

High School Mock Trial 2022

State of Buckeye *ex rel.* Hollis Fitzpatrick v. Fran DeBier, *et al.*

Errata Sheet

Please note:

The errata sheet serves to clarify or correct errors in the Mock Trial case and/or rules, and does not address team strategy, coaching, or judging protocol. If a question received does not meet the criteria for Errata (e.g. pertains to an evidence question), an email response will be sent to the individual advisor.

Errata 11/23/2021

- 1. Do other businesses along each side of the Fitzpatrick Restaurant make use of the two dumpsters in the back alley or are they rented/owned by the Fitzpatrick's exclusively? What is their location?**

There are two standard size dumpsters located in the back alley for use of the entire business strip. They are not owned by Fitzpatrick's and their location is not determined by Hollis. Their position in relation to the restaurant and their size needs no further elaboration.

Errata 11/9/2021

- 1. Where is the garden located in which Hollis grows vegetables for the restaurant?**

The garden is located on the Hollis' private, residential balcony.

- 2. In the last errata, you gave the dimensions of the sidewalk and alley. Is this information attached to any witness statements? Can it be applied to exhibit D?**

This is a stipulated fact that can be referenced during trial in relation to Exhibit D. It is not tied to any one witness statement.

- 3. How many years has Ellis worked for the Buckeye Department of Health and Human Services? In their statement it says they have worked there for 20 years, but it also says they have worked there since 1994, which would be around 27 or 28 years.**

Ellis has worked for the Buckeye Department of Health and Human Services for 20 something odd years. They began working for the Department in 1994 as stated in lines 11-12 of their witness statement on page 113 of the case file.

- 4. In Riley Zhang's witness statement (page 123, line 67) it says, "Fitzpatrick's is located in a fairly well-traveled area of Main Street..." and in Exhibit E, which was the 1st letter from the Buckeye Health Department, it says the letter was mailed to Hollis Fitzpatrick's at 5463 Cardinal Run. Is this a mistake?**

The reference to Main Street and Hollis's address at Cardinal Run are the same location. "Main Street" is a historic name given to the block where the restaurant is located. The postal service recognizes both names as official addresses.

- 5. Phoenix Anderson states that they changed the accounting system at Fitzpatrick's to cash based. Are we to assume the previous system was GAAP?**

Double-entry accounting does meet generally accepted accounting principles (GAAP).

- 6. What time does Fitzpatrick's opens in the morning?**

Fitzpatrick's opens at 8:00 a.m.

- 7. Can the booths in Fitzpatrick's be moved easily, or are they bolted to the floor?**

The booths are bolted to the floor and cannot be moved.

- 8. How many people can fit in the booths in Fitzpatrick's?**

The booths fit four total patrons, two on each side.

- 9. Ellis Mazakis' name is spelled differently in the first line of their statement (Elis). Which is the correct spelling (Ellis vs. Elis)?**

Ellis is the correct spelling of the health director's name.

- 10. Did Hollis spend the PPL in accordance with any restrictions?**

The PPL stipulations are not included in the case materials and are not to be referenced during trial. Fitzpatrick's use of funds was compliant.

Errata 10/26/2021

- 1. In Anderson's statement at page 98, line 96, does "revenue" mean "sales?" The statement on page 98 describes various measures such as overhead and labor as a percentage of sales, but the annual figure given is "revenue."**

In the case of Fitzpatrick's, revenue and sales are the same thing. Fitzpatrick's has no other source of income other than sales.

2. **What is the legal standard of review in this case? (By preponderance of the evidence, clear and convincing, etc.) Does the relator have to prove all three Penn Central factors or just one?**

The *Penn Central* case establishes a three-factor balancing test. Advocates should, therefore, present evidence supporting any/all of the factors, and the trial judge must, in their discretion, decide whether the balance has been “tipped” enough to rule that a compensable taking has or has not occurred.

3. **SCOTUS cases are binding, but are the other cases considered persuasive or binding? Specifically, the fourth case uses a ruling from the Supreme Court of Ohio, is this a binding case for the state of Buckeye?**

Only cases decided by the Supreme Court of the United States are considered binding precedent for the State of Buckeye. Other cases (e.g. Supreme Court of Ohio) are persuasive authority.

4. **When was the Fitzpatrick’s restaurant first opened?**

Fitzpatrick’s was opened by Hollis’s grandparents a long time ago.

5. **In the original Exhibit D, there was a box with a music symbol. What was supposed to be there? Where is it supposed to be in the updated schematics?**

Please only refer to the updated Exhibit D. That is the correct version that will be used during trial.

6. **In exhibit D we can see exactly where each investment had been installed and utilized. Where are the projector and screen located and does it affect the floor plan?**

The projector is mounted to the ceiling and the screen is mounted to the wall. The placement of these items does not impact the floor plan.

7. **What are the dimensions of the sidewalk and the alley?**

The sidewalk space outside of Fitzpatrick’s is 6 feet from the curb to the door and is 60 feet long. The alley behind Fitzpatrick’s is 20 feet deep, 60 feet long, and includes two dumpsters.

8. **Beginning on line 87 of Ellis Mazakis’s statement there is a sentence that reads, “Particularly because individuals are touch numerous surfaces and...” Is there a mistake in this sentence?**

Yes, there was a typo in that sentence. The word “are” should be removed so the sentence reads, “Particularly because individuals touch numerous surfaces and...”

Errata 10/12/2021

1. There were several errors on the “Acknowledgements” page of the case file: page 231. This error was corrected in any digital cases sent on or after October 4. Please see the attached copy of the updated “Acknowledgements” page.
2. The list of important dates on page 1 of the case file has an error. The date for the final errata posting should read “Tuesday, January 4, 2022.” (Emphasis added to show correction)
3. Will teams address the issue of just compensation?

If a taking is found, the Court will order the Government to initiate property appropriation proceedings, during which a jury will determine the ‘just compensation’ for the taking at a separate trial.

4. On page 90 of the case file, Hollis Fitzpatrick references a movie about a Buckeye football legend that was given an exemption to the health orders. On page 92, on line 217 of Hollis Fitzpatrick’s statement, they reference the “Rural Meijer” movie. Are these the same movie?

Yes, these are the same movie. Rural Meijer is the name of the football legend referenced on line 174 of Hollis Fitzpatrick’s statement on page 90 of the case file.

5. Line 206 of Hollis Fitzpatrick’s statement on page 92 says they received the second PPL on October 13, 2021. This date is after Fitzpatrick’s is closed. Is this an error?

Yes, there is an error on line 206 of Hollis Fitzpatrick’s statement on page 92 of the case file. The sentence should read “The second PPL payment of \$125,000 came in on October 13, 2020.” (Emphasis added to show correction)

6. Lines 63-64 of Ellis Mazakis’s statement on page 115 list Fitzpatrick’s health violations that are not included in Exhibit A. Is Exhibit A a complete list of Fitzpatrick’s health citations?

Exhibit A is an excerpt of the Buckeye Health Department citations for Fitzpatrick’s.

7. Exhibit C does not include the restrictions described in Hollis Fitzpatrick’s statement on page 88 or in Ellis Mazakis’s statement on page 117. Is Exhibit C a complete list of restaurant restrictions put in place by the Buckeye Department of Health?

There was an error in the original Exhibit C. Please see the attached copy of the updated Exhibit C.

8. Are the pinball machines at Fitzpatrick’s shown in Exhibit D?

There was an error in the original Exhibit D. Please see the attached copy of the updated Exhibit D.

CORRECTION – Updated on October 4, 2021

Acknowledgements

The steadfast support and expert advice of the Board of Trustees of the Ohio Center for Law-Related Education is appreciated:

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Exhibit C (Part 1)
Buckeye Governor's Order Reopening Restaurants



Fran DeBeir, Governor
Ellis Mazakis, Director of Health and Human Services

GOVERNOR'S ORDER TO REOPEN RESTAURANTS, BARS, AND BANQUET FACILITIES FOR DINE-IN SERVICE

I, Fran DeBeir, Governor of the State of Buckeye, pursuant to the authority granted to me by the Buckeye Revised Code, Order the following to prevent the spread of COVID-19 into the State of Buckeye:

1. Restaurants, Bars, and Banquet Facilities to reopen. All restaurants, bars, and banquet facilities and other like businesses and operations in the State, which have onsite consumption of food, beer, wine and liquor, are permitted to reopen for full, dine-in service within the State so long as all workplace safety standards are met. These businesses and operations are encouraged to reopen. Businesses and operations shall continue to comply with Social Distancing requirements as defined in this Order.

2. Mandatory Standards for Businesses and Employees

- a. Businesses must close in-person dining no later than 6:00 p.m. Takeout and delivery orders may continue beyond that time.
- b. Businesses must discontinue the use of physical menus for individual guests. QR codes and poster/chalkboard menu displays are permitted alternatives.
- c. Ensure minimum of six feet between employees and increase the frequency of surface cleaning, handwashing, sanitizing and monitor compliance.
- d. Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented legal, life, health or safety considerations and limited documented security considerations.
- e. Businesses must require all employees to wear facial coverings, except for one of the following reasons:
 - i. Facial coverings in the work setting are prohibited by law or regulation.
 - ii. Facial coverings are in violation of documented industry standards.
 - iii. Facial coverings are not advisable for health reasons.
 - iv. Facial coverings are in violation of the business's documented safety policies.
 - v. Facial coverings are not required when the employee works alone in an assigned work area.
 - vi. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace.

(Businesses must provide written justification to local health officials, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At minimum, facial coverings (masks) should be cloth/fabric and cover an individual's nose, mouth, and chin.)

- f. Employees must perform daily symptom assessment.
- g. Require employees to stay at home if symptomatic and perform daily symptom assessment requirements before returning to work.
- h. Provide approved COVID-19 education, as soon as possible. Add COVID-19 symptoms to the current standard Health Agreement required by the food safety code.
- i. Require regular handwashing by employees.

Exhibit C (Part 2)
Buckeye Governor's Order Reopening Restaurants



- j. Maintain compliance with BDHHS sanitation and food safety regulations.
- k. Limit number of employees allowed in break rooms at the same time and practice social distancing. Maximum to be current group size per state guidelines (currently 10).
- l. Banquet and catering facilities/services must not serve more than 300 guests at one time.

3. Mandatory Standards for Guests

- a. Ensure a minimum of six feet between parties waiting and when dining
- b. Post a list of COVID-19 symptoms in a conspicuous place.
- c. Ask customers and guests not to enter if symptomatic.
- d. Require guests to wear a face covering, over their nose and mouth, when not seated.
- e. Provide access to hand washing methods while in the food service establishment, and if possible, place approved hand washing/sanitizing products in high-contact areas.
- f. Food service establishments offering dine-in service must take affirmative steps with customers to achieve safe social distancing guidelines.

4. Mandatory Standards for Physical Spaces

- a. Businesses must reduce capacity to 50% of their normal capacity limit, including staff and customers.
 - Establish and post maximum dining area capacity using updated COVID-19 compliant floor plans. With maximum party size per state guidelines (currently 10.)
- b. Post a kitchen floor plan, establishing safe social distancing guidelines and following established state health dept guidance for masks and gloves.
- c. Businesses must install plexiglass between tables and counter seating.
- d. Every other table must remain empty with a minimum of six feet of clearance between all tables.
- e. Daily cleaning for the entire establishment. Clean and sanitize tabletops and chairs between seatings. Clean all high touch areas every two hours, and more frequently as needed (e.g. door handles; light switches; phones, pens, touch screens.)
- f. Provide approved hand washing/sanitizing products in common areas.
- g. When appropriate, establish ordering areas and waiting areas with clearly marked safe distancing and separations per individual/social group for both restaurant and bar service.
- h. Remove self-service, table, and common area items (e.g. table tents, vases, lemons, straws, stir sticks, condiments.)
- i. Salad bars and buffets are permitted if served by staff with safe six feet social distancing between parties.
- j. Self-service buffets and product samples are prohibited, but self-service beverage is permitted.
- k. Private dining and bar seating areas within a foodservice establishment must follow all approved safe social distancing guidelines.
- l. Open, congregate areas in restaurants and bars (for billiards, card playing, video games, arcade games, dancing, entertainment) may be open but must follow social distancing and sanitation guidelines.

