

G. (MINI) DAVY V. ROSE

Synopsis

On October 30, 2006, a clear autumn day at 2:15 p.m., Miles Davy and Sharon Rose were involved in an automobile accident. Rose was heading west on Leidig Ave. as Davy was driving north on Bush St. They collided in the intersection with both cars suffering front end damage.

Rose is suing Davy for the damage done to her blue 2005 Mazda Miata as well as the personal injuries she suffered when she was hit by Davy's 2002 silver Chrysler LeBaron. She is claiming the accident resulted in her sustaining a broken tibia, and that since the accident she has experienced severe pain from her knee down.

Each party claims the other was at fault for the accident. An important issue in the case is the color of the light that each driver had when proceeding into the intersection.

The casefile contains a photograph of the accident scene prepared by an investigator hired by the Plaintiff a month after the accident. The photograph looks north. In the photograph, Leidig Avenue is the street with the cars stopped at the traffic light. Through discovery, it was made available to the Defendant. The file also includes x-rays taken of the Plaintiff's injured leg after the accident that may be used in conjunction with the testimony of Dr. Fred Feingold.

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Assignment 1

A police report filed by the officer responding to the accident has the following included in the box titled, #1's VERSION OF THE ACCIDENT:

. Driver #1 (Rose) states that her car proceeded into the intersection before the light turned red.

4 months after the accident Rose was deposed by Davy's counsel.

Part of that deposition reads as follows:

Q: What happened as you drove into the intersection?

A: I approached the intersection, looked up and saw the light was not red, so I drove into the intersection. Your client's car came barreling from the left going real fast and smashed into me.

Q. What color was the light as you came to the intersection?

A: I don't remember whether it was it was green or yellow, but I know it wasn't red.

This deposition was taken under oath and Ms. Rose signed her name indicating she had reviewed it and the deposition transcript was accurate.

At trial during direct her examination, Rose has testified that the light was green as she passed through it.

For the Defendant, impeach Ms. Rose using the material above. For the Plaintiff, conduct a re-direct examination.

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Statement of Garfield Hayes

My name is Garfield Hayes and I am 74 years old. 3 years ago I sold my plumbing supplies business and retired. My eyes are 20/30 when wearing my glasses, as I was on the day of the accident.

On October 30th, around 2 p.m., I was on the southeast corner of Bush St. and Leidig Ave. near the light pole getting ready to cross Leidig and head north on my daily walk. I noticed this big gray car driving up Bush St. because it seemed to be going real fast. I can't estimate the speed with any accuracy probably because I haven't driven in the last 3 years. I'm almost sure the light was green when the car got to the intersection. I believe I glanced up and saw it. Besides, I remember a motorcycle also enter the intersection at the same time just behind the gray car in the other lane heading north on Bush. No way they both went through a red light.

I didn't notice the smaller blue car until it collided with the gray one in the intersection. It must have gone through a red light though because the big car had the green light.

After the crash, I went to see what happened and whether I could help. The woman in the blue car was bleeding from the head when she got out and saying that the crash had made her bad leg hurt again. Both drivers started yelling at each other. I tried to calm them down. The woman was saying that whatever the color of the light, the guy should have been going slower and looked before he entered the intersection.

I hope everyone is okay. I've never seen an accident this bad before.

Garfield Hayes

October 31, 2006

statement given to Police Officer Lester Ford

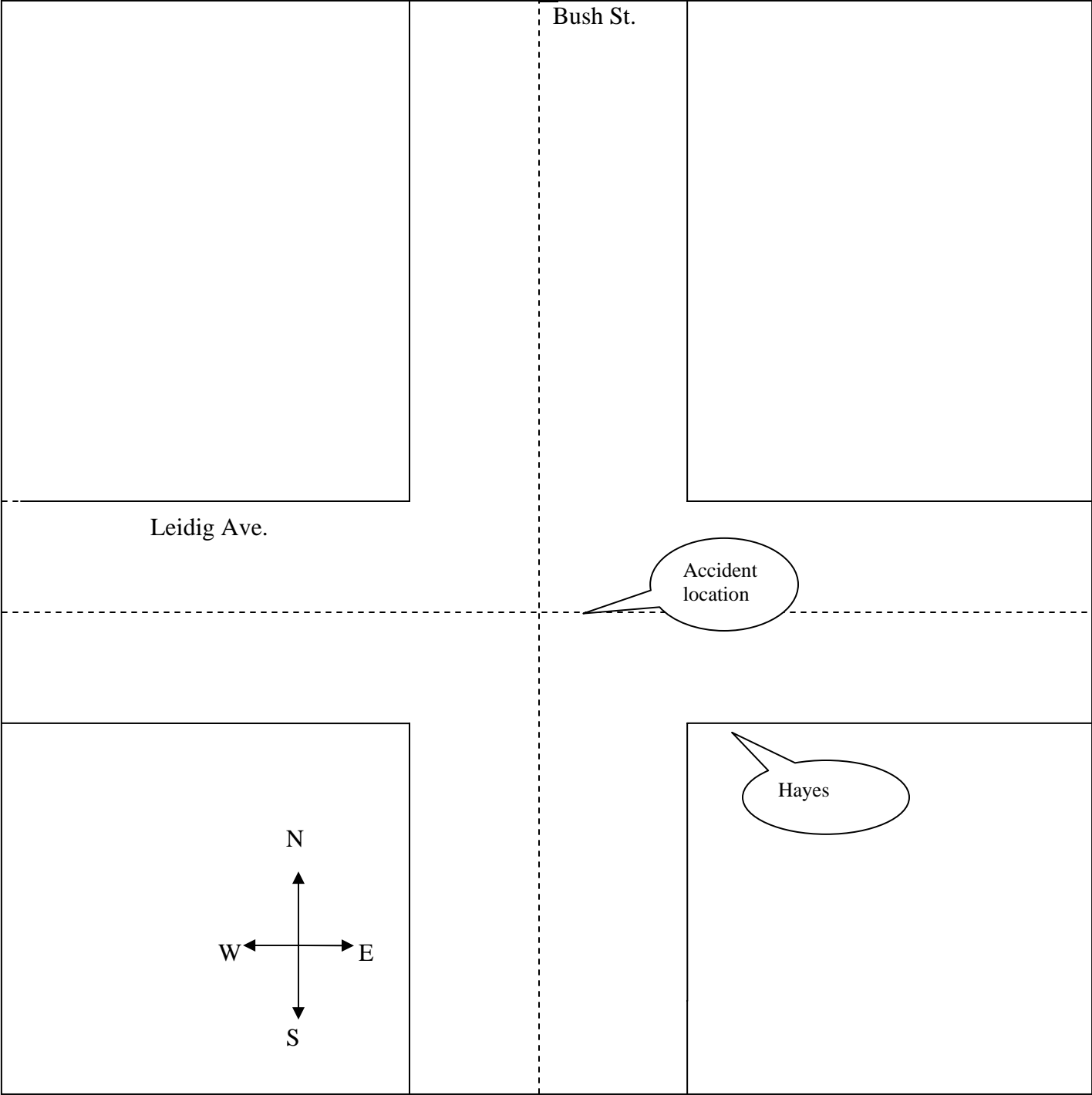
Assignment 2-The Defendant has called Hayes as a witness. For the Defendant, conduct a direct examination of Hayes. Make use of both the accompanying photograph taken for the Plaintiff and the diagram of the accident scene made by an investigator for the defense to illustrate the testimony. For the Plaintiff, do a cross examination. Do not include in either examination the statements Hayes heard from Ms. Rose.

Assignment 3- Separately from Assignment 2, now assume that Hayes has told you (the defense attorney) during witness preparation and will testify at trial that he remembers that the woman (Rose) said something but he can't remember what it was that she said. Even showing him the statement above has not refreshed his recollection. He does recall

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however that he heard it at the time and later told the police what she said. For the Defendant, find a way to get before the jury the damaging statements that Rose allegedly made after the accident. For the Plaintiff, try to keep that information from coming before the jury or in the alternative, seek to weaken its impact on cross examination.

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FRED FEINGOLD, M.D. Orthopedic Surgery

I have been asked to review the x-rays in this case taken at the hospital and explain what they show. The x-rays depict a mid-shaft fracture of the tibia before (IMG1) and after (IMG2) being fixed with a rod or nail. This fracture can be caused either by motor vehicle trauma, falls, or in some cases, sports (usually violent contact sports). Complications can include non-union (not healing), mal-union (healing in a bad position) and infection from the surgery. IMG2 also shows a clear fracture in the fibula. The fibula is also broken in the first (pre-op) x-ray (IMG1) but it's a little more displaced in the second x-ray. This may be due to manipulation during surgery or to the angle from which the x-ray was taken. It's irrelevant to the patient because the fibula at that level has no important structural function.

Additionally, I was asked to review the hospital record of this patient. The history portion of the record revealed that the patient, Sharon Rose, was in an automobile accident. After the accident she reported severe pain in her knee and lower leg. As I said above, the trauma to the leg from the accident certainly could have and likely did cause the tibia injury shown in the x-rays. I cannot state with equal certainty that the fracture of the fibula was caused by the auto accident. Surgery was performed in the standard way and seems to have repaired the injury as much as possible. I saw from Ms. Rose's hospital record that she did suffer an infection as a result of the surgery.

Additionally the history portion revealed that Ms. Rose had experienced some minor pain in her lower leg from a fall she took while running a few weeks before the auto accident. It is highly unlikely that this fall caused the fractured tibia shown in the x-rays taken after the auto accident. Were that the case, the pain from the fall before the accident likely would have been much more severe than Ms. Rose reported, and she would have had a very difficult time coping with that pain.

I was also shown an x-ray taken of Ms. Rose's knee on the same leg (IMG3). This x-ray shows that one of the knees has significantly less space between the bones on the medial side (inside). This is a characteristic picture of osteoarthritis (the most common type of arthritis, simply wear and tear of the joint). The arthritis obviously pre-existed the injury from the auto accident because it takes several years to develop. The history portion of the hospital record does not say anything about the patient's complaining about knee pain before the accident. Even if she did suffer some pain from the osteoarthritis, which is not unlikely, it probably would not have been as severe as the pain she felt in that area after the accident.

Fred Feingold, M.D.
January 18, 2007

Assignment 4- For the Plaintiff, conduct a direct examination of Dr. Feingold, using the x-rays. For the Defendant, cross- examine the doctor. You too may use any of the x-rays you wish.

*The parties have stipulated that all the x-rays are of Sharon Rose's right leg taken at York Hospital when Ms. Rose went in for surgery shortly after the accident, and that the hospital record would qualify as a business record under FRE 803(6). Assume that the record contains the information included in Dr. Feingold's report above.

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* * Both parties have stipulated that Dr. Feingold qualifies as an expert in the field of orthopedic medicine and surgery.

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