

VICKERS v. HEARST

ACTIVITY 4D, Handout 1

FACTS

Early on the morning of December 17, a two-car automobile accident occurred at the intersection of Justice and Eagle Streets, N.E., in Anytown. Terry Vickers, the driver of a 1989 Toyota coupe, was taken to the Northeast Regional Medical Center and hospitalized for treatment of a broken leg, bruised ribs and lacerations to the upper torso, neck and face. The other car, a 1987 Chevrolet sedan, was driven by Dana U. Ivy. Ivy was not injured.

Before the accident, Ivy had attended a holiday party hosted by Sandy Hearst for Hearst's friends and members of a social club to which Hearst belongs. The party was held in the party room of Hearst's apartment complex, two miles from the scene of the accident. Ivy pleaded guilty to running a stop sign.

Vickers filed suit against both Ivy, the driver, and Hearst, the social host. Anytown has a statute, the Safe Highways Act, that specifically makes a social host who serves alcohol to any obviously intoxicated person liable to anyone injured by that person. In this suit, Vickers alleged that Hearst negligently served alcohol to Dana Ivy in violation of Anytown's statute, and that Vickers's injuries in the automobile accident resulted from Hearst's negligence as well as Ivy's. Vickers has demanded \$100,000 in settlement from Hearst for medical bills, loss of wages, and pain and suffering.

Before the trial, Vickers settled out of court with Ivy for the cost of car repairs. At trial, Hearst does not contest the amount of Vickers's medical bills and lost wages, but denies liability for serving alcoholic beverages to Ivy.

WITNESSES

For the plaintiff:

1. Terry Vickers, plaintiff
2. Lee Porter, guest at the party

For the defendant:

1. Sandy Hearst, defendant
2. Dana U. Ivy, driver

ISSUES

This case concerns an interesting aspect of negligence law: **third party liability**. The statute on which this mock trial is based, Anytown's Safe Highways Act, is representative of statutes passed in 35 states that establish a special category of negligence for those who serve alcoholic beverages. The elements of this type of negligence are outlined in the statute. The plaintiff should use the facts of the case to try to establish liability under the statute. The defendant should aim to disprove these elements of negligence.

The issue of third party liability is timely in many states and can provoke lively discussion on relevant public policy issues following the mock trial.

STATUTORY LAW

Anytown Safe Highways Act

An Act to Establish Third Person Liability of
Persons Negligently Serving Alcoholic Beverages

Section 1: Every person who negligently serves or causes to be served any alcoholic beverages to an obviously intoxicated person shall be liable for injuries to third persons caused by the acts or omissions of the intoxicated person, even if someone else is also liable.

Section 2: For the purposes of this section, the following definitions shall apply:

- a. "every person" means any and all individuals, associations, or corporations, and any and all employees, agents or servants;
- b. "serves" means sells, lends, gives, or otherwise furnishes, with or without monetary compensation;
- c. "obviously intoxicated person" means an individual whose outward signs of intoxication are plainly recognized by reasonable persons exercising reasonable care under all the circumstances; and
- d. "negligently" means failing to exercise reasonable care in doing something, or in not doing something for someone to whom a duty is owed.

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For the plaintiff:

1. STATEMENT OF TERRY VICKERS

I am a computer programmer for a local retail chain. On the morning of December 17, I was going home from work. I had to work at night to get time to test some new programs I am working on. I was driving down Eagle Street at about 30 to 35 miles per hour. There was hardly any traffic. At the intersection of Justice and Eagle there is a stop sign for the traffic on Justice. As I proceeded through the intersection, I noticed this Chevy speeding at me from my left side on Justice Street. I slammed on the brakes, but the Chevy never stopped. It was as though the driver never saw me or the stop sign. The Chevy's headlights were not turned on. Just before we crashed, the driver slammed on the brakes and skidded into my car at the door on the driver's side. As I lay on the stretcher after the accident, I saw the driver talking to the police. Later, I was told it was Dana Ivy. Ivy was mumbling badly. Ivy had trouble standing up straight. Ivy was clearly drunk.

A police officer investigated the accident. Ivy was crying at the time and refused to take chemical sobriety tests.

I suffered serious injuries from the accident. I was in the hospital for 10 days and out of work for a month. I later learned that Sandy Hearst served Ivy alcohol when Ivy was already intoxicated and then told Ivy to leave and drive the car. I think the person who is at fault is Sandy Hearst.

For the plaintiff:

2. STATEMENT OF LEE PORTER

I am a senior at Capitol City College and 21 years of age. Although I had seen Sandy Hearst once or twice around campus, I did not really know Sandy. Sandy is the president of one of the big social clubs on campus, The Breaks, so it's hard not to know of someone as popular as Sandy. Sandy gave Dana Ivy and me an invitation to Sandy's party, because Sandy knew we were interested in joining The Breaks.

When we arrived at the party about 11:00 P.M., Sandy greeted us and I said we were late because it was difficult for Dana to find a place to park the car. Sandy said not to worry about that but to "just come in and have a few drinks." Sandy said there were sodas for "non-drinkers if there were any," but that the real partygoers would have the "spiked punch" or beer. Sandy gave Dana some punch and I had a soda. I am active in our college's SADD (Students Against Drunk Driving) chapter and don't believe people should drink, especially when driving.

There was a lot of loud music and over 30 people were drinking, dancing and talking. I saw Dana drink more punch and Sandy was encouraging many people to drink. I didn't see Dana for a while but about 12:30 A.M., I saw a group, including Dana, playing a video game, and Sandy handed all of them beers.

Shortly thereafter, Dana seemed to get into a loud argument with James, a club member, and they almost knocked over the video game. Sandy became quite annoyed and told both of them it was time to leave. Dana grabbed another beer while heading out the door and Sandy took no steps to stop this. I wasn't going to ride home with Dana after all that drinking, so I just stayed behind and decided to get a ride home with someone else.

I was never invited to be a member of The Breaks social club. I'm sure it's because I don't drink or approve of the way Sandy and Dana acted that night.

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For the defendant:

1. STATEMENT OF SANDY HEARST

I am a sales representative for the Mutual Opportunity Insurance Company. I am a graduate of Capital City College, and the president of The Breaks, a social club. Our club has a chapter at Capital City College. That's where I met Dana.

One of the purposes of our club is to promote lasting business, professional and social ties between our younger club members at the college and those of us who are making it in the real world. It is hoped that these contacts can translate into job opportunities for our younger members once they have graduated. In order to promote our network, I had a holiday party on December 16 for some members of my club and some of the students like Dana and Lee whom we were considering inviting to become members.

I provided food, soft drinks, beer, and punch. I made the punch myself, with a little rum in one batch, but it was no more intoxicating than rum cake.

I didn't pay attention to Dana at the party because I had a lot of guests, but from what I saw, Dana just talked and acted like any other normal person would at this kind of function. Dana did act pretty lively during the party and at one point was dancing on a table, but Dana has an outgoing personality. Dana wanted Lee to loosen up and enjoy the party but Lee is a real loser — definitely not the kind of person we would want to join The Breaks.

I may have offered Dana a drink or two at the party but no more than I offered anyone else. I didn't force anyone to drink. It was their decision; they are adults. Dana did get out of hand at about 12:30 A.M. I saw Dana get in an argument with James, another club member, over a video game. I got angry and told Dana, "You should leave if you can't act more civilized." I didn't see Dana take any more beer on the way out.

I know that Dana wasn't drunk when leaving the party. As far as I know, I gave Dana some punch on arrival, and perhaps a beer later on. I saw Dana eat a lot of food, too, and that would have cut the effect of any alcohol.

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For the defendant:

2. STATEMENT OF DANA U. IVY

I am a senior at Capital City College and 21 years of age. I attended the party at Sandy Hearst's apartment complex on December 16th but I did not have too much to drink and was not drunk when I left.

I remember having a couple of glasses of a very weak punch with some rum in it and maybe two beers. I remember Sandy offering people drinks but I don't think Sandy pushed drinks on me. There was lots of food and I ate some of that as well.

I came with Lee to the party in my car but I don't remember if Sandy knew I had driven. Lee doesn't like drinking as Lee's part of the SADD (Students Against Drunk Driving) chapter at school and was a little unhappy about alcohol being served at the party. Lee is also angry at Sandy because Lee was never invited to join The Breaks club. I was invited to join the month after the party.

I generally had a good time at the party and did some dancing and played video games. At one point I got in an argument with James, another club member, over a video game. Sandy overreacted and told me to leave and I got mad and decided to go. I took a beer on the way out but I wasn't drunk and that beer didn't make me drunk either. Sandy had nothing to do with my taking that beer.

When I got in the car accident it was because I was tired and didn't see the stop sign — not because I was drunk. I was charged with running a stop sign and pled guilty to that charge.

THE BREAKS

invites you to

"A HOLIDAY PARTY"

December 16

10 P.M. till 2 A.M.

at

8000 Cayuga Avenue

(a short drive from campus)

- Great Food
- Drinks
- Music
- Video Games
- More Drinks
- Dancing