

College of Visual Arts
Art and the Law Class
Trial Materials
Instructions

You will be conducting a trial of a case under the U.S. Copyright Law involving alleged appropriation of an image. The original *Grim Reaper* image was actually created by illustrator Dani Jones; she has given her permission for us to use it for this exercise.

Quick fact summary: (see the complaint, answer, chronology, and discovery pages for more details)
Our fictional creator of the image is Chris Scribe, a freelance illustrator who lives and works in St. Paul. Scribe created the *Grim Reaper* and later allowed Bullseye Stores to use it for an ad campaign for a new line of video games.

Pat Tracer, another illustrator, saw the image on a point-of-sale poster at Bullseye and thought it looked promising as a pattern for the pumpkin carving website that Tracer runs. Tracer sketched the image and admits to later downloading the image from Scribe's portfolio web site. Tracer made a pattern, named it "Reaper," and sold it as part of the carving pattern business.

Scribe attended a fall festival at which Tracer's pumpkin patterns were displayed and noted the similarity between "Reaper" and the original *Grim Reaper* image. Despite Scribe's demands not to use the pattern, Tracer continued to sell the pattern.

Scribe commenced this lawsuit, asking for either Tracer's profits from use of the image or statutory damages under the Copyright Act.

Materials:

Chronology, Complaint, Answer, Discovery, and Images

The materials may be found on the course web site: http://www.shortreet.net/artlaw_trial.html.

Assignments:

The class will be divided between plaintiff and defendant sides. Class members will play all the roles on the assigned side. The roles for each side:

Witness: testify as plaintiff or defendant

Witness: testify as art expert

Attorneys:

Give opening statement

Conduct direct examination of your client

Conduct direct examination of your expert witness

Conduct cross-examination of other party and

Conduct cross-examination of the other party's expert witness

Give closing statement

Trial Procedures

We won't do this as a true, formal trial, but will follow real judicial procedures closely enough to give you the flavor of a real trial.

Pleadings: to simplify things, we will have only a Complaint and an Answer for the exercise. In real life, there would also be a Summons, an affidavit or acknowledgement of service of the Complaint, many other documents for discovery, and possibly some pre-trial motions.

Discovery: a statement of facts summarizes the facts that were learned from Interrogatories and Depositions. "Discovery" is the means through which each side learns of the facts that support the other side's claims and defenses. Discovery also commits a side to a particular version of facts and can be used to impeach the credibility of a witness if s/he changes the facts in testimony at the trial.

Rules of evidence: we will use simplified rules of evidence for our trial, with the following guidelines for testimony:

1. Witnesses must testify only to facts within their own knowledge or experience. Witnesses (except qualified experts) may not give their opinions or state conclusions.
2. Hearsay is not permitted (testifying about what others have said outside the courtroom).
3. Admissions by a party are an exception to the hearsay rule. If a party has made statements out of court about the case that contradict his or her testimony at the trial, the prior inconsistent statements may be used to question the credibility of his or her testimony.
4. Expert witnesses may testify to matters that involve esoteric knowledge. Their opinions are not a substitute for the jury's conclusions, but may assist the jury in reaching conclusions about factual matters.
5. All facts must be placed before the court through witness testimony. Attorneys may not place facts in evidence through opening or closing statements or through other direct statements to the jury.
6. Witnesses may be cross-examined on the content of their testimony. They may not be examined on matters not raised on direct. If necessary, a witness may be called as an adverse witness if it is necessary to cover matters not raised in the direct examination.

Procedure for trial:

1. Opening statements: The trial begins with the opening statement of each party. This is a short summary of each side's position in the case. It must contain only statements of fact that will be supported by testimony. Plaintiff will go first; defendant will go second.
2. Testimony:
 - Plaintiff will present its testimony first:
 - Chris Scribe will testify and be cross-examined
 - Dr. Ashton Sublime will testify and be cross-examined.
 - Defendant will present its testimony next:
 - Pat Tracer will testify and be cross-examined
 - Dr. Delaney Frankenheim will testify and be cross-examined.
3. Objections:
 - The attorney who will be cross-examining a witness may object to a question that is asked on direct testimony. The attorney who conducted the direct examination may object to questions when the witness is cross-examined. The objection should state a reason. The most common objections will be the following:
 - Objection: hearsay
 - Objection: irrelevant
 - Objection: calls for an opinion or conclusion (from a lay witness)
 - Objection: leading (on direct examination, the attorney must ask open-ended questions and not use "yes" or "no" questions or questions that suggest an answer. Leading questions are permissible on cross-examination)
4. Closing statements: Each side will present a closing statement. This is one last opportunity to analyze the facts and argue for a particular decision from the jury. Defendant goes first; plaintiff gets the last word.
5. Jury instructions: the judge will instruct the jury on the applicable law and the standards they are to use in deciding the case.
6. Jury deliberations: the jury deliberates and reaches a decision
7. Announcement of decision: the jury announces its decision.
8. The court receives the jury decision and announces the disposition of the case.