

Model Trial Notebook

The Estates of Dull Pig and Dim Pig

v.

B. B. Wolf

Elements Matrix—see material on developing an elements matrix in the litigation planning outline.

Property Destruction

| Elements | Property of Another | No Justification | Intentional | Damage |
|-------------------------|-------------------------------------|----------------------------------|--|--------------------------|
| Witness—Smart Pig | brothers owned homes outright | unprovoked attack on the witness | intentional attack on the witness | houses reduced to rubble |
| Witness—Dr. Bag O. Wind | | | damage to brothers' houses could not have occurred by accident | houses reduced to rubble |
| Witness—B.B.Wolf | no ownership interest in pig houses | | “I’ll huff and I’ll puff and I’ll blow your house in” | houses reduced to rubble |

Example of Motions

IN THE SUPERIOR COURT FOR THE STATE OF CONFUSION
FOR THE COUNTY OF HORACE

Estates of DULL PIG and DIM PIG,

Plaintiffs

CIVIL ACTION

#56789

v.

B.B. WOLF,

Defendant

MOTION IN LIMINE TO EXCLUDE CERTAIN TESTIMONY OF EXPERT WITNESS

In discovery the defense has learned that a witness for the plaintiff, Dr. Bag O. Wind, intends to offer opinion testimony to the effect that damages to the houses of Dull Pig and Dim Pig could only have been caused by the intentional expulsion of breath by a canine quadruped. Defense asks that this court exclude this testimony on the ground that Dr. Wind lacks sufficient expertise on which to base this testimony and the testimony is insufficiently reliable to be of assistance to the jury.

Date: April 18, 1998

White Fang
Attorney for the Defense

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Example of Discovery
Deposition of Dr. Bag O. Wind

1 Q. Please state your name for the record.

2

3 A. Bag O. Wind

4

5 Q. What is your address?

6

7 A. 324 Windy Avenue; Tornado, Confusion.

8

9 Q. Have you ever testified at a deposition before?

10

11 A. Yes, I have.

12

13 Q. Then you understand that you are now under oath, don't you?

14

15 A. Yes.

16

17 Q. And you understand that it is important that you be as accurate as possible in your testimony, don't
18 you?

19

20 A. Yes, I understand that.

21

22 Q. So if you are not sure of the proper answer to a question, you will tell me that you do not know,
23 won't you?

24

25 A. In the unlikely event that that happens, I will let you know.

26

27 Q. And if you do not understand my question, will you let me know?

28

29 A. I certainly will.

30

31 Q. If you need to take a break at any time, will you tell me?

32

33 A. Yes, I will.

34

35 Q. Is there anything I can do at this point to make you more comfortable?

36

37 A. No.

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Example of Direct Examination

Examination of Smart Pig

Dep p 35, l 23

Now, Mr. Pig, I want to ask you about an incident which involved a visit to your house by B.B. Wolf. Do you remember that day?

When did you first see Mr. Wolf that day?

Dep p 36, l 12

What happened when Mr. Wolf arrived at your home?

Dep p 38, l 5

Did there come a time when Mr. Wolf said something which you took to be a threat?

Dep p 40, l 13

obj: 404(a) offering character evidence to show action in conformity therewith

ans: 404(b) this incident is admissible to show the identity of the animal who destroyed the houses of the decedents, the incidents are sufficiently similar that the fact that Mr. Wolf staged the attempt on Mr. S. Pig shows that he is more likely than not to have successfully destroyed the houses of the two D. Pigs

What did Mr. Wolf say?

Dep p 40, l 20

Hearsay--Admission

Can you describe for us the tone of voice in which he made this threat?

Dep p 40, l 20

And where was Mr. Wolf at the time he made this threat?

Dep p 40, l 23

Now, Mr. Pig, I show you what has been marked for identification as plaintiff's exhibit 12, what is it?

of the layout of your house and garden on the day of Mr. Wolf's attack?

Is exhibit 12 a fair and accurate representation

Mark Plan of house and grounds as exhibit 12, show to opposing counsel

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Example Cross Examination
Cross-examination of B.B. Wolf

Dep p 4, l 12

Mr. Wolf, it is a fact, is it not, that you were hungry in the morning on the day that these incidents are alleged to have happened?

You recall telling your wife that she should have done a better job of buying groceries for the week, don't you?

obj: husband/wife confidential communication privilege

ans: Wolf yelled statement while he was standing in the backyard of his house, overheard by a neighbor who was out mowing the grass

In fact, you berated her for not being a frugal housekeeper didn't you?

You said that it was her fault that you never had enough to eat, didn't you?

Your exact words were, "If I can't get a square meal here, I'll have to find one somewhere else", weren't they?

Mr. Wolf, you have been taking voice and singing lessons, haven't you?

One of the topics covered in those lessons was breath control, wasn't it?

I show you what has been marked for identification as Plaintiff's exhibit 25, that is the receipt for those lessons, isn't it?

Mark receipt as exhibit 25, show to opposing counsel

And this receipt contains a description of the material covered in those lessons, doesn't it?

It says that breath control was covered, doesn't it?

Example of Argument
Opening for Wolf

Mr. Wolf was at home with his family on the day that the attacks on Dull Pig and Dim Pig are alleged to have occurred. No witness places him anywhere near the property of either of the brothers Pig. It is true that later in the afternoon he went to the house of Smart Pig to practice for his chorale recital. Mr. Wolf had been working hard on improving his breath control so that he sustain prolonged measures in the piece that the choir was working on. Mr. Smart Pig was the choir director, and Mr. Wolf wanted to demonstrate how much progress he was making in his lessons. Everything else has been one chain of false assumptions and ghastly mistakes.

obj: best evidence, publishing a document before admitted; ans: offer into evidence
obj: insufficient foundation to overcome hearsay, Wolf did not prepare receipt
ans: in requests for admissions, defendant agreed to facts necessary for hearsay foundation

Example Jury Instructions

Intentional Instruction

Members of the jury, to conclude that an action was intentional, the law requires only that you conclude that at the time the act was committed, the actor knew what he was doing and did not act by mistake or accident. You are not required to find that the actor pre-planned his action or that he acted from any particular motive in doing what he did.

Jones v. Roberts

25 Conf. 234 (Yr-20)