

**Association of Trial Lawyers of America
2006 Student Trial Advocacy Competition
Fact Pattern Clarification Questions**

I. GENERAL ADVOCACY QUESTIONS

- A. Is the state of New Florida a “comparative” negligence or “contributory” negligence state? **Comparative Negligence.**
- B. Which party will give its closing argument first? Will there be an opportunity for rebuttal? **Plaintiff closes first.**
- C. Is Counsel precluded from identifying workman’s compensation as the Plaintiff’s appropriate recourse? **Counsel is precluded from arguing Workman’s Compensation as the proper recourse for Plaintiff.**
- D. Is Counsel giving summation required to read either the complaint against the defendant or make mention of judicial instructions to the jury? **This is left to the team’s discretion.**
- E. Is Counsel permitted *voir dire* witnesses for the purposes of laying a foundation of objection(s)? **Counsel is not precluded from conducting *voir dire* of expert witnesses for the purpose of challenging their expertise. However, both experts will be permitted to testify so you are encouraged to use your allotment of time wisely.**
- F. Do the lay witnesses have “first-hand” knowledge (under FRE 602) to testify to a matter; or are they permitted to testify to information found within other witnesses’ depositions/sworn statements? **The answer to this question is found with the Federal Rules of Evidence.**
- G. If witnesses are permitted to testify to information found within other witnesses’ depositions/sworn statements, then are all party witnesses permitted to stay in the courtroom during trial pursuant to FRE 615? **You can invoke the rule but all witnesses will stay in the courtroom anyway.**
- H. May Counsel use the Restatements in the presentation of its case? **No.**
- I. Can any of the testimony in any of the witness statements or depositions be blown up for demonstrative evidence purposes? **Yes.**
- J. Would a timeline of dates when the pulley system was serviced qualify as demonstrative evidence? **Demonstrative evidence is limited to that which is provided in the Fact Pattern. Counsel or witnesses may draw or make simple charts and drawings in court.**
- K. Who installed the original hoist? **Information not provided.**

- L. Is there any other information forthcoming about the circumstances surrounding the hoist system's installation? **No.**
- M. What is the date that both experts conducted their inspections? **The experts inspected the hoist on the same day, March 3, 2005.**

II. COURT DOCUMENTS

A. Complaint for Damages

1. Where was Plaintiff injured? What part of Plaintiff's body? **Back injuries.**
2. Is articulating an injury to a part of Plaintiff's body a reasonable inference for a team to make during direct examination of Plaintiff? **Back injuries.**
3. There is no rule preventing Defendant from inquiring of Plaintiff on cross-examination: "Am I correct that you do not know how you were injured?" Because a witness is not permitted to make up facts—and would have to do so to answer this question in the affirmative—how should Plaintiff properly answer this question in order to comply with the rules and still make out the negligence claim? **Witness can only make reasonable inferences.**
4. Line 23: What was Plaintiff's previously existing condition that was aggravated? **Damages are not to be argued.**

B. Answer and Affirmative Defenses

1. Is Defendant's Second Affirmative Defense (no duty to warn) intended to encompass an argument that no warning was necessary, or that there was in fact a warning and thus no failure, or both? **The Affirmative Defense is as stated.**
2. Are the teams permitted to argue that non-party defendants should have been sued and that such non-party defendants are the entities responsible for the accident (the jury instructions don't account for the affirmative defense)? **Hoist Handling is the only entity named in the Affirmative Defenses.**
3. Defendant's Third Affirmative Defense alleges that the "sole and proximate cause of Plaintiff's injuries was the negligence of third parties not under the control of defendant." But there is no jury instruction regarding agency. Why? **You can argue that Chipper is not responsible because Hoist Handling is, if that is what you choose to do.**
4. Does Chipper's admission #8 in its reply concede that Gerry Cook was an invitee of defendant Chipper, or only that Gerry Cook was an invitee of the lessee Absolute Dewatering that was using the premises of defendant Chipper? **Gerry Cook was properly on the premises.**
5. Is it contestable that Gerry Cook was an invitee of Chipper? **No.**

C. Pre-Trial Order

1. Are motions *in limine* allowed? **No.**
2. If no *in limine* motions are not permitted, is Counsel required to show their opposition enlargements of photographs it wishes to submit into evidence or use for demonstrative purposes? **Each team will show the other their exhibits at the coaches meeting.**
3. Are housekeeping motions considered pre-trial motions in that they are excluded from the competition? **“Houskeeping” matters are not considered Pretrial Motions.**
4. Line 11 states “experts may testify about and use anything contained in the exhibits and documents attached to this package.” Does that include the statements and depositions of all witnesses including Ralph Alvarez and Sandy Freeze? **Yes.**
5. Line 11: states the “Background information is correct and factual.” Does that refer to the experts’ background or something else? **No, it refers to the background information that is sometimes provided along with the fact patterns.**
6. Where is the “Background Information” to which the parties have stipulated? **No additional/separate background information is provided.**
7. Line 13 says that “all witnesses have read and are familiar with the deposition, testimony, statements and the information contained with the Exhibits.” Does that mean that all the witnesses, both expert and non-expert, have read the deposition and statements of all the other witnesses in the case? **You can assume that all witnesses are familiar with all depositions and exhibits.**

III. DEPOSITIONS

A. Gerry Cook

1. Could you provide an explanation as what the plaintiff was doing when the pump fell and injured him? **See page 32.**
2. Line 55: What is the difference between a field mechanic and a mechanic”? **See page 28.**
3. Line 77: Does this question refer to the garage that was rented from Chipper or the main garage for Absolute Dewatering? **Chipper.**
4. Line 112-113: Does this question refer to the Absolute Dewatering’s garage or to Gerry’s employment for Absolute Dewater as a whole? **During the**

relevant time period, Gerry worked for Absolute stationed out of Chippers garage.

5. Line 132: Should the word “**not**” be inserted as follows: “...chain had not been properly installed...”? **Line 132 is written properly.**
6. Line 160: Is Gerry Cook referring to the time of day or their tardiness with appointments? **Time of day.**
7. Line 186: Should the word “before” or “after” be inserted after the word “so”? **Before**
8. Line 202 reads “Picked up one of the pumps.” Is this sentence referring to Gerry Cook picking up one of the pumps, or the hoist itself? **The pump is “picked up” by the hoist.**
9. Lines 203 & 210: Is the term “eye” beam a typo for the commonly used building/construction term “I” beam or “wide-flange” beam? **“I” beam.**
10. Lines 217-227: Which chain is Plaintiff referring to in his response to the question concerning the hoist failure, i.e., the center chain on the hoist or the “lifting vail” as further questioned below (“Q. Did the hoist come down? A. The chain did but the block was still attached.”)? **Chain on the hoist.**
11. Line 227: Is the term “lifting vail” a typo for “lifting bail” (as in the “bail” or handle of a buck)? **Lifting bail.**
12. Line 245-6: Are there any words missing, such as “a” or “the” or something else, between “set it on” and “big frame with wheels”? **“A”**

B. Logan Stein

1. Line 47-48 reads “Included were effects...” Is this sentence referring to fracture mechanics or failure analysis of engine parts, or both? **Both.**
2. Line 60-66: May Counsel presume that Defendant has the missing pin? **It was last in the possession of Chipper.**
3. Line 70-72: Stein says: “I reviewed...the depositions of the Hoist Handling employee.” There is no deposition of any Hoist Handling employee, only a statement. Can the witness say “Oh, I meant the statement of the employee?” **Yes.**
4. Line 71-72 reads “the depositions of the Hoist Handling employee.” Is this an error since there is no deposition from a Hoist Handling employee? Or, is this sentence referring to the Alvarez statement. **Alvarez’ statement.**
5. Lines 135-6: Is there anything missing in the first sentence of Stein’s response: “if a hoist has an unknown history of use, as in this case.”? It is

posed as a question, but then not completed. **He is saying that he believes that special assessments should be carried out if the hoist has unknown history.**

C. Leigh Flounders

1. Who hired the Defense expert witness? **The Defense.**
2. Are OSHA regulations to be considered federal regulations for purposes of this problem? **Yes.**
3. May Counsel refer to actual OSHA regulations? **No.**
4. Line 94-97: Why is lift system required for a proper daily inspection from ground level? **So you can see.**

IV. STATEMENTS

A. General Questions

1. Are the two statements “sworn” statements with the ability to be cross-examined? **Sworn statements.**
2. Will the persons rendering the statements be “surprise” witnesses at trial? There are only four witnesses allowed by the pre-trial order. **No.**

B. Ralph Alvarez

1. Randy Alvarez refers to work he completed on February 12, 2004 (where he claims to have “replaced the hook block assembly”) and on February 9, 2004. Was the work actually done on December 22, as the invoices indicate (thus replacing the block after the accident), and on February 11, as the invoices indicate, respectively. **The date Alvarez replaced the hook block is December 22, 2004, not February 12, 2004.**

V. EXHIBITS

A. Business Lease Agreement

1. What is the correct agreement date? **August 22, 2004.**
2. Paragraph five (5) ends with a sentence fragment. Is Counsel to assume the lease was executed in this incomplete fashion? **That should be a period after “Lease” not a coma.**
3. Part 5 reads “Excepted” (capital E). Is this a typographical error? Should it be one sentence or two separate sentences? **The last sentence should be “reasonable wear and tear accepted, except as otherwise provided in this Lease.”**
4. Should the assumption be made that the contract was signed by the necessary representatives of both contracting parties? **Yes.**

B. Invoices

1. Is there a second invoice from February 2004? **No – Alvarez’ statement should be that he came on December 22, 2004 to replace the block.**
2. The invoices dated 2/11 and 3/17 appear to be for the same repair. Was Chipper billed twice for the repair or was the hoist repaired twice with the same parts? **Different invoices, different work.**
3. Who paid for the four Hoist Handling invoices? **That is addressed in the Fact Pattern.**
4. Was the party that initially paid the invoice reimbursed by the opposing party in any way or given a copy of the invoice? **See #3.**
5. The invoice date March 17, 2004 is not signed by anyone. Is the intentional? **It’s just not signed.**
6. The invoice date 4/21/04 reads “attn: Ryan.” Is this meant to refer to Rian Green? **Yes.**
7. On the invoices, what does “n/c” stand for? Does it mean ‘no cost’? **No charge.**

C. Photographs

1. Are the descriptions of the photographs on page 66 to be considered true and accurate representations of what the photos actually depict? **Yes.**
2. Is there any additional information available regarding the descriptions/definitions of “hoist,” “chain,” “block,” “hook” and “lifting vail”? **No.**
3. Picture #242: There are no cracks visible on the picture, though the description of the picture says it is “showing cracks in the upper portion of the block.” Do the cracks have to be drawn in and labeled so that the expert witnesses do not have to make up where the cracks are? **Your expert can draw where the cracks appear on the upper portion.**
4. Picture #250: Where is the “guide assembly?” Does this refer only to the visible external housing of the hook block casing? Or does this refer to the black interior of the hook block assembly, which is not visible in the photograph? **The guide assembly is the piece shown below. You can see that there is a deformity as depicted by the arrow that travels through it from the right to the left.**
5. Picture #250: The description says “a twisting action of the hook block can occur if the chain is installed in a twisted condition...” According to whom? **By stipulation.**

VI. JURY INSTRUCTIONS

- A. When it states that the rule of sequestration is not to be invoked does this mean that the fiction of *constructive sequestration* of witnesses is not allowed or that *actual sequestration* is not allowed or neither one is allowed? **All witnesses shall be permitted to remain in the courtroom. If you want to utilize the fiction of what you call “construction sequestration,” that’s fine.**
- B. May the teams prepare a verdict form to use in the closing? The jury instructions reference a verdict form (instruction number three) but one was not provided. **A verdict form will be provided.**
- C. In the third paragraph, should “CHIPPER PROPERTIES, INC.” read “GERRY COOK” as the paragraph outlines the jury instruction on the affirmative defense of contributory negligence? **Paragraph three should say “Gerry Cook” not “Chipper Properties.”**
- D. There is no jury instruction as the effect of the lease provision on the duties of the parties and third parties. Why? **There just isn’t.**
- E. Will the jury instructions be fleshed out to describe the duties of an invitee? **No further instructions will be provided.**
- F. The jury instructions do not mention negligence as it pertains to third parties. Will such an instruction be included?

Paragraph Three is amended to read as follows:

“On defense, the issue for your determination is whether GERRY COOK and/or HOIST HANDLING was negligent and, if so, whether such negligence was a contributing legal cause of the injury or damage complained of.”

Paragraph Five is amended to read as follows:

“If however, the greater weight of evidence shows that GERRY COOK and/or HOIST HANDLING, and CHIPPER PROPERTIES were negligent and that negligence of each contributed as a legal cause of injury sustained by GERRY COOK, you should determine and write on the verdict form what percentage of the total negligence of both parties to this action is chargeable to each.”

- G. If the jury can consider the negligence of non-parties, does that include the plaintiff’s employer, Absolute Dewatering? **No.**