

CIVIL LAW MOCK TRIAL: FADEY V. KETKLUANE HIGH SCHOOL



SCENARIO: FADEY v. KETKLUANE HIGH SCHOOL	PAGE
List of participants	2
What happened?	3 - 4
Relevant Law	5 - 7
Background information for witnesses	8 - 15
Questions for the Jury	16
Statement of Claim	17 - 23
Statement of Defence	24 - 27

ROLE PREPARATION	PAGE
Preparing for a Mock Trial	1 - 5
Time Chart	6
Etiquette	7 - 8
Role Preparation for:	
Plaintiff and Defendant Lawyers	9 - 12
Judge	13
Jury	13
Court Clerk	14 - 15
Court Artist	16
Members of the Press	17

JUSTICE SECTOR VOLUNTEER PACKAGE	PAGE
Purpose of a Mock Trial	1
Mock Trial Time Chart	2
Information for:	
Lawyer Coaches	3 - 4
Mock Trial Judges	5 - 6



For each OJEN Civil Law Mock Trial, there are three packages:

- » OJEN Civil Law Mock Trial **Scenario**
- » OJEN Civil Law Mock Trial **Role Preparation Package**
- » OJEN Civil Law Mock Trial **Justice Sector Volunteer Package**

Youth need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/teachers/organizers need all three packages.

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What happened?	3 - 4
Relevant law	5 - 7
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Statement of Defence	24 - 27

SCENARIO:

FADEY v. KETKLUANE HIGH SCHOOL

- Slip and Fall
- Negligence

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PARTICIPANTS

LIST OF PARTICIPANTS

1. **Marcus Fadey** (Plaintiff)
2. **Ketkluane High School** (Defendant)
3. **Yasir Patel** (Defence Witness)
4. **Hannah Blackwood** (Plaintiff Witness)
5. **Jayme Thomson** (Defence Witness)
6. **Lawyers for the Plaintiff** (3)
7. **Lawyers for the Defendants** (3)
8. **Judge** (can be played by a student, a teacher, a judge, or a lawyer)
9. **Court Services Officer** (keeps order in the court) (*optional*)
10. **Court Clerk** (assists the judge) (*optional*)
11. **Jury Members** (6) (*optional*)
12. **The Press** (2, report on the trial) (*optional*)
13. **Court Artists** (2, sketch what happens at trial) (*optional*)

WHAT HAPPENED?

On March 2, 20** the Ketkluane High School Tigers played in the basketball league championship game against the Bjorkbell High School Bulldogs. The game was played in the Ketkluane High gymnasium, and many of the school's students turned out to support their team.

WHAT
HAPPENED?

After a slow start, the Ketkluane Tigers came from behind and tied the game at the final buzzer. With the crowd cheering them on, the Ketkluane Tigers triumphed – for the third year in a row - as Marcus Fadey sunk the winning three point shot in the last few seconds of overtime.

After this spectacular win, the crowd streamed onto court to congratulate the players. As had become a tradition over the last couple of years, the players (including Marcus) and some enthusiastic crowd members helped empty the water cooler over their coach's head.

Even though he had been distracted by the recent break up with his ex-girlfriend, Lokia Rami, Marcus was thrilled with this win. There had been scouts from at least two American universities in the stands, and he had played the best game of his career. Plus, he was happy to have beaten the Bjorkbell High team, because the team captain was his old friend Yasir Patel who had recently started seeing Marcus's ex-girlfriend, Lokia.

After the game, in the change room, the team decided to go out for dinner. Marcus decided to catch up with them a bit later because he wanted to speak with Lokia. He heard from one of her friends that she was in the stands during the game, and was having second thoughts about breaking up with him.

Shortly after 8pm, Marcus walked from the change room into the now empty gym. He called Lokia on his new iPhone, and paced around the gym as the conversation became quite intense. He glanced over when he heard a noise at the change room door, and saw Yasir Patel enter the gym. Yasir was looking for a jersey he had left behind, but soon realised that Marcus was on the phone with Lokia.

"Hey! Are you talking to Lokia?!" Yasir yelled from across the gym. "Yeah, do you have a problem with that?!" Marcus yelled in response. Still on the phone, eyes fixed on Yasir, Marcus started walking across the gym to where Yasir was standing. Marcus didn't notice the water puddle left over from emptying the water cooler on the coach. Before he reached Yasir, he slipped and fell.



Marcus sustained a mild concussion, broke his wrist badly, and needed surgery. He was in a cast for two and a half months, and has been in physiotherapy since the cast was removed.

WHAT HAPPENED?

Because of his injuries, Marcus was unable to play on the basketball team during his last year of high school, and so lost his chance at the basketball scholarship he had been hoping for. Now he'll have to pay his own university tuition. He also lost his job at Belding Construction Co. because he was unable to do the heavy lifting required.

After the accident, Marcus sued Ketkluane High School for negligence for leaving the unsafe situation in the gym. In his lawsuit, Marcus asked for the following in damages:

- \$20,000 for loss of opportunity of a basketball scholarship;
- \$10,000 for lost wages due to inability to perform the required duties of his employment;
- \$400 for the damage to his iPhone;
- General damages for pain and suffering and loss of enjoyment of life resulting from the injury itself and the side effects of the medication prescribed for the same injury.

THE LAW

WHAT IS NEGLIGENCE?

“Negligence” is conduct that falls short of what a reasonable person would do to protect another person from harm. If an injured person proves that another person acted negligently to cause his injury, he can recover damages for his losses. The injured plaintiff may be compensated for harm to his body, property, mental well-being, financial status, or intimate relationships.

Negligence suits are analyzed in stages, called elements. The elements that must be established in every negligence case are: duty of care, standard of care, causation, and damages. Each element is defined and explained below.

(1) DUTY OF CARE

A duty is when a person is under a legal obligation to exercise care for another person. The court must determine if the defendant had a legal obligation to show care toward the plaintiff.

There is a two-part test to answer this question:

1. could the defendant have predicted that this particular person would be injured; and
2. was there a risk that the defendant should have been aware of?

(2) STANDARD OF CARE

The court must determine if the defendant acted as a reasonable person would in similar circumstances.

(3) PROXIMATE CAUSE

Proximate cause refers to the fact that the wrongdoer’s failure to meet the standard of care must be the actual cause of the plaintiff’s loss. For a defendant to be held liable, it must be shown that the acts or omissions (failure to act) of the defendant were the cause of the loss or damage suffered. Therefore, if the wrongdoer did not meet the standard of care, but the loss was caused by something other than the wrongdoer’s actions, the negligence claim will be unsuccessful.

(4) LOSS

The fourth element of a negligence claim refers to the fact that the plaintiff must

have actually experienced some sort of loss. If the wrongdoer failed to live up to the standard of care that was owed, but no loss resulted from those actions, then no damages will be awarded.

EXAMPLE:

Aneela was in charge of her daughter's carpool on Tuesdays. Aneela drove her daughter, plus two other children to school, including their neighbour Inna's son, Felix.

One Tuesday, Aneela was extremely tired from staying up all night working the night before, but she decided that she was still fine to carpool the children to school. While driving with the three children, Aneela dozed off and hit the car in front of her. The accident was very minor and none of the passengers in either car were injured. Aneela pulled over and safely parked on the side of the road to wait for the other parents to pick up their children.

While Aneela and the kids were seated in their parked car, another driver, David, was driving down the street. David had spent most of the night at a local pub where he consumed a large amount of alcohol. David saw Aneela's parked car, but he could not react fast enough to change lanes and he hit Aneela's car. All of the passengers suffered minor injuries, except Inna's son, Felix, who suffered a broken arm.

Inna wants to bring a negligence claim against Aneela, on behalf of Felix. She wants compensation from Aneela for Felix's broken arm.

Duty of Care: As the driver of the carpool, Aneela owed the children in the car a duty to drive safely.

A Failure to Meet the Standard of Care: A reasonable person who had stayed awake the entire night before the carpool and was "extremely tired" would not have driven the children to school. The reasonable standard of care in this circumstance is for the driver to be adequately alert when driving the carpool. Someone who stays awake all night is not sufficiently alert to drive children to school. Therefore, Aneela failed to meet the standard of care owed to the children.

Proximate Cause: Although Aneela failed to meet the standard of care, the accident that she caused did not cause Felix's injuries. Aneela's accident was minor and all of the children were safe in the car after the accident. Therefore, Aneela's actions were not a proximate cause of Felix's injuries.



Loss: Felix suffered from a broken arm after the second accident caused by David and this is considered a loss. However, Felix had not suffered any injury after the first accident caused by Aneela.

Conclusion: Inna’s negligence claim against Aneela for Felix’s broken arm is unlikely to be successful because Felix’s injuries were a result of David’s actions, not Aneela’s actions. Inna would probably be more successful if she advanced a negligence claim against David for causing Felix’s broken arm.

DEFENCES TO NEGLIGENCE

CONTRIBUTORY NEGLIGENCE

THE LAW

- One possible defence available to a defendant is to argue that the plaintiff was contributorily negligent. That is, that the plaintiff is partially responsible for what happened.
- Canadian law allows the court to divide responsibility for damages, making each person who contributed to the harm responsible for only his or her share.
- Basically, this means that the defendant can argue that the plaintiff might have done something himself to contribute to the injury, which made it worse than it would have been otherwise.

When this occurs, the plaintiff cannot sue for damages for the portion of the injury that he caused.



MARCUS FADEY, PLAINTIFF

Your background:

- Your name is Marcus Fadey. You are 16 years old and a student at Ketkluane High School. You are captain of the Ketkluane Tigers boys basketball team.
- You have been hoping to go to an American school on a basketball scholarship.
- You work part-time during the school year (and full time during the summer) at Belding Construction Co. You have worked at Belding Construction Co. since you turned 15, and you have been getting small raises every year since. You currently make \$9.50 an hour.
- Your ex-girlfriend, Lakia Rami, recently broke up with you to date your friend, Yasir Patel.

Your version of what happened:

- On March 2, 20***, you played a great game and helped lead your team to victory.
- After the game, a friend of Lakia's told you that Lakia wanted to speak with you. She had been in the stands watching the game, and was apparently having second thoughts about breaking up with you to date your friend Yasir Patel.
- Your teammates and coach were going out for a celebratory dinner, but you decided to join them later. You wanted to call Lakia to talk. You walked from the change room into the empty gymnasium to call Lakia. The conversation was very intense.
- While pacing around talking on your iPhone with Lakia, you looked up and saw Yasir Patel enter the gym through the change room door. He must have realised you were talking to Lakia and he yelled "Hey! Are you talking to Lakia?!"

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

- » Learn your facts by heart.
- » You will be sworn in during the trial and need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.



MARCUS FADEY, PLAINTIFF

- You yelled back, “Yeah, do you have a problem with that?!” While still on the phone with Lafia, you started walking across the gym, heading straight for Yasir.
- You didn’t notice the orange “wet floor” pylon marking the spot where the water had been spilled after the game. You slipped on the water and fell on the gym floor.
- You hit your head and lost consciousness temporarily. Your iPhone broke, and you knew right away something bad had happened to your wrist.
- Yasir came over to help you, but as soon as you were on your feet you told him to leave you alone. Your parents, who were waiting outside the school, took you to the hospital.
- Your injuries were extensive. In addition to a mild concussion, you broke your wrist in a number of places and required surgery to realign things properly.
- You had a cast for two and half months, and have been undergoing intensive physiotherapy ever since the cast was removed.
- You were unable to play on the basketball team during your last year of high school, and so could not be in contention for the basketball scholarship you had hoped to get. As a result, you are not sure how you’re going to pay your tuition next year.
- You are not sure when your wrist will be strong enough to allow you to engage in any physical activity.
- You had to stop working at Belding Construction Co. after you hurt your wrist because you were no longer able to do the heavy lifting the job required. You have recently started looking for a new job.
- You still don’t have a new iPhone because they are so expensive.

WITNESS
INFORMATION



MARCUS FADEY, PLAINTIFF

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

How did you feel about seeing your friend again, so soon after he had started dating your ex-girlfriend?

Why didn't you notice the "wet floor" pylon?

Did you know what the gym hours were?

What will you do now for a summer job?

What effects has the fall had on you?

How is recovery going?

WITNESS
INFORMATION



YASIR PATEL, DEFENCE WITNESS

Your background:

- Your name is Yasir Patel. You are 16 years old and you attend Bjorkbell High School. You are the captain of the Bjorkbell Bulldogs boys basketball team.
- You have known the plaintiff, Marcus Fadey, for ten years. You used to play on the same community basketball team, and remained friends even though you now attend different high schools.
- You haven't spoken to Marcus in the last couple of weeks because you started dating his ex-girlfriend.

Your version of what happened:

- On March 2, 20**, you were playing in the championship game at Ketkluane High School. The game was close, but your team lost. You couldn't help but notice how happy everyone from Ketkluane was at the win. You saw team members (including Marcus) and some of the crowd pouring water over their coach's head.
- Just as your bus was about to leave Ketkluane, you realised you had left a jersey on a bench in the gym. You went back into the school and tried to open the main gym doors, but they were locked. There was a sign on the gym doors that read "Gym Hours: 8am – 8pm".
- As you were about to leave, you saw someone leaving the men's change room door, which was just down the hall from the main gym door. You knew there was an entrance to the gym through the change room so you yelled "hold the door!" The person held open the change room door and you entered the gymnasium through the door inside the men's change room.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

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YASIR PATEL, DEFENCE WITNESS

- Once you entered the gym, you saw Marcus talking on his phone while pacing around the gym. You also noticed an orange “wet floor” pylon in the middle of the gym floor.
- It only took a few seconds for you to realise he was talking to your new girlfriend, Lokia. You yelled “Hey! Are you talking to Lokia?!” and Marcus yelled back “Yeah, do you have a problem with that?!”, as he started walking across the gym towards you.
- On his way towards you, Marcus walked past the orange “wet floor” pylon and slipped and fell in the puddle of water left on the gym floor.
- Marcus hit his head and used his arm to break his fall. He seemed dazed as you helped him up, and you noticed that his iPhone had broken and was lying in the water. Marcus also said that he had done something to his wrist. You offered to help him, but he refused.

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

WITNESS
INFORMATION

How did you enter the gymnasium and at what time?

Did you notice the orange “wet floor” pylon on the gym floor? How visible was it?

How did you feel about losing the game?

Have you tried to apologize to Marcus for dating his ex-girlfriend?

How do you feel about not being friends with Marcus anymore?

How did you feel when you realised Marcus was on the phone with your girlfriend?

How have your own chances to get a scholarship changed now that Marcus no longer has a shot at a scholarship?



HANNAH BLACKWOOD, PLAINTIFF WITNESS

Your background:

- Your name is Hannah Blackwood. You are 28 years old and have been working as an art teacher at Ketklwane High School for two years. Ketklwane High School is the only school you have worked at.
- You taught the plaintiff, Marcus Fadey, in one of your classes last semester.

Your version of what happened:

- On March 2, 20**, you attended the basketball game briefly, but left because it was too crowded. You heard about what had happened to Marcus the next day.
- You were not surprised to hear that Marcus had slipped on something left on the floor because, in your opinion, the maintenance at Ketklwane High School is never good enough.
- You know that the school does not have a large budget to begin with, and think that many aspects of school life are underfunded.
- You don't know what the gym is typically like, but you do know that it often takes a long time for spills in your art room to be properly cleaned up.
- Since the accident, you have noticed that Marcus has become more withdrawn and has failed to hand in a few assignments.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

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- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

WITNESS INFORMATION

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

Do you have anything with which to compare the maintenance at Ketklwane High School?

How do you feel about one of your students going through such a difficult time?

JAYME THOMPSON, DEFENCE WITNESS

Your background:

- Your name is Jayme Thompson. You are 46 years old.
- You have worked as a custodian at Ketklwane High School for 7 years. Before that, you worked as a custodian at an elementary school in the neighbourhood.
- You are well liked by the students and staff at Ketklwane High School.
- You are very familiar with the school maintenance policy.

Your version of what happened:

- On March 2, 20***, you were working your shift at Ketklwane High School. Your shift was supposed to end at 6:00pm. However, the basketball game did not finish until after 7:30pm.
- You were the only custodian working that evening and you were responsible for cleaning up the gym after the basketball game. The school does not have a large budget for maintenance and it is very common that you are the only custodian working at a particular time. Although everything always gets cleaned up eventually, sometimes it takes a more time given the limited number of custodians.
- It took you until 8pm to clean up the spilled food and sweep up the mess that the crowd left in the stands. At that time, you had not yet cleaned up the water on the gym floor that remained after the students emptied the water cooler on their coach's head.
- At 8pm you got a call from your son's babysitter.

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JAYME THOMPSON, DEFENCE WITNESS

She said that you were two hours late and that she had to leave in twenty minutes. If you didn't leave right away, your son was going to be left unattended.

- Consequently, though you normally would have stayed to clean up the water spill, you rushed home. You put an orange "wet floor" pylon next to the water spill on the gym floor, which was the accepted practice of school custodians when there was a spill. You were going to clean it up in the morning because you knew you would be the first person in the gym at 7:30am. Plus, you knew that no one was supposed to be in the gym between the hours of 8pm and 8am. The hours of gym operation are posted outside all gym entrances.
- Before you left, you locked the gym doors and the men's and women's change room doors.
- You think it is really too bad about what happened to Marcus.

WITNESS
INFORMATION

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

What are your responsibilities at the school?

How does the school's limited maintenance budget affect you?

How do you feel when students leave garbage lying around?

What are the good and bad things about working at a high school?



QUESTIONS FOR THE JURY

1. Did the defendant have a duty of care toward the plaintiff?

Yes [] **No** []

If **No**, deliberations are over. Action is dismissed.

2. Did the defendant breach that duty of care?

Yes [] **No** []

If **No**, deliberations are over. Action is dismissed.

If **Yes**, in what manner did the defendant breach that duty of care?

3. Did the breach of that duty of care cause damage to the plaintiff?

Yes [] **No** []

If **No**, deliberations are over. Action is dismissed.

4. If **Yes**, was the plaintiff contributorily negligent?

Yes [] **No** []

If **Yes**, how was the plaintiff contributorily negligent?

If **Yes**, what percentage of fault do you attribute to plaintiff? [%]

5. What damages do you award to the plaintiff without considering contributory negligence?

Special damages \$ _____

General damages \$ _____



Court File No: 01-CV-234567 XY1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCUS FADEY

Plaintiff

- and -

KETKLUANE HIGH SCHOOL

Defendant

**STATEMENT OF CLAIM OF
MARCUS FADEY**

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty

STATEMENT
OF CLAIM



days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$3000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$3000 for costs and have the costs assessed by the court.

Date: March 15, 20XX

Issued by: The Litigator LLP
456 Centre Street
Anytown, ON A1A 2B2

TO: Ketkluane High School
123 Main Street
Anytown, ON
A1A 2B2

STATEMENT
OF CLAIM

1. The Plaintiff, Marcus Fadey, claims:

- a. The sum of \$20,000 for loss of opportunity in the form of a basketball scholarship, which has resulted in an obligation to pay tuition out of pocket for university education;
- b. The sum of \$5,000 for lost wages due to inability to perform the required duties of his employment as a construction worker (equivalent to wages for a period of 6 months);
- c. The sum of \$400 for the loss of use of his iPhone;



- d. Special damages in the form of any medical bills accumulated during treatment, including the cost all prescription medications required;
- e. General damages for pain and suffering and loss of enjoyment of amenities and life resulting from the injury itself and the side effects of the medication prescribed for the same injury.
- f. Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and amendments thereto;
- g. Costs of this action on a substantial indemnity basis including Goods and Services Tax;
- h. Such further and other relief as this Honourable Court may deem just.

Parties

2. The Plaintiff, Marcus Fadey (“Marcus”) resides in the City of Anytown in the Province of Ontario. At the time of the accident, Marcus was 16 years old and was a high school student at Ketkluane High School (“Ketkluane”). He was a promising basketball player who was being recruited to play at the university level at several schools in the United States of America. He was also an employee at the Real Canada Construction Company site near the Defendant school, where he hoped to save enough money to afford his university expenses.

3. The Defendant, Ketkluane High School, is a public high school in the Ontario Board of Education. It is located at 123 Main Street in the City of Anytown in the Province of Ontario.

The Slip and Fall

4. On March 2nd, 20XX, at approximately 7:30 pm, the Plaintiff and his teammates from Ketkluane High School, won a basketball championship game in the last seconds of overtime.

5. There were scouts present at this championship game, at least two of whom had already been in contact with the Plaintiff about a potential university scholarship.

6. After the big win, celebrations ensued which included a crowd of spectators who streamed onto the court.

7. The contents of Ketkluane High School’s basketball team’s water cooler were

STATEMENT OF CLAIM

poured on Coach Ernie Westwood after the game, as is traditional in sports championships, especially at Ketkluane High.

8. After the game, the Plaintiff was to attend a celebratory dinner with his coach and teammates but was delayed in joining them.

9. At approximately 8:15pm, the Plaintiff left the Ketkluane change room and entered the school's gymnasium through a door connecting the change room to the gymnasium, where he called his ex-girlfriend, Lokia Rami on his iPhone.

10. While he was speaking to Ms. Rami, Marcus was confronted in the gymnasium by a rival player from the South Valley Bulldogs team, Yasir Patel. Yasir Patel is a former friend of the Plaintiff's who was dating Ms. Rami at the time.

11. Upon realizing that the Plaintiff was talking to Ms. Rami, Mr. Patel became quite upset. The Plaintiff and Mr. Patel exchanged words and when the Plaintiff approached Mr. Patel, he unexpectedly slipped and fell on a puddle of water on the gymnasium floor.

12. As he was falling, the Plaintiff put out his hand to break his fall, landing awkwardly on his wrist, and shattering it.

13. The Plaintiff was unable to fully cushion the blow of this unexpected fall and, as a result, hit his head on the gymnasium floor. He lost consciousness temporarily and had to be taken to the hospital by his parents, who were waiting outside of the school. As a result of the fall, he suffered a broken wrist and required emergency surgery. He was later diagnosed with a mild concussion and prescribed a few days of bed rest.

14. In addition, the iPhone into which the Plaintiff was speaking at the time of his fall landed in the puddle beneath him and was crushed and destroyed irreparably.

15. The Plaintiff does not recall any warnings of the hazardous puddle.

Cause of Action

16. As an "occupier" under the *Occupier's Liability Act*, Ketkluane had a duty to take reasonable steps to ensure that persons on its premises were safe.

17. For the following reasons, the Plaintiff states that the Defendant breached its duty by failing to meet its standard of care due to the individual or combined



negligence of its employees, for whom Ketkluane High School is responsible.

18. The Plaintiff alleges that the fall and the resultant damages and injuries were caused entirely by the negligence of the Defendant, which consisted of the following acts or omissions, or the cumulative effect of any combination of them:

- a. failing to ensure that the gymnasium was maintained in a safe condition;
- b. allowing dangerous water to accumulate on the floor in the gymnasium;
- c. failing to have in place procedures that would ensure that the premises were regularly inspected;
- d. failing to inspect the premises on a regular basis or, at least, before the end of day;
- e. failing to mop the floor, leaving water on the floor;
- f. failing to erect signs or provide the Plaintiffs with sufficient warning with respect to the conditions of the premises;
- g. failing to provide adequate training to employees regarding cleanliness and safety.

19. The Defendant and its employees knew or ought to have known that water left on the floor of the gymnasium aisle was dangerous for customers.

The Plaintiff’s Loss

STATEMENT OF CLAIM

20. Because of the Defendant’s negligence, the Plaintiff suffered painful, serious, and permanent injuries, particulars of which are:

- a. Severely fractured wrist;
- b. Steel rods placed in the wrist following complex emergency surgery;
- c. Visible scarring on the wrist;
- d. Mild concussion;
- e. Frequent migraine headaches;
- f. Prolonged and extensive pain;



[Empty box for case number]

- 21. Because of the above injuries, the Plaintiff requires ongoing physiotherapy.
- 22. Marcus was also prescribed pain medication for his wrist by his family doctor.
- 23. The emergency wrist surgery and the concussion resulted in the Plaintiff's absence from school.

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24. At the time of the accident, the Plaintiff was an aspiring basketball player. Since the fall at Ketklwane, he has been unable to return to the game he loves. He was unable to play on the basketball team during his final year of high school, and so lost his opportunity at a basketball scholarship. Marcus will now have to pay for his own university education in full.

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25. At the time of the accident, the Plaintiff was also an employee of the Real Canada Construction Company near Ketklwane High School. Following the extensive injury to his wrist, Marcus was unable to engage in the heavy lifting required, nor could he operate the site machinery. As such, he was released from his position.

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26. Due to the pain from his injury, his extensive physical therapy and the emotional setbacks resulting from the withdrawal of his scholarship offers, the Plaintiff has only recently been able to find the time or energy to pursue alternate employment.

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- 27. One year after the fall, Marcus continues to exhibit symptoms including pain in the injured wrist, numbness, headaches, and withdrawn affect.
- 28. The Plaintiff pleads the provisions of the *Occupier's Liability Act*, R.S.O. 1990, C. O.2 and the *Negligence Act*, R.S.O. 1990, c. N-1 and amendments.

Place of Trial

STATEMENT OF CLAIM

29. The Plaintiff proposes that this action be tried at the City of Anytown in the Province of Ontario.

Date Issued: March 15, 20XX

The Litigator LLP
 456 Centre Street
 Anytown, ON A1A 2B2

J. Lawyerly, LL.B.
 Lawyer for the Plaintiff

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	Marcus Fadey Plaintiff	and	Ketkluane High School Defendant	Court File No: 01-CV-234567 XY1
				ONTARIO SUPERIOR COURT OF JUSTICE Proceeding commenced at Anytown
				STATEMENT OF CLAIM
				THE LITIGATOR LLP Barristers & Solicitors 456 Centre Street Anytown, ON A1A 2B2 J. Lawyerly Lawyer for the Plaintiff Served on Fax: 416-555-5555

STATEMENT OF CLAIM



Court File No: 01-CV-234567 XY1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCUS FADEY

Plaintiff

- and -

KETKLUANE HIGH SCHOOL

Defendant

**STATEMENT OF DEFENCE OF
THE DEFENDANT KETKLUANE HIGH SCHOOL**

1. The defendant admits the allegations of fact contained in paragraphs 3, 4, 5, 8, and 16 of the statement of claim.
2. The defendant denies that the plaintiff is entitled to the relief claimed in paragraph 1 of the statement of claim and denies the allegations contained in paragraphs 17, 18, and 19, and 20 of the statement of claim.
3. The defendant has insufficient knowledge to confirm or deny the allegations of fact contained in paragraphs 7, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, and 27 of the statement of claim.
4. The Defendant pleads that a visible orange “wet floor” pylon was placed in the gymnasium, near the pool of water before the alleged slip and fall took place on March 2, 20**.
5. The Defendant pleads that the gym doors were locked at 8pm and the gym doors clearly identified the gymnasium hours as being 8AM – 8PM.

STATEMENT
OF DEFENCE



6. The Defendant pleads that the Standard Of Care was met by setting out the visible orange “wet floor” pylon and locking the gymnasium doors.

7. The Defendant pleads that if the Plaintiff sustained the injuries as alleged in the Statement of Claim, such injuries and damages were not caused or contributed to by the fault or neglect or any breach of duty or breach of care on the part of the Defendants or anyone for whom the Defendant is in law responsible.

8. The Defendant pleads that if the Plaintiff sustained the injuries as alleged in the Statement of Claim, such injuries were caused or contributed to by the negligence of the Plaintiff, the particulars of which are as follows:

- a. he failed to take adequate care for his own safety;
- b. he failed to keep a proper lookout;
- c. he failed to wear proper footwear;
- d. he was walking or running at an excessive rate of speed in the circumstances;
- e. his ability to walk was impaired by drugs, alcohol, and/or other circumstances.

9. The Defendant denies that the Plaintiff sustained the injuries and damages as alleged in the Statement of Claim and put the Plaintiff to the strict proof thereof.

10. The Defendant pleads that the damages sustained by the Plaintiff, if any, were caused by a casualty, illness, or event unknown and unrelated to the Defendant.

11. The Defendant pleads that the injuries and damages as alleged in the Statement of Claim are exaggerated, excessive, and/or too remote.

12. The Defendant pleads that the Plaintiff has failed to mitigate his losses as a result of failing to pursue medical treatment and/or alternative employment.

13. The Defendant pleads that the gymnasium was safe for persons exercising reasonable care.

14. The Defendant therefore submits that the action be dismissed with costs on a substantial indemnity basis.



Date: April 1, 20XX

THE LEGAL EAGLES LLP
Barristers & Solicitors
789 High Street
Anytown, ON A1A 2B2

A. Justice
Lawyer for the Defendant

TO: The Litigator LLP
456 Centre Street
Anytown, ON A1A 2B2

J. Lawyerly, LL.B.
Lawyer for the Plaintiff

STATEMENT
OF DEFENCE



	Marcus Fadey Plaintiff	and	Ketkluane High School Defendant	Court File No: 01-CV-234567 XY1
				<p>ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Proceeding commenced at Anytown</p>
				STATEMENT OF DEFENCE
				<p>THE LEGAL EAGLES LLP Barristers & Solicitors 789 High Street Anytown, ON A1A 2B2</p> <p>A. Justice Lawyer for the Defendant</p> <p>Served on Fax: 416-555-5555</p>

STATEMENT OF DEFENCE