

Opening Argument Planning Notes

Case: Cat in the Casket

client: pet owner needs a name

Elements of Law to Consider:

the defendant engaged in outrageous conduct (OUTRAGEOUS CONDUCT)
the defendant intended to cause the plaintiff emotional distress (INTENTION)
the plaintiff suffered emotional distress (EMOTIONAL DISTRESS)
such outrageous conduct of the defendant was the cause of the emotional distress (CAUSE)

Elements of Statement (Story)

Hook, Who is the plaintiff (refer to by name), what is her experience, what asking of jury, objections defendant may raise, law in layman terms, how law applies to situation, expression of "damages" as a value

Audience

1. Most likely mix of pet owners who love their pets to go to the lengths the plaintiff went to to bury her pet, 2. pet lovers who can sympathize with grief of loss but may not understand going to such great lengths, 3. non-pet-lovers who do not understand why the loss of the pet and the funeral were such a big deal

Grabbing attention of audience--group 1 will largely accept the value of the grievance simply telling plaintiff story, group 2 may or may not need explanation of the value in damages except by focusing on how much the pet meant to her and the horror of experience with the vet which they can connect to, group 3 will largely see the claim as ridiculous, including if I try to equate a pet's loss to the loss of family and friend, except if I focus on the experience of dealing with incompetency in a company, the experience of hassle

Focus: Tell the story as experience of pet owners feelings both as grieving and grievance, connecting to examples of what we have all experienced

Use elements of following discussion:

To evoke intentional infliction of emotional distress--

1) The defendant must act intentionally or recklessly--The defendant and the plaintiff agreed that the dog's body was to be turned over to the organization Bide-A-Wee for funeral arrangements. But the defendant not only did not turn over the remains, but provided the

remains of a cat instead. They were not careful with the remains or they would not have mixed them up, making them reckless

2) The defendant's conduct is extreme and outrageous--Extreme and outrageous conduct, according to the jury instructions, is conduct that would cause an average member of the community to immediately act in outrage. The defendant showed she cared about the animal as she would for a friend or family by arranging an elaborate funeral that is usually reserved for people. So to have what amounted to a stranger's body, in the form of a cat, appear in the casket is outrageous to an average citizen such as myself.

3) The plaintiff suffers severe emotional distress--The Restatement says that intensity and duration and the extreme and outrageous character of the defendant's conduct is in itself important evidence that distress exists. The defendant's conduct was outrageous. The plaintiff, after all the time it took to take the case to court, is still in distress and anguish, indicating the intensity of the emotions and showing enduring distress.

4) The distress is caused by the defendant's conduct--The plaintiff's distress is a result of the defendant putting down the dog, but going back on the terms of the agreement to turn over the dog's remains for funeral arrangements and putting a cat's remains in the dog's place.

The defendant is liable for wrong, and the plaintiff is entitled to damages as a result of arranging an expensive funeral for the dog, having guests spend their time, and the anguish caused.

Joanne Matson Instructor Manager
RE: The Cat in the Casket

In contrast to the discussion on the JCPenney case, here you've given us an idea of why you think the defendant's behavior was "reckless" : They weren't careful, and you would expect them to be careful. Note that it is not just being reckless that is the issue, but being reckless of the possibility of causing emotional distress. Since they were in the veterinary business, they must be very much aware of how important pets are to people, and so they must have certainly known that mixed up pets would be extremely upsetting.

Notes from Meyer on Plotting:

Plot--a series of events outlining the action of a narrative or drama; think of the "drawing of lines to mark out order"

forward movement
anticipate ending

why telling the story (why is it so important) meaning

Story--steady state interrupted by trouble resulting in efforts made to restore steady state or new transformed steady state by which then-or-there is

use language the underlines the "character" or situation

narrative theme--"understanding the truth about the meaning of human affairs", story theme "announces" itself time and again like a musical motive

theory of case explicit and narrative theme implicit

good vs evil--evoke familiar stories, how will good triumph over evil and restore the steady state, maintain tension--struggles with defendant to recapture steady state plaintiff is trying for

introduce theme and evil early and build anticipation that is implied will conclude with, of course, rightful ending

Bare Bones My Statement:

- *Introduce Kay Corso loving her dog, dealing with illness, suffering loss (steady state)
- *Introduce vet, death at the hands of
- *Time of grieving, making arrangements
- *Vet makes agreement (rule)
- *Ms. Wilkins grieves and arranges for (elaborate) emotional funeral
- *Vet breaks agreement
- *Vet not just breaks but blatantly disregards grief and loss with replacement of cat (outrageous)
- *Vet is responsible for the loss of great time of friends and family and funeral (liability)
- *Vet still does not give Ms. Wilkins her beloved pet, incompetence (who can tell what happened to pet)(reckless disregard)
- *Vet causes longterm (emotional distress)
- *Vet causes irreparable harm (liability)
- *Right prevails if wrong (tort) judged so and damages are provided for (return to new transformed state)

Remember so what so, why this matters, meaning and this is implicit

Opening sentence idea?

Kay Corso grieved while Crawford Dog and Cat Hospital harried.

This is a common story of a business', organization's, or agency's disregard for our trying to do business with them and our becoming distressed for our trouble. Ladies and gentlemen of the jury, the crime here is this Veterinary Hospital acted with reckless disregard and with extreme and outrageous conduct of their responsibilities, emotionally distressing and causing damage to pet owner, Kay Corso.

Begin story here with Kay and continue to build tension between Kay and the Veterinary Hospital.

Objections:

Honest mistake, they acted on the agreement, but in the transfer of the remains, something was misread or handled. We all make mistakes. It doesn't mean we are reckless or intended to cause emotional distress. Do people usually think you outrageous or extreme to be human in making a mistake?

Since we made the agreement with Ms. Corso, it clearly shows we intended to do as she wished with her dog's remains. We cared about, not disregarded, her experience with the loss of her pet, because we treated the experience seriously enough to agree to turn over the pet's remains to an organization that is specifically for arranging pet funerals.

We are not liable for damages because we are not responsible for how Ms. Corso disposes of the remains or how she grieves the loss of her pet. We might expect enduring grief and anguish for the loss of a companion of 15 years.

Inferences from the Case Record to Help Narrate:

Kay was a responsible caring pet owner--her dog had a long life of 15 years and she was accustomed to taking the dog to the vet as she did that day for treatment. She knew her companion so well that when it was time for her dog to die, she preempted his death by taking the pet to the veterinary who confirmed her understanding by recommending euthanasia. She also did not try to hang on to her pet, allowing him to suffer just because she couldn't bear to part with the dog. She went ahead and euthanized him, which is a difficult choice to make of a long-time companion. She further showed her care for the pet in making sure the pet had a funeral worthy of a friend, including family in friends in honoring her pet in death. Furthermore, she felt distress and anguish both at the time of finding a cat rather than her pet in the casket and at the time of the court proceedings.

Vet's responsibilities--A veterinary hospital is a constant flow of pets with owners who care enough to put their pet's care in the vet's hands. Their constant interaction gives them intimate knowledge of how much pets mean to their owners. As a vet it is their responsibility to care enough about these animals in their own right that they handle these living animals with care. The vet knows enough about how hard the death of a pet can be as the vet seems to have no problem turning the remains over to an organization that arranges pet funerals. The vet also sees the anguished experience of pet owners who need to have their pets euthanized. They call themselves a hospital which is defined as an institution where the sick or injured are given medical or surgical care. As their name implies they are responsible for the care of their patients with a medical professional's care which they didn't do in not treating the remains respectfully in providing the wrong remains for the funeral.

Damages--The event of a funeral, including a head stone, epitaph, and attendance by family and friends is expensive, takes careful arrangements in timing and invitations of attendees. Kay had to take time off from her responsibilities of work? family? home? to go through the whole sequence of events--taking her pet to the vet, locating? and making arrangements with funereal organization, the funeral itself, and dealing with the vet about the wrong remains. Taking time you didn't know you needed costs something in responsibilities and finances. Taking time you didn't know you needed costs something in caring for yourself in your enduring anguish over the outrage of the cat in the casket.

Now I need to put this abundance of material into a 500-1000 word essay. Having comments from my Legal Memo would help too.