

*Civil Procedure for All States:  
A Context and Practice Casebook  
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**MASTER PROBLEM USED FOR STATE CIVIL PROCEDURE COURSE**

**Accompanies both Student Writing Assignments**

Following is the Master Problem that will serve as a platform for each chapter. As the chapters proceed, [the student] (as an associate in the law firm of Dogood, Befayre, and Prosper, P.C.) will develop more facts—the way a lawyer does in real life. Here, however, are the facts with which [the student] begins with:

Your client is an elderly widow, Sally Wilreiz. Sally is experiencing a run of bad luck and has a number of problems to discuss. First, Sneaky Sam, a stockbroker at the investment firm of Wheeler Dealer, Inc., handled her investments. Sam absconded with funds, and many investments made through him are now worthless. Because Sam has disappeared, Sally is interested in whether she can sue Wheeler Dealer, for whom Sam worked.

Second, Sally, who owns a several-acre parcel of land in the City of Arcadia, is upset about a fence on her property. Her brother, a licensed surveyor, had surveyed the boundaries of her property over twenty years earlier when he was visiting from his home in South Africa. At some point since then, the adjoining landowner put up a fence along the back of her lot. Sally became aware of the fence only recently. On his first visit since the surveying work years ago, her brother was walking in the back yard while smoking his pipe and discovered the fence. He asked his sister whether she realized that the fence along the back of her yard was three yards within her property line.

Furthermore, Sally had a porch added to her home twelve years ago. While Sally was walking across the porch one day (six months before she came to see you), a roof panel fell on her foot. It hurt badly enough for her to have an X-ray, which showed a broken bone in her foot. As a result, she wore a walking boot for two months. She called the porch contractor, who referred her to the supplier of the roof panels. Sally related that the supplier said something about a “statute of repose” because the porch had been completed well over ten years ago.

As if these troubles were not enough, Sally recently was in an accident resulting from a large pothole on the highway. The hole was on the border between the municipality of Arcadia and that State of Illyria. (Arcadia is a municipal corporation within the State of Illyria). The municipality is responsible for the highway within its borders, and the State for that part outside. Neither the municipality nor the State is prompt at repairing road hazards. What began as a large pothole had grown as time passed so that, by the time of the accident, even a car could all into it.

Sally owned a 2008 Stallion convertible manufactured by HorsePower, Inc. that she had bought recently from a dealer in an adjoining state. On February 2, 2009, Sally was driving the Stallion, at the posted speed limit through the municipality of Arcadia on her way to another location outside of Arcadia. She had never driven on this particular road before. Hitting the pothole on Route 3 at the border of Arcadia and Illyria, Sally’s car fell into the hole on the end within Illyria’s territorial boundary—a hole that was approximately thirty-one inches deep. Her car flipped because one side entered the hole first and upset the car’s balance. One of the features that led HorsePower, Inc. to claim the Stallion was the safest convertible on the road and its roll bar, a metal rod that ran up the car’s sides and across the top even when the convertible’s top was retracted. When



Sally's car turned over, however, the roll bar crumbled. She sustained serious injuries: lacerations to her face (requiring sixty stitches and plastic surgery), a concussion, broken bones, and partial paralysis. She was in the hospital over six months. Moreover, her Stallion was totaled.

You start by gathering as much information as possible about the facts of your case. You spring into action. First, you call Sally and ask her to send any paperwork in her possession that is related to the events mentioned in the memo, especially any contracts she has with Wheeler Dealer, Inc. You inform Sally you are sending her, via courier, a release form for her to sign that will allow you to speak with her health care providers.

Within a few days, you have a bunch of disorganized documents and many medical bills on your desk. Among them you discover a contract between Sally and Wheeler Dealer dated January 2, 2005. The contract binds both parties to arbitration of any disputes regarding the management of Sally's investments by Wheeler Dealer, Inc., or by its brokers.

You send an employee of your firm, Frankie Find-it, to Sally's property with instructions to locate any signs on the fence at the rear of the lot in order to identify the fence company that placed it there. Frankie finds a sign that identifies the fence company: you call the company and determine that the fence was placed in 1988.

A discussion with Sally's neurologist is the next logical step, although the doctor will only convey medical information after Sally has signed a valid "Release of Information" form. The neurologist relates Sally's diagnosis as pre-senile (early) dementia. Sally has exhibited typical signs of this condition, with alternating intervals of impairment and lucidity. Over the last few years, the neurologist has noted brief gaps in Sally's ability to manage her affairs.

You have an upcoming appointment with Sally and will need to assess her lucidity at that point in time. The neurologist provides several questions that would constitute an "unofficial" mental status examination (one typical question would involve Sally's comprehension and interpretation of that day's world events).

Your next line of inquiry concerns the concussion that Sally sustained in the collision. The neurologist was Sally's attending physician during the entire six-month hospitalization. The concussion had left Sally in a state of semi-consciousness, a type of low-grade coma. The doctor plainly states that the brain injury definitely incapacitated Sally during the six-month hospital stay. Eventually, Sally returned to her pre-accident, baseline level of cognitive function, and the neurologist released her from the hospital. The doctor recommended that Sally arrange for a relative or trusted friend to serve as a power of attorney (POA) during those intervals when Sally was not lucid. A "power of attorney" is a legal document by which an individual appoints another person or party to handle his or her legal affairs. Physicians generally recommend that patients with fluctuating mental capabilities appoint a POA as soon as the diagnosis is made, and during a lucid interval. Otherwise, a patient may decompensate mentally and a POA can only then be secured through legal channels--a process which can take days or weeks.

Finally, you obtain the accident report from the police department. It is reprinted below:

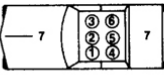
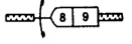
# Local Traffic Crash Report

## Arcadia Division of Police

Local Report Number 12345

Driver - Pedestrian - Vehicle Section

Occupant Section

Report Taken <input checked="" type="checkbox"/> Headquarters <input checked="" type="checkbox"/> Substation	Total Number of Vehicles and Pedestrians Involved <b>ONE</b>	Combined Vehicle and Property Loss (Account for the total of all vehicles and property damaged) <input checked="" type="checkbox"/> Over \$150 <input type="checkbox"/> Under \$150
In City Of <b>Arcadia Court State of Illyria</b>	• Within corporate limits of Arcadia (if not, file with correct agency)	Date of Crash M <b>02</b> D <b>02</b> Y <b>2009</b> Day <b>WEDNESDAY</b> Time <b>11:00</b> <input checked="" type="radio"/> AM <input type="radio"/> PM
Crash Occurred On <b>ROUTE 3</b>		Other Streets/Roads in Vicinity <b>ARCADIA/CENTRAL BORDER ON RT. 3</b>
Misc.		
A Unit No. <b>1</b>	No. Of Occupants <b>1</b>	Operating <input checked="" type="checkbox"/> Parked <input type="checkbox"/> Driverless <input type="checkbox"/> Non-Contact <input type="checkbox"/> Insurance Co. Or Agent <b>GORGE YOU INSURANCE CO.</b>
Driver - Pedestrian Name (Last, First, MI) <b>Forth, Sally E.</b>		Address (No., Street, State, Zip Code) <b>612 THOMAS MORE LN. ARCADIA, ILLYRIA 112233</b>
Phone No. <b>999-111-2222</b>	Birth Date M <b>02</b> D <b>02</b> Y <b>1939</b>	Age <b>50</b> Sex <b>F</b> State <b>Illyria</b> Drivers License No. <b>X4Z-64321</b> Occupation <b>PROFESSOR</b>
Owner (If Same As Driver, Write Same) <b>Same</b>		Address <b>Same</b> Phone <b>Same</b>
Veh. Year <b>1999</b>	Make <b>Chrysler</b>	Model <b>Jeep Wrangler</b> Color <b>Red</b> Style <b>---</b> State <b>Illyria</b> License Plate No. <b>SAL-TH-GAL</b> Towing Service <b>Joe's Towing</b> Veh/Ped Dir From To
Circle Damage Areas 	Damage Severity <input type="checkbox"/> Non-Functional <input type="checkbox"/> Functional <input checked="" type="checkbox"/> Disabling	Damage Scale <input type="checkbox"/> None <input type="checkbox"/> Light <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Heavy
Vehicle Disposition <input type="checkbox"/> Driven Away <input type="checkbox"/> Remained At Scene <input checked="" type="checkbox"/> Towed		Fire <input checked="" type="checkbox"/> No Fire <input type="checkbox"/> Fire Due To Crash <input type="checkbox"/> Other Fire
B Unit No.	No. Of Occupants	Operating <input type="checkbox"/> Parked <input type="checkbox"/> Driverless <input type="checkbox"/> Non-Contact <input type="checkbox"/> Insurance Co. Or Agent
Driver - Pedestrian Name (Last, First, MI)		Address (No., Street, State, Zip Code)
Phone No.	Birth Date	Age Sex State Drivers License No. Occupation
Owner (If Same As Driver, Write Same)		Address Phone
Veh. Year	Make	Model Color Style State License Plate No. Towing Service Veh/Ped Dir From To
Circle Damage Areas 	Damage Severity <input type="checkbox"/> Non-Functional <input type="checkbox"/> Functional <input type="checkbox"/> Disabling	Damage Scale <input type="checkbox"/> None <input type="checkbox"/> Light <input type="checkbox"/> Moderate <input type="checkbox"/> Heavy
Vehicle Disposition <input type="checkbox"/> Driven Away <input type="checkbox"/> Remained At Scene <input type="checkbox"/> Towed		Fire <input type="checkbox"/> No Fire <input type="checkbox"/> Fire Due To Crash <input type="checkbox"/> Other Fire
C From Unit No.	Name (Last, First, MI) <b>Forth, Sally E</b>	Birth Date M <b>02</b> D <b>02</b> Y <b>2009</b> Age <b>50</b> Sex <b>F</b> Position A B C D E F
D From Unit No.	Name (Last, First, MI) <b>Same address as above</b>	Birth Date M D Y Age Sex <b>799-111-2222</b>
E From Unit No.	Name (Last, First, MI)	Birth Date M D Y Age Sex 
F From Unit No.	Name (Last, First, MI)	Birth Date M D Y Age Sex 
G From Unit No.	Name (Last, First, MI)	Birth Date M D Y Age Sex <b>P-PEDESTRIAN</b>
H From Unit No.	Name (Last, First, MI)	Birth Date M D Y Age Sex <b>Restraints</b>
I From Unit No.	Name (Last, First, MI)	Birth Date M D Y Age Sex <b>Ejection</b>
Date Report Filed M D Y	Desk Officer's Name & Badge #	

S-36.133 (Revised 7/2000)



Local Report Number <b>1111</b>		Describe What Happened Refer To Unit By Number <b>MS. FORTH WAS DRIVING OUT OF THE CITY OF ARCADIA ON RT 3. A LARGE POT HOLE (4' X 4') HAS GROWN OVER THE PAST 4 MONTHS &amp; NEITHER THE CITY NOR THE STATE HAS DEALT WITH IT (THE POT HOLE IS ON THE DIVIDING LINE BETWEEN ARCADIA &amp; THE STATE. WHEN THE JEEP HIT THE POT HOLE, IT WENT INTO THE HOLE (31") DEEP &amp; SLAMMED THE OTHER END. THE AIRBAG DID NOT DEPLOY &amp; MS. FORTH HAS SEVERAL BROKEN BONES &amp; CUTS IN HER FACE.</b>			
<b>Weather Conditions</b> 1 No Adverse Weather    4 Fog 2 Rain    5 High Wind 3 Snow    6 Other		<b>First Harmful Event</b> Two MV In Transport 1 Head On 2 Rear-End 3 Backing 4 Sideswipe Meeting 5 Sideswipe Passing 6 Angle One MV In Transport (Collision) 7 Parked 8 Pedestrian 9 Animal 10 Train 11 Pedal Cycle 12 Other Non-MV 13 Fixed Object 14 Other Object Non-Collision 15 Fall From or In MV 16 Overturning 17 Other Non-Collision			
<b>Road Conditions</b> 1 Dry    4 Ice 2 Wet    5 Dirt/Sand 3 Snow    6 Other		<div style="text-align: center;"> </div>			
<b>Light</b> 1 Daylight    4 Dark No Lights 2 Dawn    5 Dark Lighted 3 Dusk    6 Other					
<b>Road Contour</b> 1 Straight Level    3 Curve Level 2 Straight Grade    4 Curve Grade					
<b>Occurrence</b> 1 On Roadway    3 Off Right Side 2 Off Left Side    4 On Opposing Lane of Divided Highway					
<b>Special Area</b> 1 Road Construction/Maintenance Area 2 School Zone		<b>Location</b> 1 Intersection 2 Intersection-Related 3 Driveway Access 4 Railroad Crossing 5 Bridge-Passing Over 6 Bridge-Passing Under 7 Non Intersection 8 Private Property			
<b>Type of Unit</b> # _____ A    # _____ B <div style="display: flex; justify-content: space-between;"> <div> <b>Car</b>            1 Sub Compact            2 Compact            3 Mid Size            4 Full Size         </div> <div> <b>Bus</b>            16 School Bus            17 Church            18 Public         </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <b>Truck</b>            5 Pickup            6 Panel/Van            7 Straight Truck            8 Straight Truck &amp; Trailer            9 Truck Tractor            10 Tractor &amp; Semi-Trailer            11 Tractor &amp; Double Trailer         </div> <div> <b>Emergency</b>            19 Police Vehicle            20 Fire Truck            21 Ambulance/Rescue         </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <b>Motorcycle</b>            12 MC up to 350cc            13 MC up to 750cc            14 MC over 751cc            15 Motorized Bicycle         </div> <div> <b>Other</b>            22 Taxi            23 Motor Home            24 Train            25 Farm Vehicle            26 Farm Equipment            27 Snowmobile            28 Construction Equip.            29 Animal W/Rider            30 Animal W/Buggy            31 Bicycle            32 All Others            P = Pedestrian         </div> </div>		<b>Pre-Crash Actions</b> <div style="display: flex; justify-content: space-between;"> <div> <b>Driver Actions</b>            1 Going Straight            2 Turning Right            3 Turning Left            4 Turning on Red Light            5 U Turn            6 Stopped To Turn            7 Stopped in Traffic            8 Parking/Unparking            9 Parked            10 Backing            11 Passing            12 Changing Lanes            13 Merging/Exiting Ramp            14 Out of Control            15 Swerving            16 Driverless Vehicle            17 Other Driver Action         </div> <div> <b>Pedestrian Actions</b>            18 Crossing in X-Walk            19 Crossing Other than X-Walk            20 Walking in Road (With Traffic)            21 Walking in Road (Against Traffic)            22 Playing in Road            23 Working On Road            24 Entering or Leaving Vehicle in Road            25 Pushing/Working on Vehicle in Road            26 Other in Road            27 On Sidewalk or Shoulder         </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <b>Traffic Control</b>            A    B            1    1         </div> <div> <b>Fixed Object</b>            A    B            16    16         </div> </div>		<b>Contributing Factor</b> <div style="display: flex; justify-content: space-between;"> <div> <b>Driver Error</b>            1 None            2 Failure to Yield            3 Unsafe Speed            4 Following Too Closely or ACDA            5 Ran Red Light            6 Ran Stop or Yield Sign            7 Improper Turn            8 Improper Passing            9 Improper Lane Change            10 Improper Backing            11 Improper Start from Parked Position            12 Stopped or Parked Illegally            13 Left of Center            14 Failure to Control            15 Driver Inattention            16 Drove Off Road Reason Unknown            17 Other Driver Error         </div> <div> <b>Non-Driver Factor</b>            18 Vehicle Defects            19 Load Shifting, Falling, Spilling            20 Pavement Defect            21 Shoulder Defect            22 Debris on Road            23 Downed Traffic Sign/Device            24 Vision Obstruction            25 Animal Actions            26 Pedestrian Actions         </div> </div> <div style="display: flex; justify-content: space-between;"> <div> <b>Truck Load</b>            A    B            1 Empty            2 Perishable Goods            3 General Freight            4 Metal/Heavy Machinery            5 Hazardous Gas            6 Hazardous Liquid            7 Hazardous Solid            8 Radioactive Material         </div> <div> <b>Truck Axles</b>            A    B            Tractor Trailer Rigs         </div> </div>	
<b>Speed</b> Unit    Estimated    Legal A    35    35 B		<b>Motorcycle Helmet Use</b> Unit    Driver    Pass A B			
1 No Helmet 3 Full Facial Cover		2 Full Coverage 4 Other Type Helmet			

S-36.133 (7/2000)

