
This problem involves the case of *Heather Patrick v. Mid-City Bar & Grill et al.* and includes the facts and instructions.

You will be randomly assigned to argue either the Plaintiff's or the Defendant's position. Each side will have 15 minutes to present their argument. The Plaintiff may reserve time for rebuttal.

Please adhere to the following:

1. Do not refer to or use materials beyond those provided, except that you are encouraged to use any applicable Revised Arizona Jury Instructions, which are available in the law library.
2. The specific Facts given are not in dispute. Do not assume additional facts, but you may attempt to draw reasonable inferences.

FACTUAL BACKGROUND

Daniel Patrick, 55 years old, went to Mid-City Bar & Grill for dinner on May 17, 2006. He frequently ate dinner there alone because his wife worked nights. Patrick was a Certified Public Accountant with a large national accounting firm. He was about 5 feet 9 inches tall, weighed about 150 pounds and had thinning gray hair. Patrick and his wife, Heather, had been married for 25 years and did not have children. Patrick was an only child, and his parents had passed away years before. Unbeknownst to him, Heather was considering a divorce. Earlier on May 17th, she had met with a lawyer and rented an apartment that would be available a few days later. She planned to tell Patrick of her intentions when she returned from work that day.

On May 17th, Patrick arrived at the Mid-City Bar & Grill at 8:30 p.m., two hours later than his routine. He had just come from work and was dressed in his regular work attire--a conservative suit, tie, and wing tipped shoes. The doors to the restaurant are at the north end of the building. After entering through double doors, one is immediately in the restaurant. The bar area is not completely separated from the restaurant, and the bar extends the length of the south side of the building. The servers all knew Patrick and always tried to seat him at a booth away from the bar.

The server (Wanda Kadlubek) that served Patrick that evening testified that the restaurant was very busy by the time that Patrick arrived, and the only available table was in the middle of the room very close to the bar. She stated that although it was quite noisy, Patrick did not want to wait, and he agreed to take the table.

While Wanda was taking Patrick's order, they watched a group of young men drinking and laughing at the bar. As they watched, one of the members of the group, Paul Stanley, fell off his stool. Stanley's friends all laughed and helped him up back onto his stool. The bartender, Drew Merritt, saw Stanley fall off his stool yet served Stanley his sixth Vodka Redbull when asked. Most of Stanley's friends were drinking beer from heavy 24 ounce mugs.

Mid-City Bar and Grill had a written policy against serving intoxicated persons, but the totality of the testimony at trial was that the policy was not generally enforced.

By the time Patrick's food arrived, Stanley and his friends were in a heated argument. Ms. Kadlubek told Patrick that there was one available table in the smoking section which was farther from the altercation and asked if he would like to move to it. Patrick, a non-smoker, declined the offer and proceeded to eat his dinner. Over a period of approximately ten minutes, the argument escalated to pushing and shoving, and another patron called the Phoenix Police from their cell phone. Stanley then threw a punch at one of his friends. Despite the efforts of the member of his group to restrain him, Stanley then picked up a half full mug of beer and threw it at his friend. The mug missed his friend but hit Patrick squarely in the forehead and bounced off into the middle of the floor.

Patrick, whose head was down, did not see the mug coming toward him and did not know what had hit him. Patrick slumped over, unconscious for a few seconds. He hit his face on the table and broke his dinner plate. Stanley and his friends immediately closed ranks and acted as though nothing had happened. The

bartender heard the commotion but saw only that the mug had landed on the floor. Because of the configuration of the bar, no one else had seen the mug hit Patrick. Stanley testified that he saw Patrick appear to "come around," stand up, and walk out without speaking to anyone. He admitted Patrick looked unsteady as he walked out, but assumed he was just going to "get some air." The mug had cut his scalp, and some blood remained on his plate, the table, and on the floor near the door.

As Patrick was leaving, Police Officer Koulanarse arrived on the scene. Seeing Patrick's stagger, the blood, and smelling the odor of beer that spilled from the mug that had hit him, Officer Koulanarse stopped Patrick, assuming Patrick had been in the fight. Koulanarse had been a Police Officer for six months. Patrick was incoherent but appeared to Officer Koulanarse to be more intoxicated than injured. Assuming a "mutual combat" scenario, he handcuffed Patrick and tried further to get Patrick to talk to him. Patrick became belligerent and kept repeating that his head hurt. Rather than call an ambulance, Officer Koulanarse put Patrick into the back seat of his police car and proceeded into the bar.

When Officer Koulanarse came in the bar, Stanley had left through a different door, and the scene was quieted down. Instead of calling for assistance, Officer Koulanarse decided to interview anyone in the bar that was in the vicinity of the disturbance before transporting Patrick to the police station. By the time he completed his interviews, sixty minutes had passed. As Officer Koulanarse got into his car, he noticed that Patrick was slumped over in the corner of the back seat with his eyes shut. Officer Koulanarse assumed that Patrick had passed out from

the alcohol and did not attempt to examine or revive him. When Officer Koulanarse arrived at the police station, Patrick was non-responsive. Patrick died three days later of a sub-dural hematoma.

After failing to reach settlement with Mid-City Bar & Grill or the City of Phoenix, Patrick's wife brought a wrongful death action against Mid-City Bar & Grill, Paul Stanley and the City of Phoenix Police Department. All of the facts reported in this memorandum were established as facts at trial via testimony or documentary evidence.

The bartender testified that Paul Stanley was a regular at the bar and that he thought he was an alcoholic. He admitted that Stanley had twice before been in fights at the bar and that the last fight had been over a year ago. The bartender also testified that, when Officer Koulanarse had asked him about Patrick, he told him that Patrick was a regular customer and a non-drinker. The bartender also told Koulanarse that, although he had not seen the fight, there was no way that Patrick could have been a participant in the fight. He testified that he did not intervene early in the confrontation because most of the time the drinkers involved in fracas would calm down on their own.

Officer Koulanarse stated that he did not recall the bartender giving him the information concerning Patrick.

A treating physician, Dr. Parr, and Mrs. Patrick's expert, Dr. Bogey, testified that it was "very probable" that Patrick would not have died if he had received treatment within an hour of being hit.

Mrs. Patrick had left Mr. Patrick twice during the first ten years of their marriage. In both instances, she had moved into an apartment for a few months, but she had not contacted an attorney on either of these two occasions. Mrs. Patrick attributed their recent marital difficulties to the conflicting work schedules with her working nights and him working days, his general inattentiveness, and her outside interests such as shopping, art festivals, and weekend lunches with friends. She testified that she was trying to get on the day shift at the hospital. Mrs. Patrick's supervisor testified that she recently asked about switching to the day shift but had not aggressively pursued such a switch.

INSTRUCTIONS

You will be assigned to represent either Mrs. Patrick or Paul Stanley. Assume that the officer and the bartender were both acting in the course and scope of their duties and that their employers would be liable for their actions or inactions under the doctrine of *respondeat superior*.

The issues to be resolved by the jury are: (1) was the decedent, one or more of the Defendants, a non-party, or some combination thereof, responsible for any injury to Mrs. Patrick?; (2) what is the extent of Mrs. Patrick's damages?; and, (3) what is the proper apportionment among the responsible parties?

With regard to damages, assume that the parties' experts agree on the following damage calculation:

1.	Reasonable funeral and burial expense	\$ 4,400.00
2.	Lost future income	\$750,000.00
3.	Medical expenses	\$100,000.00

Two additional categories of damages are: (4) loss of love, care, affection, companionship, and other pleasures of the marital relationship; and, (5) pain, suffering, anguish, etc. already experienced, and reasonably expected to be experienced in the future.

You are free to use any demonstrative aids, such as diagrams, consistent with the factual background or these instructions. You may not use photographs, video, or other depictions of similar events.

As stated, you may incorporate any applicable RAJI (CIVIL) 4th instructions, including fault, negligence, damages, and multiple defendant verdict forms.