

## Exercise on Evidence

Case: Mrs. Nice has sued Puke Pitchard for money damages due to an incident in which Puke's dog injured her and killed her dog. Mrs. Nice's nephew is a lawyer, and he suggested that her best bet would be to sue Puke for *Keeping a Vicious Animal*. Here are the essential elements of that tort:

- Defendant is the owner or keeper of the animal.
- The animal in question was vicious, i.e., because of its breed, species, character, or habit, likely to injure a person or property
- Defendant knew or should have known of the animal's vicious nature or propensity.
- The injury was caused by the animal's viciousness.
- Damages.

When we talk about torts in Session 8, we'll come back to this case as we delve into substantive tort law. For now, though, let's practice analyzing a case by considering the evidence in the context of the essential elements.

Here's a summary of Mrs. Nice's testimony:

On the day in question, Mrs. Nice was walking Dainty, her miniature dachshund, in her front yard. Dainty had arthritis and so took very slow steps, which was OK with Mrs. Nice because she has arthritis too. When her husband was alive, they used to take walks all the time, but these days it's harder for her to get around. Suddenly, Mrs. Nice heard Puke yelling words she won't repeat, then heard a yelp and saw a white streak come out of Puke's open garage. Before she knew it, she had been knocked down by Perilous, Puke's pitbull. Dainty came to her defense, barking and snarling. Perilous snarled back, and a fight ensued. Unfortunately, Dainty suffered fatal injuries. Furthermore, Mrs. Nice broke her hip in the fall. She's asking for \$10,000 in damages: \$2500 for her medical expenses, \$2000 for the loss of her beloved dog and companion, and \$500 for pain and suffering.

### Questions

At this point in her case, has Mrs. Nice offered evidence on each essential element of her claim? \_\_\_\_\_

If you answered no, what element(s) needs to be addressed?

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Re-read the above testimony and draw a line through the statements that are not relevant to Mrs. Nice's case.

Evaluate the evidentiary value of each of these additional statements by Mrs. Nice in her testimony. Consider:

- ✓ Is it relevant to one of the essential elements? Which one?
- ✓ Is it trustworthy? That is, how confident are you that the statement is true?
- ✓ Assuming you believe the statement is true, how significant is this evidence to the plaintiff's case?

**Statement #1:** "Everybody on the street knows to be careful around Perilous – and Puke, too! They're both ill-tempered. . . "

Relevant?	1	2	3	4	5
Trustworthy?	1	2	3	4	5
Significant?	1	2	3	4	5

**Statement #2:** " . . . and Puke's been known to beat that dog."

Relevant?	1	2	3	4	5
Trustworthy?	1	2	3	4	5
Significant?	1	2	3	4	5

**Statement #3:** "Anytime I knew Perilous was out next door, I waited to take Dainty out."

Relevant?	1	2	3	4	5
Trustworthy?	1	2	3	4	5
Significant?	1	2	3	4	5

**Statement #4:** "That dog would growl and snarl at other dogs. "

Relevant?	1	2	3	4	5
Trustworthy?	1	2	3	4	5
Significant?	1	2	3	4	5

**Statement #5:** "Puke encouraged him – he'd say things like "Get him, boy!"

Relevant?	1	2	3	4	5
Trustworthy?	1	2	3	4	5
Significant?	1	2	3	4	5

Mrs. Nice is accompanied by two witnesses, who testify as follows:

**Neighbor #1:** "I've heard Puke brag to his buddies about how mean his dog is – I've heard him say, 'That dog would rather chew a hole in you than take a bone from you!'"

Relevant?	1	2	3	4	5
Trustworthy?	1	2	3	4	5
Significant?	1	2	3	4	5

**Neighbor #2:** "I'll never forget it. When I went to help Elsie after she fell, she was crying and upset, and she said, ""That dog attacked me! He was trying to get to my throat!"

Relevant?	1	2	3	4	5
Trustworthy?	1	2	3	4	5
Significant?	1	2	3	4	5