit Court for Howard County, alleging that he  
1275 was injured by the defendants' negligence. The defendant and respondent, the Soccer Association of Columbia,  
1276 asserted the defense of contributory negligence.

1277 At the ensuing jury trial, the soccer coach who had invited Coleman to help coach the soccer players  
1278 testified that he had not inspected or anchored the goal which fell on Coleman. The coach also testified that the goal  
1279 was not owned or provided by the Soccer Association, and he did not believe that it was his responsibility to anchor  
1280 the goal. During the trial, the parties disputed whether the goal was located in an area under the supervision and  
1281 control of the Soccer Association and whether the Soccer Association was required to inspect and anchor the goal.  
1282 The Soccer Association presented testimony tending to show that, because the goal was not owned by the Soccer  
1283 Association, the Soccer Association owed no duty to Coleman. The Soccer Association also presented testimony that  
1284 the condition of the goal was open and obvious to all persons. The Association maintained that the accident was  
1285 caused solely by Coleman's negligence.

1286 Testimony was provided by Coleman to the effect that players commonly hang from soccer goals and that  
1287 his actions should have been anticipated and expected by the Soccer Association. [5] Coleman also provided  
1288 testimony that anchoring goals is a standard safety practice in youth soccer. At the close of evidence, Coleman's  
1289 attorney proffered a jury instruction on comparative negligence. The judge declined to give Coleman's proffered  
1290 comparative negligence instruction and, instead, instructed the jury on contributory negligence.

1291 The jury was given a verdict sheet posing several questions. The first question was: "Do you find that the  
1292 Soccer Association of Columbia was negligent?" The jury answered "yes" to this question. The jury also answered  
1293 "yes" to the question: "Do you find that the Soccer Association of Columbia's [6] negligence caused the Plaintiff's  
1294 injuries?" Finally, the jury answered "yes" to the question: "Do you find that the Plaintiff was negligent and that his  
1295 negligence contributed to his claimed injuries?" In short, the jury concluded that the Soccer Association of Columbia

1296 was negligent and that the Soccer Association's negligence caused Coleman's injuries. The jury also found that  
1297 Coleman was negligent, and that his negligence contributed to his own injuries. Because of the contributory  
1298 negligence finding, Coleman was barred from any recovery. The trial court denied Coleman's motion for judgment  
1299 notwithstanding the verdict and subsequently entered judgment in favor of the Soccer Association of Columbia.  
1300 Coleman filed a notice of appeal, and the Soccer Association filed a notice of cross-appeal. Before briefing and  
1301 argument in the Court of Special Appeals, Coleman filed in this Court a petition for a writ of certiorari, which was  
1302 granted. *Coleman v. Soccer Ass'n of Columbia*, 425 Md. 396, 41 A.3d 570 (2012). In his petition, Coleman posed only  
1303 one question: whether this Court should retain the standard of contributory negligence as the common law standard  
1304 governing negligence cases in [7] the State of Maryland.

1305 We shall hold that, although this Court has the authority to change the common law rule of contributory  
1306 negligence, we decline to abrogate Maryland's long-established common law principle of contributory negligence.  
1307 II.

1308 This Court last addressed the continuing viability of the contributory negligence doctrine in *Harrison v.*  
1309 *Montgomery County Bd. of Educ.*, supra, 295 Md. 442, 456 A.2d 894. In *Harrison*, the Court held that the  
1310 contributory [8] negligence principle remained the valid standard in Maryland negligence cases and that "any  
1311 change in the established doctrine [was for] the Legislature." 295 Md. at 463, 456 A.2d at 905.

1312 Chief Judge Murphy, for the Court in *Harrison*, began his review of the contributory negligence standard by  
1313 tracing the standard's historical origins to Lord Chief Justice Ellenborough's opinion in *Butterfield v. Forrester*, 11 East  
1314 60, 103 Eng. Rep. 926 (K.B. 1809). As *Harrison* explained the case, "Butterfield left a public inn at dusk, mounted his  
1315 horse and rode off 'violently' down the street. Forrester, who was effecting some repairs to his house, had placed a  
1316 pole in the roadway. Although Butterfield could have seen and avoided the obstruction, he did not and was injured.  
1317 The [English] court there noted:

1318 'One person being in fault will not dispense with another's using ordinary care for himself. Two things  
1319 must concur to support this action, an obstruction in the road by the fault of the defendant, and no want  
1320 of ordinary care to avoid it on the part of the plaintiff.' [11 East] at 61, 103 Eng. Rep. at 927."

1321 The *Harrison* opinion explained that, when the contributory negligence standard was first judicially adopted in the  
1322 United States, the courts at the time were concerned that juries would award to plaintiffs sums that had the  
1323 potential to stifle "newly developing industry." Early American courts were also concerned that they should not  
1324 adopt a policy in which "courts... assist a wrongdoer who suffered an injury as a result of his own wrongdoing."  
1325 *Harrison*, 295 Md. at 450, 456 A.2d at 898. See also *Smith v. Smith*, 2 Pick. 621, 19 Mass. 621, 624 (1824) (a leading  
1326 early American case incorporating the contributory negligence bar as part of common law).

1327 This Court, relying on *Butterfield v. Forrester*, *supra*, first adopted the standard of contributory negligence in  
1328 *Irwin v. Sprigg*, 6 Gill. 200, 205 (1847), stating:

1329 "The established doctrine now is, that although the defendant's misconduct may have been the primary  
1330 cause of the injury complained of, yet the plaintiff cannot recover in an action of this kind, if the  
1331 proximate and immediate cause of the damage can be traced to a want of ordinary care and caution on  
1332 his part. Under such circumstances he must bear the consequences of his own recklessness or folly."

1333 The contributory negligence standard was later modified in part by this Court's adoption of the last clear chance  
1334 doctrine, see *N.C.R.R. Co. v. State, Use of Price*, 29 Md. 420, 436 (1868), [12] which allowed a plaintiff to recover "if  
1335 the defendant might, by the exercise of care on its part, have avoided the consequences of the neglect or  
1336 carelessness" of the plaintiff. The Court recognized another exception to the contributory negligence standard  
1337 where the plaintiff is under five years old. See *Taylor v. Armiger*, 277 Md. 638, 358 A.2d 883 (1975).

1338 The *Harrison* Court examined the origins and impact of comparative negligence, noting that early in the  
1339 20th century, the Maryland General Assembly had adopted a form of comparative negligence for "certain perilous  
1340 occupations," but had subsequently repealed the provisions. The Court in *Harrison* also pointed out that, as of 1983,  
1341 of the thirty-nine states that had adopted comparative negligence, thirty-one had done so by statute, with the eight  
1342 remaining states having adopted the principle by judicial action. The Court noted that it was "clear" that legal  
1343 scholars "favored" the comparative negligence standard, as supported by "[a]n almost boundless array of scholarly  
1344 writings." 295 Md. at 453, 456 A.2d at 899.

1345 Nevertheless, the *Harrison* Court pointed to other considerations involved in changing the standard from  
1346 contributory negligence [13] to comparative negligence (295 Md. at 454-455, 456 A.2d at 900-901):

1347 "Also to be considered is the effect which a comparative fault system would have on other fundamental  
1348 areas of negligence law. The last clear chance doctrine, assumption of the risk, joint and several liability,  
1349 contribution, setoffs and counterclaims, and application of the doctrine of the doctrine to other fault systems, such as

1350 strict liability in tort, are several of the more obvious areas affected by the urged shift to comparative  
1351 negligence. Even that change has its complications; beside the 'pure' form of comparative negligence,  
1352 there are several 'modified' forms, so that abrogation of the contributory negligence doctrine will  
1353 necessitate the substitution of an alternate doctrine. Which form to adopt presents its own questions and  
1354 the choice is by no means clear....That a change from contributory to comparative negligence involves  
1355 considerably more than a simple common law adjustment is readily apparent."

1356 *Harrison* also examined those states which had abrogated the contributory negligence standard, pointing out that  
1357 "most of the states which have adopted comparative negligence have done so by statute in derogation of the  
1358 common [14] law." 295 Md. at 456, 456 A.2d at 901. The Court observed that, in several of these states, the courts  
1359 had refused to judicially abrogate the contributory negligence standard because they "expressly deferred on policy  
1360 grounds to their respective legislatures." 295 Md. at 456, 456 A.2d at 901. Only eight state supreme courts, as of  
1361 1983, had adopted a comparative negligence standard by judicial decision.

1362 The *Harrison* opinion further held that, when this Court is

1363 "called upon, as here, to overrule our own decisions, consideration must be given to the doctrine of *stare*  
1364 *decisis* — the policy which entails the reaffirmation of a decisional doctrine of an appellate court, even  
1365 though if considered for the first time, the Court might reach a different conclusion. *Deems v. Western*  
1366 *Maryland Ry.*, 247 Md. 95, 231 A.2d 514 (1966)." 295 Md. at 458, 456 A.2d at 902.

1367 Chief Judge Murphy in *Harrison* continued his assessment by explaining that the principle of *stare decisis* should not  
1368 be construed to

1369 "inhibit [this Court] from changing or modifying a common law rule by judicial decision where we find, in  
1370 light of changed conditions or increased knowledge, that the rule has become unsound in the  
1371 circumstances [15] of modern life, a vestige of the past, no longer suitable to our people." (295 Md. at  
1372 459, 456 A.2d at 903).

1373 Nevertheless, *Harrison* concluded (295 Md. at 459, 456 A.2d at 903):

1374 "[I]n considering whether a long-established common law rule — unchanged by the legislature and thus  
1375 reflective of this State's public policy — is unsound in the circumstances of modern life, we have always  
1376 recognized that declaration of the public policy of Maryland is normally the function of the General  
1377 Assembly; that body, by Article 5 of the Maryland Declaration of Rights, is expressly empowered to revise  
1378 the common law of Maryland by legislative enactment. *See Felder v. Butler...*292 Md. [174,] 183, 438 A.2d  
1379 494 [499]; Adler v. American Standard Corp....291 Md. [31,] 45, 432 A.2d 464 [472]. The Court,  
1380 therefore, has been particularly reluctant to alter a common law rule in the face of indications that to do  
1381 so would be contrary to the public policy of the State. *See, e.g., Condore v. Prince George's Co....*289 Md.  
1382 [516,] 532, 425 A.2d [1011,] 1019."

1383 In the years immediately prior to *Harrison*, from 1966 to 1982, the Maryland General Assembly had  
1384 considered twenty-one bills seeking to change the contributory [16] negligence standard. None of the bills had been  
1385 enacted. The *Harrison* Court accorded a great deal of weight to the General Assembly's failure to enact any of these  
1386 bills, stating:

1387 "[T]he legislature's action in rejecting the proposed change is indicative of an intention to retain the  
1388 contributory negligence doctrine." 295 Md. at 462, 456 A.2d at 904.

1389 The Court further pointed out that enactment of a comparative negligence standard is not a single issue; instead,  
1390 such a decision would encompass a variety of choices to be made, beginning with the initial inquiry of what form  
1391 of comparative negligence to adopt, "pure" or one "of the several types of modified comparative negligence," 295  
1392 Md. at 462-463, 456 A.2d at 904. If Maryland's common law were to change, the *Harrison* opinion explained,  
1393 the decision as to which form of comparative negligence to adopt "plainly involves major policy considerations" of  
1394 the sort best left to the General Assembly. 295 Md. at 462, 456 A.2d at 904.

1395 III.

1396 Since the time of *Harrison*, this Court has continued to recognize the standard of contributory negligence as the  
1397 applicable principle in Maryland negligence actions. *See, e.g., Thomas v. Panco Management of Maryland, LLC,*423  
1398 Md. 387, 417 (2011). \* \* \* [17] (Citations omitted.)

1399 Although the contributory negligence principle has been part of this State's common law for over 165 years,  
1400 petitioners and numerous amici in this case urge this Court to abolish the contributory negligence standard and  
1401 replace it with a form of comparative negligence. They argue contributory negligence is an antiquated doctrine, that  
1402 it has been roundly criticized by academic legal scholars, and that it has been rejected in a majority of our sister  
1403 states. It is also pointed out that contributory negligence works an inherent unfairness by barring plaintiffs from any

1404 recovery, even when it is proven, in a particular case, that a defendant's negligence was primarily responsible for the  
1405 act or omission which resulted in a plaintiff's injuries. **[18]** It is said that contributory negligence provides harsh  
1406 justice to those who may have acted negligently, in minor ways, to contribute to their injuries, and that it absolves  
1407 those defendants from liability who can find any minor negligence in the plaintiffs' behavior.

1408 Petitioners correctly contend that, because contributory negligence is a court-created principle, and has not  
1409 been embodied in Maryland statutes, this Court possesses the authority to change the principle. This Court has  
1410 recognized that (*Ireland v. State*, 310 Md. 328, 331-332 (1987)),

1411 "[b]ecause of the inherent dynamism of the common law, we have consistently held that it is subject to  
1412 judicial modification in light of modern circumstances or increased knowledge. *Harris v. State*, 306 Md.  
1413 344, 357 (1986); *Kelley v. R.G. Industries, Inc.*, 304 Md. 124 (1985). Equally well established is the principle  
1414 that the common law should not be changed contrary to the public policy of this State set forth by the  
1415 General Assembly. *Kelley, supra*, 304 Md. at 141; *Harrison v. Mont. Co. Bd. of Educ.*, 295 Md. 442, 460-61  
1416 (1983). In the area of civil **[19]** common law this Court has not only modified the existing law but also  
1417 added to the body of law by recognizing new causes of action. *Kelley, supra*, (recognizing cause of action  
1418 against manufacturers or marketers for damages caused by 'Saturday Night Special' handguns); *Boblitz v.*  
1419 *Boblitz*, 296 Md. 242 (1983)(permitting negligence action by one spouse against another); *Moxley v.*  
1420 *Acker*, 294 Md. 47 (1982)(deleting force as a required element of the action of forceable detainer); *Adler*  
1421 *v. American Standard Corp.*, 291 Md. 31 (1981)(recognizing tort of abusive or wrongful discharge); *Lusby*  
1422 *v. Lusby*, 283 Md. 334 (1978) (abolishing the defense of interspousal immunity in the case of outrageous  
1423 intentional torts); *Harris v. Jones*, 281 Md. 560 (1977)(recognizing tort of intentional infliction of  
1424 emotional distress)."

1425 The Court's ability to modify the common law was further underscored in *Kelley v. R.G. Industries, Inc.*, 304 Md. 124,  
1426 140, 497 A.2d 1143, 1151 (1985):

1427 "This Court has repeatedly said that 'the common law is not static; its life and heart is its dynamism — its  
1428 ability to keep pace with the world while constantly searching **[20]** for just and fair solutions to pressing  
1429 societal problems.' *Harrison v. Mont. Co. Bd. of Educ.*, 295 Md. 442, 460 (1983). See *Felder v. Butler*, 292  
1430 Md. 174, 182 (1981). The common law is, therefore, subject to judicial modification in light of modern  
1431 circumstances or increased knowledge. *Jones v. State*, 302 Md. 153, 161 (1985).

1432 Since the *Harrison* case, the General Assembly has continually considered and failed to pass bills that would abolish  
1433 or modify the contributory negligence standard. The failure of so many bills, attempting to change the contributory  
1434 negligence doctrine, is a clear indication of legislative policy at the present time. This Court in *Moore v. State*, 388  
1435 Md. 623, 641 (2005), **[21]** with regard to the failure of legislation, explained:

1436 "Although the failure of a single bill in the General Assembly may be due to many reasons, and thus is not  
1437 always a good indication of the Legislature's intent, under some circumstances, the failure to enact  
1438 legislation is persuasive evidence of legislative intent. See, e.g., *Lee v. Cline*, 384 Md. 245, 255-256 (2004);  
1439 *Arundel Corp. v. Marie*, 383 Md. 489, 504 (2004) ('The Legislature [has] declined invitations to modify the  
1440 rule as [appellant] wishes'); *Stearman v. State Farm*, 381 Md. 436, 455 (2004). ('The refusal of the  
1441 Legislature to act to change a [statute]...provides...support for the Court to exercise restraint and refuse  
1442 to step in and make the change');\* \* \* *State v. Bell*, 351 Md. 709, 723 (1998) ('Therefore, by declining to  
1443 adopt the proposed language of the amending bill, the Legislature **[22]** clearly did not intend' to adopt  
1444 the result being urged); *State v. Frazier*, 298 Md. 422, 459 (1984) ('All of these proposals [supporting  
1445 different views of a statute advocated by the parties] were rejected by the General Assembly')."

1446 The *Moore* opinion continued (388 Md. at 641-642, 882 A.2d at 267):

1447 "Legislative inaction is very significant where bills have repeatedly been introduced in the General  
1448 Assembly to accomplish a particular result, and where the General Assembly has persistently refused to  
1449 enact such bills. See, e.g., *Arundel Corp. v. Marie, supra*, 383 Md. at 502-504, 860 A.2d at 894-896;  
1450 *Stearman v. State Farm, supra*, 381 Md. at 455, 849 A.2d at 551 ('Every year since 2000, legislators have  
1451 introduced bills in the General Assembly that would' accomplish what the appellant urges, but '[n]one of  
1452 these bills were enacted'); *Bozman v. Bozman*, 376 Md. 461, 492 (2003), quoting *Boblitz v. Boblitz*, 296  
1453 Md. 242, 274 (1983) (The Court will decline to adopt a particular position 'where the Legislature  
1454 repeatedly had rejected efforts to achieve legislatively that which we were asked to grant judicially');  
1455 *Halliday v. Sturm*, 368 Md. 186, 209 (2002) **[23]** (The Court refused to adopt positions 'that have been  
1456 presented on several occasions to the General Assembly' and '[s]o far, the Legislature has chosen not' to  
1457 adopt them) . . . ."

1458 The General Assembly's repeated failure to pass legislation abrogating the defense of contributory negligence is very  
1459 strong evidence that the legislative policy [24] in Maryland is to retain the principle of contributory negligence.  
1460 Chief Judge Bell emphasized for the Court in *Baltimore v. Clark*, 404 Md. 13, 36 (2008), the following:

1461 "It is well settled that, where the General Assembly has announced public policy, the Court will decline to  
1462 enter the public policy debate, even when it is the common law that is at issue and the Court certainly has  
1463 the authority to change the common law. *Adler v. American Standard Corp.*, 291 Md. at 47, 432 A.2d at  
1464 473."

1465 For this Court to change the common law and abrogate the contributory negligence defense in negligence actions, in  
1466 the face of the General Assembly's repeated refusal to do so, would be totally inconsistent with the Court's long-  
1467 standing jurisprudence.

1468  
1469 **JUDGMENT OF THE [25] CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT**  
1470 **JAMES COLEMAN.**

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1472  
1473

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1474 Restatement (Second) of Torts § 314A (1965)  
1475 Restatement of the Law – Torts  
1476 Division 2. Negligence  
1477 Chapter 12. General Principles  
1478 Topic 7. Duties of Affirmative Action

1479  
1480 **§ 314A Special Relations Giving Rise to Duty to Aid or Protect**

1481  
1482 (1) A common carrier is under a duty to its passengers to take reasonable action

1483  
1484 (a) to protect them against unreasonable risk of physical harm, and  
1485 (b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for  
1486 them until they can be cared for by others.

1487  
1488 (2) An innkeeper is under a similar duty to his guests.

1489  
1490 (3) A possessor of land who holds it open to the public is under a similar duty to members of the public who enter in  
1491 response to his invitation.

1492  
1493 (4) One who is required by law to take or who voluntarily takes the custody of another under circumstances such as  
1494 to deprive the other of his normal opportunities for protection is under a similar duty to the other.

## Appendix A: Guidelines for Attorney Advisors

### I. Approaches to Student Coaching

#### A. The Basics

- Answering questions that students may have concerning general trial practices;
- Discussing court etiquette
- Explaining the sequence of events/procedures found in a trial;

#### B. Case Content

- Learning and discussing the statement of facts, affidavits, and evidence
- Reading and discussing any relevant case law contained in the packet
- Brainstorming the facts with students – which ones support the Plaintiff/Prosecution? Which support the Defense?
- Create a timeline of events
- Discuss logical assumptions about the case

#### C. Strategy

- Listening to the students' approach to the assigned case
- Discussing general strategies (i.e. the order of witnesses) as well as raising key questions regarding the case (i.e. what are strengths/ weaknesses of the case, what are possible “holes” in your strategies, how best do we utilize our time with each witness).
- Developing proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here, an attorney can best serve as a constructive observer and critical teacher—listening, suggesting, and demonstrating techniques to the team.

Students develop a better understanding of the case and learn more from the experience if the attorney coaches **do not** figure out the angles, fill in the gaps, and determine trial strategy for the team. Coaching, guiding, and asking questions of the students is far more beneficial than directing them. Allow the students to make the decisions regarding trial strategy, and discuss the pros and cons of their approach to limit “surprises” or unintended consequences during trial.

**It is extremely important that students are coached on, and understand the “human” element of, judging, and how that factors into our judicial process. Part of your focus should rest upon the fact that law is not black and white, and that individuals will interpret the law differently. Similarly, as in the real world, court proceedings will vary greatly; accordingly, scores, interpretations, and outcomes will vary. What is permitted in one courtroom may not be permitted in another; what is encouraged by one judge, may be discouraged by another. When a judge provides feedback following a trial, use it as a guideline rather than an absolute for future competitions. The portfolio of feedback will grow during the year, and together, the students can decide what is beneficial and relevant for their approach.**

If the competition is to realize its full potential, it is crucial that you help discourage a “win-at-all-costs” attitude among your team members. Please coach your team on proper decorum when a case, or decisions throughout the case, are not decided in their favor. It has been shown time and time again that the best teams are those that view defeats as opportunities to learn. Debriefing with team members after wins and losses helps everyone improve their skills and increase their understanding of the law.

### II. Time Commitment

There is no pre-determined amount of time that attorney coaches are expected to spend coaching their teams. Inexperienced teams will likely need more advising time than veteran teams, simply because they have not yet mastered the trial process.

## Appendix B: Guidelines for Competition Judges

### I. Procedures for Scoring Competitions

Rankings are determined by both wins and points. Therefore, it is essential that the presiding judge carefully rate each team on all elements listed on the Performance Score Sheet.

#### A. Tie Point

Always award the Tie Point immediately after the close of the trial, and before adding the scores. This point will be used only in the event of a tie.

#### B. Decorum

Please be sure to score each team's overall performance in decorum in the space provided.

#### C. Announcing Your Decision

1. After awarding, tallying and double-checking the rest of the scores, your first announcement to the teams should focus on the general student performance, decorum, and legal understanding that you just witnessed.
2. Your second announcement should be which team prevailed, based on the merits of the case.
3. Your last announcement should declare who prevailed based on the score sheet.

#### C. Providing Feedback to the Team

**PLEASE BE MINDFUL THAT STUDENTS HAVE OFTEN TRAVELED FOR THE COMPETITION AND STILL HAVE OTHER OBLIGATIONS (E.G. HOMEWORK). Feedback should be limited to a maximum of 10 minutes.**

### II. Time Limitations

Students have been asked to limit their presentations to the timeframes listed in #2 of the Organizational Rules (page 1). It is particularly helpful for teams to know in advance how you will handle the time guidelines. Some judges prefer to give a warning, for instance, when there is one minute left; others expect students to be mindful of the time on their own. Students should not base an objection on the time. This is left to your discretion as the presiding judge. Competitions should last approximately 1½ hours.

### III. Mock Trial Simplified Rules of Evidence

The rules of evidence governing trial practice have been modified and simplified for the purposes of mock trial. Other more complex rules are NOT to be raised during the trial enactment.

Attorneys and witnesses may neither contradict the Statement of Facts or Affidavits, nor introduce any evidence that is not included in this packet of materials. As with any perceived violation of a rule of evidence, opposing team members should object or request a bench conference if this occurs.

### IV. Trial Procedures

#### A. Motions to Dismiss

The purpose of the competition is to hear both sides; therefore, motions to dismiss are not allowed. There shall be no sequestration of witnesses at any time during the trial. If such a motion is made, the motion MUST be denied.

#### B. Opening/ Closing Arguments

Competition procedures permit only one opening statement and one closing argument for each team. In Mock Trial Competition, the Defense Team will always make the first closing argument, followed by the Prosecution/Plaintiff. There is no rebuttal in Mock Trial.

#### C. Direct and Cross Examinations

Each attorney (three for each side) must engage in the direct examination of one witness and the cross-examination of another.

### Mock Trial Performance Rating Sheet

Schools: \_\_\_\_\_ vs. \_\_\_\_\_  
Plaintiff/Prosecution Defense

**1=Fair                  2=Satisfactory                  3=Good                  4=Very Good                  5=Excellent**

Please note that you are asked to give each attorney a composite score for their overall presentation: direct and re-direct or cross and re-cross. If re-direct or re-cross is NOT used, the attorney should NOT be penalized for not using this technique if there was nothing to be gained by using re-direct or re-cross.

**\*\*Please do not use fractions in scoring.\*\***

		Prosecution/ Plaintiff	Defense
<b>Opening Statements</b>			
<u>PLAINTIFF/PROSECUTION</u> First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>PLAINTIFF/PROSECUTION</u> Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>PLAINTIFF/PROSECUTION</u> Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> First Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> Second Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<u>DEFENSE</u> Third Witness	Direct & Re-Direct Examination by Attorney		
	Cross & Re-Cross Examination by Attorney		
	Witness Performance		
<b>Closing Arguments</b>			
<b>Decorum/ Use of Objections:</b> Students were courteous, observed courtroom etiquette, spoke clearly, demonstrated professionalism, and <b>utilized objections appropriately.</b>			
<b>TOTAL</b>			
<b>Tie Point</b> (Before totaling score sheet, please award one point to the team you think gave the best overall performance. This point will be used ONLY in a tie.)			
<b>TOTAL WITH TIE POINT (provide this score only in a tie)</b>			

*I have checked the scores and tallies, and by my signature, certify they are correct:*

Presiding Judge: \_\_\_\_\_ Date: \_\_\_\_\_

Teacher Coach, Defense: \_\_\_\_\_ Teacher Coach, P: \_\_\_\_\_



**Maryland State Bar Association/ CLREP  
2013-2014  
Statewide High School Mock Trial Competition**

Registration Deadline.....	Friday, November 8, 2013
Case Mailed to Paid/ Registered Teams.....	Wednesday, November 13, 2013
Circuit Competitions (1st Level of Competition).....	January 6—March 27, 2014
CIRCUIT CHAMPIONS MUST BE DECLARED BY MARCH 27, 2014.	
Regional Competitions (2nd Level of Competition)..... (The eight Circuit Champions compete in single eliminations.)	Tuesday, April 8 and Wednesday, April 9, 2014
Semi-Final Competitions: Anne Arundel Circuit Court, 4pm.....	Thursday, April 24, 2014
State Championship: Maryland Court of Appeals, Annapolis, 10am*.....	Friday, April 25, 2014
*LIVE WEBCAST* - <a href="http://www.mdcourts.gov/coappeals/webcast.html">http://www.mdcourts.gov/coappeals/webcast.html</a>	

**Note: All competition dates are final.  
A change by the Chief Judge of the State of Maryland is the only exception.**

**Organizing Local Competitions**

**The Citizenship Law-Related Education Program will:**

- provide Mock Trial Guides and rules for each State competition;
- disseminate information to each circuit;
- provide technical assistance to Circuit Coordinators;
- provide certificates to all registered participants who compete for the season;
- assist in recruitment of schools;
- act as a liaison in finding legal professionals to assist teams;

**The role of the Bar Association is:**

- to advocate involvement of local attorneys in preparing teams and hearing trials;
- to provide support to schools;
- to assist the Circuit Coordinator.

**The role of the Circuit Coordinator is:**

- to make decisions/ mediate at the local level when problems or questions arise;
- to establish the circuit competition calendar;
- to arrange for courtrooms, judges, and attorneys for local competitions;
- to inform and attempt to recruit all schools in the circuit;
- to work with the local Bar Associations to set court dates, recruit attorney advisors, and establish local guidelines;
- to arrange general training sessions if necessary.

**The role of the individual school/teacher coach is:**

- to DEMONSTRATE that winning is secondary to learning;
- to coach and mentor students about the “real-world” aspect of judging in competitions;
- to teach sportsmanship, team etiquette and courtroom decorum;
- to recruit students for the team;
- to arrange training sessions and scrimmages;
- to arrange transportation to and from competitions
- to supervise the team during practices and competitions;
- to work with partners to recruit attorney advisors;
- to ensure that the team arrives at all scheduled mock trial competitions.

## Mock Trial State Champions

2012-2013  
Annapolis High School  
Anne Arundel County

2011-2012  
The Park School  
Baltimore County

2010-2011  
The Park School  
Baltimore County

2009-2010  
Severna Park High School  
Anne Arundel County

2008-2009  
Allegany High School  
Allegany County

2007-2008  
Severna Park High School  
Anne Arundel County

2006-2007  
Severn School  
Anne Arundel County

2005 – 2006  
Severna Park High School  
Anne Arundel County

2004-2005  
Richard Montgomery High School  
Montgomery County

2003-2004  
The Park School  
Baltimore County

2002-2003  
Elizabeth Seton High School  
Prince George's County

2001-2002  
Towson High School  
Baltimore County

2000-2001  
DeMatha Catholic High School  
Prince George's County

1999-2000  
Broadneck High School  
Anne Arundel County

1998-1999  
Towson High School  
Baltimore County

1997-1998  
Pikesville High School  
Baltimore County

1996-1997  
Suitland High School  
Prince George's County

1995-1996  
Towson High School  
Baltimore County

1994-1995  
Pikesville High School  
Baltimore County

1993-1994  
Richard Montgomery High School  
Montgomery County

1992-1993  
Elizabeth Seton High School  
Prince George's County

1991-1992  
Oxon Hill High School  
Prince George's County

1990-1991  
Westmar High School  
Allegany County

1989-1990  
Bishop Walsh High School  
Allegany County

1988-1989  
Lake Clifton/Eastern High School  
Baltimore City

1987-1988  
Pikesville High School  
Baltimore County

1986-1987  
Thomas S. Wootton High School  
Montgomery County

1985-1986  
Old Mill High School  
Anne Arundel County

1984-1985  
High Point High School  
Prince George's County

1983-1984  
Worcester County Team