

Developments in Business Simulation & Experiential Exercises, Volume 10, 1983

MOOT TRIAL: AN EXERCISE IN TRIAL PROCEDURE AND EVIDENCE

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ABSTRACT

The purpose of the exercise is to determine whether the student can identify the various parts of a trial, ascertain their proper trial sequence and recognize whether the plaintiff's or defendant's attorney presents them. The second section of the exercise is to introduce or test knowledge of the basic rules of evidence.

INSTRUCTIONS

The following pages contain parts of a simulated trial. Only selected portions of a trial are given here, for in an actual trial many more parties, witnesses, questions and types of examinations would be used. Best results are obtained if the instructor photocopies and distributes all of the sections of the trial to the class, with each section on a separate sheet of paper. Selected students should role-play the parts for the class, after which each student should label each section of the trial and place it in proper order. The "A line" should be used for the name of the parts of the trial, the "B line" for numbering the trial order and the "C line" for indicating whether it is presented by the plaintiff (7) or defendant (a). After the students have numbered and placed the parts of the trial in order, the role-players should read the trial.

The second section of the exercise is for students who have already studied basic evidence or for introducing students to basic rules of evidence. Each section contains five questions that were also part of the direct and cross examinations. Each was objected to by opposing counsel and the objection was sustained by the Judge. On the line following the question, write the reason why the objection was sustained. To further demonstrate the layout and the workings of the courtroom, this part of the trial should also be performed by the role-players.

To conclude the exercise, the instructor should lead a discussion of the types of questions used in the examinations and the structuring of the trial. Variations in courtroom procedures and attorney styles should be discussed. Rules, such as not asking a question unless you know the answer, should be analyzed.

SECTION ONE

I: A _____ B _____ C _____

Ladies and Gentlemen:

We are here today to remedy the wrong done to my client, Hazel Brown. On June 11, 1982, the day before her daughter's wedding, Mrs. Brown went to Mr. Maurice's Beauty Salon to have her hair done. What should have been a happy experience turned into a nightmare! Mrs. Brown was awakened the next morning by her husband who frantically pointed out a large bald spot on the back of her head. In the testimony that follows, you will hear how all the anguish Mrs. Brown endured was caused by the negligence of Mr. Maurice and his agents.

II: A _____ B _____ C _____

Now that you have heard the testimony of both Mrs. Brown and Mr. Maurice, you must make a decision. The testimony has shown, through clear and convincing evidence, that Mrs. Brown had the bald spot for some twenty plus years before even meeting Mr. Maurice. I ask you to return a verdict for the defendant, Mr. Maurice. In this way you will be doing justice to Mr. Maurice. He deserves to have the sterling reputation he has earned in this community preserved, as neither he nor his agents are in any way responsible for Mrs. Brown's problem. Thank you.

III: A _____ B _____ C _____

Atty: Please state your name and address for the record.
Mrs. B: Hazel Brown, 436 Hawthorne Street, Phila., Pa.

Atty: Do you know the defendant?
Mrs. B: Yea. That is Mr. Maurice of Mr. Maurice's Grand Patee' Salon.

Atty: Did you have the occasion to use the services of Mr. Maurice?
Mrs. B: Yes - on June 11, 1982.

Atty: How do you remember the date?
Mrs. B: It was the day before my daughter's wedding and I wanted my hair to be special for the wedding.

Atty: Did you have an appointment at Mr. Maurice's salon on June 11, 1982?
Mrs. B: Yes - at 2:00 P.M. in the afternoon.

Atty: Did you keep the appointment? Mrs. B: Yes.

Atty: What happened when you arrived at the salon? Mrs. B: I was greeted by Mr. Maurice's receptionist-shampoo girl and led back to the shampoo area.

Atty: What happened next?
Mrs. B: The girl proceeded to wet my hair and put conditioner on it.

Atty: Did she shampoo your hair?
Mrs. B: No. I did not want a shampoo, as I had shampooed the day before and didn't want dry hair.

Atty: What happened next?
Mrs. B: The shampoo-girl led me to Mr. Maurice's station and he cut and set my hair,

Atty: Did Mr. Maurice cut and set your hair himself?
Mrs. B: Yea.

Atty: After your hair was set, what happened?
Mrs. B: I sat under the dryer for an hour and then went back to Mr. Maurice's station for styling,

Atty: Did Mr. Maurice style your hair himself?
Mrs. B: Yea.

Atty: Were you pleased with your hair when you left the salon?
Mrs. B: Yea - very pleased.

Atty: Did you have any further contact with Mr. Maurice?

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- Mrs. B: Yes. The next morning my husband pointed out a large bald spot and I immediately called Mr. Maurice.
- Atty: Did you talk to Mr. Maurice?
- Mrs. B: Yes. The receptionist answered but he came to the phone.
- Atty: What did you say to Mr. Maurice?
- Mrs. B: I asked him what he had done to create the big bald spot.
- Atty: What did he say to you?
- Mrs. B: He said he had not created the bald spot, that it was there when I came in.
- Atty: How large was the bald spot? Mrs. B: It was about 2½ inches around.
- Atty: where was the spot? Mrs. B: The top-back of my head.
- Atty: Did you do anything to your hair after leaving Mr. Maurice?
- Mrs. B: No.
- Atty: Did you have this bald spot when you went in Mr. Maurice's salon?
- Mrs. B: Absolutely not.
- IV: A _____ B _____ C _____
- Atty: Are you telling us that you saw a 2½ inch bald spot on Mrs. Brown's head and that you didn't say anything to her about it?
- Mr. M: Yes. As I said before, I didn't want her to feel bad.
- Atty: Being in business for ten years, weren't you afraid that if you didn't point out an existing bald spot to Mrs. Brown and some witnesses, that you would be blamed for it?
- Mr. M: No - she seemed like a good family woman.
- Atty: Please, just answer my questions.
- Atty: Do you use hair spray or something to preserve a hair-do?
- Mr. M: Yes. I use hair spray.
- Atty: Do you use high quality spray in your shop?
- Mr. M: Yes. I use the best.
- Atty: Then if the bald spot was there when Mrs. Brown came in and you covered it and sprayed it, how could a 2 inch bald spot show the next day?
- Mr. M: No spray will hold hair in place if a person is rolling, tossing and turning in bed.
- Atty: Wouldn't you say there is a big difference in a quarter size spot and a 2½ inch spot?
- Mr. M: Yes, but a good stylist can disguise either.
- Atty: Mr. Maurice, please just give the simple yes or no the question requires.
- Atty: Mr. Maurice, is it standard procedure for your shampoo-girl to work on people's hair who have scalp problems?
- Mr. M: If the problem is localized, she is instructed to work around it.
- Atty: If some of the chemical-conditioners splash. couldn't that worsen or spread an existing condition?
- Mr. M: Possible yes; probable no. All of the products used in my shop are specially formulated for sensitive skin.
- Atty: Do you feel that a shampoo-girl is capable of assessing the compatibility of hair formulas, scalp conditioners etc. with a customer's needs?
- Mr. M: My shampoo-girl is a full fledged beautician who works in that capacity to be in my shop to learn special styling and cutting from me.
- Atty: Don't you still feel that you personally should see customers, especially those with problems, when they first enter your shop?
- Mr. M: No. I have carefully interviewed, selected and instructed my employees.
- Atty: Since Mrs. Brown was not under your exclusive care while in the shop, you don't really know if your agent caused the hair loss while Mrs. Brown was with her, do you?
- Mr. M: The spot was not sore or new. It was "old" with light fuzz on it.
- Atty: Mr. Maurice, do you expect us to believe that neither Mrs. Brown nor her husband would be unaware of a 2½ inch bald spot, i.e. that they could see a twenty year old quarter size spot and confuse it with a large spot that wasn't apparent until after your services?
- Mr. M: Yes. It was the same spot, but it looked bigger because the hair was out of place after a restless night.
- V: A _____ B _____ C _____
- I thank you for the time and careful consideration you are giving this case. Now we have reached the most important point - you must make your decision. I ask you to weigh all the evidence presented. Then I ask you to decide in favor of the plaintiff, Mrs. Brown. You have heard of the suffering and embarrassment of Mrs. Brown. You can understand how she felt having one of the most important days in her life marred by Mr. Maurice. And all of this was unnecessary. All of this happened because of Mr. Maurice's negligence. By exercising ordinary care, the same ordinary, reasonable behavior expected of all of us in our everyday life, Mrs. Brown could have enjoyed her special day, Mr. Maurice would not be here in court and all of you would not have to take time from your busy lives to do justice. I ask you to find in favor of the plaintiff, Mrs. Brown. Thank you.
- VI: A _____ B _____ C _____
- Atty: Mrs. Brown, I remind you that you are still under oath. Mrs. Brown, a £ correct that the shampoo-girl was the first person in Mr. Maurice's salon to work on your hair?
- Mrs. B: Yes.
- Atty: Did she point out anything unusual about your head or hair?
- Mrs. B: She pointed out a small patch at the top of my head which she said she would avoid with the conditioner.
- Atty: Please describe the "patch".
- Mrs. B: It was about the size of a quarter - no problem, I had it for many years.
- Atty: Did hair grow in the "patch"?
- Mrs. B: No - but it was so small It didn't matter.

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Atty: How long had you had this "patch"? Mrs. B: Twenty years or so.

Atty: Did you ever have it diagnosed?

Mrs. B: Yes. I forget the word the doctor used, its been so many years, but it was from nerves. It doesn't bother me- it's nothing like the bald spot was.

Atty: Where was the bald spot in relation to the "patch"?

Mrs. B: The patch was on the top of my head, the bald spot behind it.

Atty: Did you sleep well the night before the wedding? Mrs. B: No. I was too excited.

Atty: Were you restless that night?

Mrs. B: Yes, very because of the wedding.

Atty: Did you do anything to protect your hair during the night?

Mrs. B: No. I sleep on my back and figured I could fluff up the back on my hair in the morning.

Atty: Did you find any of your hair in your bed or comb?

Mrs. B: No.

Atty: Do you share a double bed with your husband? Mrs. B: Yes.

Atty: Were you awake when your husband pointed out the bald spot?

Mrs. B: No - he woke me.

Atty: Then you weren't sleeping on your back?

Mrs. B: No - I guess not - or he wouldn't have seen the bald spot.

VII: A _____ B _____ C _____

Atty: Please state your name, address and occupation for the record.

Mr. M: Maurice Doucette' hairstylist and owner of Mr. Maurice's Grand Patee Salon at 473 Chestnut Street, Philadelphia. Pa.

Atty: Do you remember the plaintiff, Mrs. Brown?

Mr. M: Yes. She came to me to have her hair done on June 11, 1982.

Atty: What, if anything, happened that was unusual?

Mr. M: Seeing that she had a large bald spot, I skillfully styled the hair so it would not show.

Atty: How large was the bald spot?

Mr. M: Two and one-half inches around.

Atty: Where was the bald spot?

Mr. M: The top and back of her head.

Atty: Did you say anything to her about the bald spot?

Mr. M: No. I didn't want to make her feel self-conscious, especially since she told me she was preparing for her daughter's wedding.

Atty: How did her hair look when you finished?

Mr. M: Beautiful - I completely disguised the bald spot.

Atty: How did you disguise it?

Mr. M: Mrs. Brown had enough hair that I could geometrically cut it and comb it over the spot.

Atty: Did you do anything to make it stay in position?

Mr. N: Yes. I prayed it.

Atty: How effective is the spray?

Mr. N: The hair will still move if it is windy, rainy or subjected to activities such as tossing and turning.

Atty: How long have you been a hair stylist?

Mr. M: Fifteen years, with my own shop for ten years.

Atty: Are you familiar with special hair conditioners and needs?

Mr. M: Yes. I even teach a course at the local beauty academy.

Atty: Had you ever seen a bald spot like Mrs. Brown's before?

Mr. M: Yes, several times. It is a sporadic balding, usually worsening when a person is nervous or excited.

VIII: A _____ B _____ C _____

Ladies and Gentlemen:

We are here today to find truth and to do justice. We can sympathize with Mrs. Brown and empathize with the disappointment, even despair, she must have felt upon having her husband point out the bald spot just hours before she was to appear at her daughter's wedding. However, we cannot blame Mr. Maurice for this unfortunate occurrence. In the course of the trial, we will show that Mr. Maurice did everything he could to make the day nice for Mrs. Brown. The evidence will show that her hair was conditioned in his shop and personally cut and styled by Mr. Maurice. Mr. Maurice skillfully styled Mrs. Brown's hair so the bald spot she had for twenty years would not show. She left the salon happy with her hairdo. I ask you to listen to the testimony and then I know you will make the right decision - the decision that Mr. Maurice had nothing to do with this bald spot and exercised utmost care in helping Mrs. Brown prepare for a special day.

SECTION TWO

The following questions were also part of the direct and cross examinations. Each was objected to by opposing counsel and the objection was sustained by the Judge. On the line following the question, write the reason why the objection was sustained.

Direct examination of Mrs. Brown

1. Atty: What is the reputation of Mr. Maurice's father who had the shop before him? _____
2. Atty: What should Mr. Maurice have used to treat your hair? _____
3. Atty: What did your daughter say when she saw you? _____
4. Atty: Since the "patch" you had was only dime size and further forward on your head, you knew this was a new spot, correct? _____
5. Atty: What were your husband's feelings in having to go to the wedding with you? _____

Direct examination of Mr. Maurice

6. Atty: Since you observed that Mrs. Brown is a nervous person, wouldn't you say that her excitement over the wedding could have

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caused the big bald spot? _____

7. Atty: What did your shampoo-girl say about the bald spot? _____
8. Why did you become a hairdresser? _____

Cross-examination of Mrs. Brown

9. Atty: If the bald spot was really different than before, all the wedding guests would have said something about it - right? _____

Cross-examination of Mr. Maurice

10. Atty: Wouldn't the correct treatment of Mrs. Brown have been with prescription drugs?

ANSWER KEY

SECTION ONE

I:A Opening Statement	B: 1	C: **
II:A Closing Statement	B: 8	C: ^
III:A Direct examination	B: 3	C: **
IV:A Cross examination	B: 6	C: **
V:A Closing statement	B: 7	C: **
VI:A Cross examination	B: 4	C: ^
VII:A Direct examination	B: 5	C: ^
VIII:A Opening Statement	B: 2	C: ^

SECTION TWO

1. Irrelevant.
2. Calls for expert opinion.
3. Hearsay.
4. Leading.
5. Calls for a conclusion on the part of the witness.
6. Leading.
7. Hearsay.
8. Irrelevant.
9. Calls for a conclusion on the part of the witness.
10. Calls for an expert opinion.