

ROUND 2 (CIVIL MATTER) 2014

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All characters, vessels, events and addresses of the parties are fictional and created solely for the Mock Trial.

Attachments:

Attached are:

1. Statement of Claim
2. Defence
2. Statement of the Plaintiff Peter Murphy
4. Statement of the Plaintiff's witness Martia Murphy
3. Statement of Defendant Timothy Ian Tanick
4. Statement of Defendant's witness Eloise Dellaire

General Notes

This is an action for damages in the District Court. There is only one issue: Did the Defendant "run down" and sink the Plaintiff's yacht "La Principessa?"

It has been agreed that the question of liability will be determined separately from the issue of damages. Therefore no issue as to damages arises in the present Mock Trial.

Discovered Document:

The Invoice for repairs was a document that the Defendant had in his possession and which he was obliged to "discover" to the Plaintiff as part of the pre-trial procedures.

Important Note

The scene of the collision is not a fictional place. Teams are expected to have referred to a map of the Swan River.

The parties are agreed that the Western Australian Department of Transport's "***A Boating Guide for the Swan and Canning Rivers***" is an accurate depiction of the Swan River. Accordingly the Map may be tendered without objection as evidence in the Mock Trial. That map can be downloaded from: http://www.dpi.wa.gov.au/mediaFiles/mar_rb_swanriver-1109.pdf.

It can be seen from the pleadings that issues to be resolved between the parties at the liability hearing are simply, did a collision and the subsequent sinking of the Plaintiff's yacht occur. If so, was the collision and the damage to the Plaintiff (the loss of his yacht) caused by the defendant's negligence. In deciding whether the Defendant was negligent you need to ask would a reasonable person in the position of the Defendant foresee that in driving his boat in the manner he did, he might collide with the other yacht and cause damage to the Plaintiff?

On duty of care:

**Wyong Shire Council v Shirt (1980) 146 CLR 40
(High Court of Australia)**

Mason J (at 47):

“In deciding whether there has been a breach of the duty of care the tribunal of fact must first ask itself whether a reasonable man in the defendant’s position would have foreseen that his conduct involved a risk of injury to the plaintiff or to a class of persons including the plaintiff. If the answer be in the affirmative, it is then for the tribunal of fact to determine what a reasonable man would do by way of response to the risk.....”.

The Civil Liability Act 2002 WA provides:

5D. Onus of proof

In determining liability for damages for harm caused by the fault of a person, the plaintiff always bears the onus of proving, on the balance of probabilities, any fact relevant to the issue of causation.

**IN THE DISTRICT COURT OF WESTERN No. 349 of 2014
AUSTRALIA
HELD AT PERTH
BETWEEN**

PETER MURPHY

Plaintiff

AND

TIMOTHY IAN TANICK

Defendant

STATEMENT OF CLAIM

Date of Document:	1 March 2014
Filed on Behalf of:	The Plaintiff
Date of Filing:	1 March 2014
Prepared by:	Telephone: 9261 3345
Donoghue & Stevenson	Facsimile: 9261 3346
Solicitors	Reference No: SS12345
227 Wagon Mound Street	Samantha Stevenson
MELVILLE WA 6156	

1. At all material times, the Plaintiff was the owner and skipper of yacht "La Principessa" ("the Plaintiff's yacht").
2. On 28 December 2013 at approximately 12.30pm the Plaintiff was sailing the Plaintiff's yacht in approximately a north easterly direction near Blackwall Reach on the Swan River at the same time the Defendant was driving motor vessel LBOG 144 ("the Defendant's vessel") approximately south westerly towards the Plaintiff's yacht.
3. At a point, 130 meters directly north of the East Fremantle Yacht club the vessel driven by the Defendant collided with the Plaintiff's yacht ("the Collision") causing the Plaintiff's yacht to sink.
4. The Collision was caused by the negligence of the Defendant.

Particulars of Negligence

The Defendant

- i) failed to avoid the Plaintiff's vessel;
 - ii) sailed the Defendant's vessel at a speed that was, in all the circumstances, excessive;
 - iii) sailed directly into the path of the Plaintiff's vessel.
5. As a result of the Defendant's negligence the Plaintiff's vessel sunk and was extensively damaged and the Plaintiff has suffered the loss and damage.

Particulars of Damage

The Plaintiff's vessel was totally lost.

- i) Cost of vessel: \$150,000

AND the Plaintiff claims:

- (a) Damages;
- (b) interest pursuant to section 32 of the Supreme Court Act from 28 December 2013 to the date of judgment at the rate of 8 per cent per annum or at such other rate as this Honourable Court allows; and
- (c) costs

**IN THE DISTRICT COURT OF WESTERN No. 349 of 2014
AUSTRALIA
HELD AT PERTH
BETWEEN**

PETER MURPHY

Plaintiff

AND

TIMOTHY IAN TANICK

Defendant

DEFENCE

Date of Document:	15 March 2014
Filed on Behalf of:	The Defendant
Date of Filing:	15 March 2014
Prepared by:	Telephone: 9261 6645
Rylands & Fletcher	Facsimile: 9261 6646
Solicitors	Reference No: SS12345
28 Peach Muse	Jane Rylands
MELVILLE WA 6156	

1. The Defendant admits each and every allegation in paragraphs 1 to 2 of the Statement of Claim.
2. The Defendant denies each and every allegation in paragraphs 3 to 5 of the Statement of Claim and denies that the Defendant was negligent as alleged by the Plaintiff or at all.
3. At approximately 12.30 pm on 28 December 2013, the Defendant was sailing through Blackwall Reach on the Swan River in a south westerly direction, towards Fremantle.
4. As the Defendant's vessel approached the Plaintiff's yacht the Plaintiff's yacht was sinking. At no time did the Defendant's vessel collide with the Plaintiff's yacht or come within more than 30 meters of the Plaintiff's yacht.
5. The Defendant denies the Plaintiff is entitled to the damages and the relief claimed in the Statement of Claim or any relief at all.

STATEMENT OF PETER MURPHY

1. I live at 23 Broad Street, Leeming in the State of Western Australia.
2. I am the Plaintiff and I am a plumber.
3. On 28 December 2013 around 9 am over breakfast my wife suggested that we head out on the river in our little yacht La Principessa.
4. I checked the boating forecast and then headed out to the carport where I keep La Principessa.
5. La Principessa is 3 meters long, about 60 years old and is made of antique cedar. Such yachts are considered more historical pieces than working yachts, however we have been using La Principessa to sail up to Fremantle about 5 times a year.
6. On 28 December we planned to follow our usual pattern – we sail from the Point Walter Reserve. From there to East Fremantle and then back down to UWA and back across to Point Walter Reserve.
7. We arrived at Point Walter around 9.30 am. The river was calm and there was a light breeze from the East Northeast.
8. We backed the trailer into the water. My wife held on to the La Principessa while I parked the car and we beached the La Principessa while we got the mast up and set the rigging.
9. We headed out West along the river. There was an easterly breeze so we were able to run westward easily and picked up a bit of speed. As we came to the end of a long sand bar that runs in an East/West direction we turned almost due South and sailed into Blackwall Reach. At this point the river is 20 meters deep (its deepest point).
10. We pulled into Point Roe Park and set up a picnic. I had packed a morning tea – a thermos full of hot water for my wife and a beer for me and something to eat.
11. We picnicked at Point Roe for about an hour and a half. We then packed everything up, placed it on the boat and headed back to Point Walter.
12. We began tacking up Blackwall Reach as the breeze began to die away and within about 5 minutes of coming into Blackwall Reach we became becalmed.

13. We basically weren't going anywhere and spent about 5 minutes with the sail just flapping a tiny amount from side to side. After about 30 minutes I noticed a large motor yacht coming in our direction.
14. The yacht seemed to be going at considerable speed and from where we were sitting on our little yacht the bow wave of the motor yacht seemed about 2 meters high.
15. I could clearly see the person skippering the other yacht. He was on the flying bridge and was talking to a woman on the bridge. He seemed to be giving far more attention to the woman than he was to the skippering his yacht. The woman was on his left and he was looking at her and was not looking forward of his yacht. I could see him very clearly.
16. We started yelling out and frantically waving and trying to get his attention but the other yacht just kept coming towards us. It was doing more than 8 knots and was certainly travelling faster than the other two boats that he had passed on his way through Blackwall Reach.
17. When the yacht was about 20 meters from us it was obvious that there was going to be a collision and my wife and I jumped for it. I looked back to see the sickening sight of our lovely La Principessa cut in half.
18. My wife and I then swam to some adjacent moored boats and managed to clamber up one.
19. The owner of that boat, a Mr Thicker was on the boat. He said: *"I saw the lot. That was the most disgusting boating I have ever seen – the guy should be prosecuted!"*
20. The La Principessa was lost. I was gutted. It was worth \$150,000.

STATEMENT OF MARTIA MURPHY

1. I live at 23 Broad Street, Leeming in the State of Western Australia.
2. I am the wife of Peter Murphy and I am an air force aviation mechanic.
3. On 28 December 2013 around 9 am my husband and I were having breakfast when I suggested that we head out on the river in our little yacht La Principessa.
4. La Principessa is a beautiful little antique cedar wood yacht.
5. I packed a picnic basket with a few nibbles and cold drinks and the like. It was forecast to be a hot day around 40 degrees if I remember correctly.
6. We headed down to Point Walter and then launched La Principessa. Before launching the boat I tied a rope at the bow of La Principessa and watched my husband secure the bung at the stern.
7. When we launched from the trailer I walked La Principessa to the shore so we could put up the mast and set up the rigging.
8. Once the boat was rigged we headed off down the river towards Fremantle.
9. We pulled into Point Roe Park and set up a picnic. We picnicked at Point Roe for about an hour and a half. We then packed everything up, placed it on the boat and headed back to Point Walter. As we sailed up Blackwall Reach, within about 5 minutes we became becalmed.
10. We basically weren't going anywhere the sail was just flapping a tiny amount from side to side.
11. We were there just slowly rocking with the waves and getting very hot. I must say it was very very hot.
12. After a while I became concerned about how long it we would be there before the sea breeze would come in. I remembered hearing on the radio on the way down to launch the boat that the sea breeze was due around 3pm.
13. We were becalmed for about 20 minutes when I noticed a large motor yacht coming in our direction.
14. I could clearly see the person skippering the

other yacht. He was on the flying bridge and was talking to a woman on the bridge.

15. The guy driving the other boat was having a great time. I could see him laughing and joking around with a woman on the boat. Not once in all the time that I watched him did he look in our direction.
16. It was obvious to me that there was going to be a collision.
17. My husband and I began to panic. It is just terrifying seeing a boat coming straight for you and some idiot just not even looking at you. You feel so helpless.
18. We started yelling out and frantically waving and trying to get his attention but the other yacht just kept coming towards us. It was doing more than 8 knots and was certainly travelling faster than the other two boats that I saw coming in our direction that I saw him pass some minutes before.
19. Eventually my husband said: "*jump for it*" and we both jumped in the water and headed for a boat moored near by.
20. We looked back to see the sickening sight of our lovely La Principessa cut in half.
21. We clambered up a boat moored nearby and the boat's owner (who was on the boat), a Mr Thicker said: "*I saw the lot. That was the most disgusting boating I have ever seen – the guy should be prosecuted!*"
22. About a week after the incident I was driving down to Fremantle when on a whim I decided to go past the Tarrant Yacht Club. As I did I could plainly see the Defendant's boat on the slip having work done to the bow. I am sure that the Defendant was getting the collision damage fixed.

STATEMENT OF TIMOTHY IAN TANICK

1. I am the Defendant. I live at 23 Calderbanks Reserve, Waterford, Western Australia. I am the Manager of an import/export business.
2. On 28 December 2013, I had arranged to take out my friend Miss Eloise Dellaire to Rottnest on my 20 metre yacht, Sir Galahad.
3. We set out from my yacht club and headed down towards Fremantle. My plan was to approach Fremantle first by going past Point Walter, going around the sandbar and then down through Blackwall Reach.
4. At the northern end of Blackwall Reach the permitted speed is in excess of 8 knots. There is a requirement to do 8 knots at the western end of Blackwall Reach.
5. It was a sunny day on the 28 December 2013 and it was forecast to have initially West Southwest breezes, then East Northeast breezes then finally a South West breeze.
6. It was the plan of myself and Miss Dellaire to stay at Rottnest for a few days, which eventually we did.
7. Some have said that I am too old to be dating Miss Dellaire given that there is a 20 year age gap between us. However, we are completely compatible and have lots of mutual interests. In particular, Miss Dellaire and I are both very keen golfers. Miss Dellaire has a particularly good handicap and is intending to further her golfing skills over the next few years.
8. As we headed past Point Walter, I started to pick up a bit of speed in my yacht and proceeded into Blackwall Reach. I was at the helm on the fly bridge to my yacht, which is approximately 4 metres above sea level.
9. As we were proceeding down Blackwall Reach, I could see approximately 500 metres in front of me a small yacht that appeared to become becalmed. I took the view that this boat was nevertheless not in my pathway and that I would be able to avoid it and saw no good reason for slowing down. As I proceeded closer to the small yacht it appeared to be moving into my path and I could see that the occupants of the boat were frantically moving around. It became apparent to me that rather than being becalmed their boat was sinking.

10. I immediately put my yacht into neutral and about 20 metres from the small yacht I was proceeding at a very slow speed. As I passed the small yacht the occupants jumped out of it. I deny absolutely that my yacht was anywhere near the small yacht or that it collided with the small yacht. What in fact happened, was that the small yacht began to sink and when I became almost adjacent to it but some 10 metres to the left of it I noticed the water was at the gunnels and almost immediately as the small yacht became astern of my yacht it sank and I could see the occupants were swimming to some boats that were moored nearby.
11. For that reason I saw no good reason to stop. There was no reason for me to stop and provide assistance, firstly because the occupants of the small yacht had managed to get to the safety of a moored boat and were seen by me to be helped onto it and secondly, because my boat had not at any point come within anywhere more than 10 metres of the other yacht and there was no collision as alleged.
12. My friend Mr Colin Thicker advised me that he assisted the Plaintiff onto his boat that day. He clearly noted the alcohol that was on the breath of the Plaintiff and what is more the Plaintiff's wife said: "*why the hell didn't you put the bung in the yacht?*"

STATEMENT OF ELOISE DELLAIRE

1. I live at 23 Calderbanks Reserve, Waterford, Western Australia. I am a semi professional golfer. I am also a Commerce Student at Curtin University.
2. On 28 December 2013, my now de-facto partner Timothy Ian Tanick agreed we would take out his motor yacht, the Sir Galahad to Rottnest. Our intention was to spend up until the day after New Year at Rottnest at Tim's mooring near Geordie Bay.
3. I had arranged with my favourite catering firm to supply us with some packaged meals for our stay at Rottnest and met with the catering company at a jetty near our mooring at the yacht club so I could pack all the food and beverages. Our intention was to stop at Thompson's Bay where we would pick up a number of people who were going to ferry it across to Rottnest and then we would move on to Geordie Bay.
4. 28 December was a beautiful day and we set out with quite high spirits. I had studied the maps for the trip over to Rottnest. My intention was to get my skipper's licence and I wanted to have a good understanding of the river and the environs around Rottnest.
5. After we left the yacht club we eventually rounded the sandbar at Point Walter and then headed in a southerly direction along Blackwall Reach.
6. As we did, I noticed cliffs at Blackwall Reach and I remember remarking to Tim that I had never noticed them before.
7. Tim was telling me stories and getting quite excited about when he was a kid and he used to go swimming near Bicton and Blackwall Reach.
8. Tim was also telling me that the river at Blackwall Reach is rather deep and as we sailed through it I noticed that the depth sounder got down to around 20 metres.
9. I went below for a short time while we were travelling through Blackwall Reach to grab some cool drinks for Tim and I.
10. Tim has a strict policy of not drinking while he is at the helm of his boat. I think he loves the boat too much really. It is the only time that he

won't have a drink. As I did so, I opened a champagne bottle for myself and took Tim his cool drink and my champagne up to the fly bridge.

11. When I got to the fly bridge, I could see there was a small yacht some 200 metres in front of us and at this point in time we had entered the 8 knot zone around Blackwall Reach and Tim had pulled back the speed of the boat. I remember, given that I was very keen to learn how to operate the boat that I had a look at his speed at this point and we were only travelling just slightly under 8 knots.
12. At the time we had reached 8 knots we were still some 100 metres from the other vessel and at that point I noticed the occupants of the vessel waving at us in a frantic sort of way. I got hold of the binoculars and saw that the gunnels of their boat were level with the water. I said to Tim that I thought they needed help.
13. When we were within 50 metres of the other boat, however, it had already sunk and the occupants were out of the boat and making their way to a boat moored adjacent to the Blackwall Reach. I can't believe that the Plaintiffs have brought this action. It is quite clear that their boat sank and I understand it is through their negligence.