

**THE BENCH & THE BARD: A MOOT COURT SERIES BY
KENAI PERFORMERS**

COVER PAGE

Disclaimer: The contents herein do not, and are not intended to, constitute legal advice. Instead, all information, content, and material herein is for general information purposes only, and is merely assembled for use in a simulated exercise. Information herein may not constitute the most up-to-date legal or other information. Readers of the content herein should contact their attorney to obtain advice with respect to any particular legal matter. No reader, user, or simulation exercise participant should act or refrain from acting on the basis of information contained herein without first seeking legal advice from counsel in the relevant jurisdiction. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Use of, and access to, the contents herein does not create an attorney-client relationship between the reader, user, or simulation exercise participant and the event host organization(s), the case scenario packet author(s), contributor(s), any event co-sponsoring organization(s), or other contributing party/ies. All liability with respect to actions taken or not taken based on the contents herein is hereby expressly disclaimed.

Warning: Patron and participant discretion advised. “Hamlet” by William Shakespeare is a revenge tragedy. Themes associated with this literary work include, but are not limited to, murder, death, social/behavioral manipulation, domestic violence, insanity, mental instability/illness, suicide, sexual reference/innuendo, and other content that some may find disturbing or offensive.

COVER PAGE

**THE BENCH & THE BARD: A MOOT COURT SERIES BY
KENAI PERFORMERS**

2024 – 2025 Season Case Problem Scenario “Hamlet”
--

Following the events of “Hamlet,” Ophelia’s Estate brings a timely cause of action for wrongful death against the Estates of Polonius (Lord Chamberlain and father to Ophelia), Laertes (brother to Ophelia), Claudius (King of Denmark), and Hamlet (Prince of Denmark) (hereinafter together “The Four Defendant Estates”). Ophelia’s Estate alleges that all four decedents (Polonius, Laertes, Claudius, and Hamlet), negligently caused Ophelia’s death during the events of “Hamlet” prior to their own respective deaths. The Four Defendant Estates deny this allegation on behalf of their respective decedents. They answer (1) none of their respective decedents were negligent towards Ophelia (*i.e.*, none of them breached a duty of care owed to Ophelia), and (2) even assuming for the sake of argument their respective decedents had been negligent towards Ophelia, such negligence was not the legal cause of Ophelia’s death.

The Honorable Christopher Marlowe, Superior Court Judge for the First Judicial District at Denmark, presides over the parties’ bench trial in this matter. Upon the close of evidence, Judge Marlowe rules in The Four Defendant Estates’ favor on all relevant issues.

Relevant portions from Judge Marlowe’s decision include the following:

.....

I. Regarding The Action & Parties At Hand.

This matter involves a claim for wrongful death brought by the Estate of Ophelia against the Estate of Polonius, the Estate of Laertes, the Estate of Claudius, and the Estate of Hamlet. Each estate’s interests are represented in these proceedings by a named Personal Representative. For convenience, the following chart is provided:

Plaintiff: Bev Crusher, as Personal Representative of the Estate of Ophelia, brings this action for wrongful death on behalf of Ophelia, the decedent.

Defendant: Jon Archer, as Personal Representative of the Estate of Polonius, defends against this action for wrongful death on behalf of Polonius, the decedent.

Defendant: Chris Pike, as Personal Representative of the Estate of Laertes, defends against this action for wrongful death on behalf of Laertes, the decedent.

Defendant: Jim Kirk, as Personal Representative of the Estate of Claudius, defends against this action for wrongful death on behalf of Claudius, the decedent.

Defendant: J.L. Picard, as Personal Representative of the Estate of Hamlet, defends against this action for wrongful death on behalf of Hamlet, the decedent.

The wrongful death action brought by Ophelia’s Estate alleges that the decedents of The Four Defendant Estates (Polonius, Laertes, Claudius, and Hamlet), negligently caused Ophelia’s death. For purposes of trial, the parties stipulate that the decedents of The Four Defendant Estates owed Ophelia a unique duty of care under Danish common-law principles. The parties further stipulate that the issue of damages is bifurcated from these proceedings, and will be addressed at a later time if needed. Accordingly, the only issues presented for trial at this time include the following:

(1) Whether Polonius, Laertes, Claudius, and Hamlet – singly or in combination – breached a duty of care owed to Ophelia.

&

(2) Assuming Polonius, Laertes, Claudius, and Hamlet – singly or in combination – breached a duty of care owed to Ophelia, whether such breach was the legal cause of Ophelia’s death.

The Court herein applies the law of negligence to the facts at hand, with a particular focus on the elements of breach and causation, and in so doing, finds in The Four Defendant Estates’ favor.

II. Governing Principles Surrounding Wrongful Death Claims & Negligence.

A. Wrongful Death.

Denmark’s wrongful death statute allows a decedent’s personal representative to bring a cause of action for wrongful death on the decedent’s behalf against a party whose conduct caused the decedent’s death if the decedent possesses no surviving spouse, children, or other dependents.¹ As our judiciary explains:

An action for wrongful death in [Denmark], which was created by statute, is intended to compensate those individuals who have suffered direct losses as a result of the decedent’s death. [Denmark] Statute 09.55.580 allows an estate’s personal representative to seek damages against a party whose wrongful acts or omissions caused the decedent’s death, so long as the decedent would have been able to maintain a cause of action against that party for an injury caused by the same acts or omissions had he or she lived. When the decedent is not survived by a spouse, children, or other dependents, the statute instructs that ‘the amount recovered shall be administered as other personal property of the decedent but shall be limited to pecuniary loss.’ In these cases, the personal representative is the real party of interest, and the amounts recovered are to be included within the probate estate.²

Notably, Denmark’s wrongful death statute does not relieve a defendant from prospective liability due to his or her own death. The statute expressly states: “The right of action granted by this section is not abated by the death of a person named or to be named [as] the defendant.”³

¹See, AS 09.55.580(a).

²*In re Estate of Maldonado*, 117 P.3d 720, 724 (Alaska 2005).

³AS 09.55.580(e).

For all these reasons, Bev Crusher, in her capacity as personal representative of Ophelia's Estate, possess standing to bring this wrongful death action on decedent Ophelia's behalf, and her cause of action is not frustrated merely because Polonius, Laertes, Claudius, and Hamlet are themselves now deceased.

B. The Interface Between Wrongful Death & Negligence.

Denmark's wrongful death statute speaks of death "caused by the wrongful act or omission of another[.]"⁴ This means that, by its very language, the statute contemplates the existence of some underlying negligent act as forming the basis for the cause of action. Indeed, "to recover in an action for wrongful death, a plaintiff must prove that a party was negligent and that the negligence was the legal cause of the wrongful death. The damages recoverable are limited to those that are the natural and proximate consequence of the negligent act."⁵ Ophelia's Estate expressly alleges negligence as the sole basis for the wrongful death claim levied against The Four Defendant Estates.

C. The Concept Of Negligence.

Generally speaking, negligence at law means "[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation[,]" or "any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of others' rights."⁶ Reduced to its essential components as a tort, negligence is usually expressed in terms of the following elements: "duty, breach of duty, causation, and damages."⁷

"Duty" concerns a duty of care owed to another. Explained another way, "[t]he concept of 'duty' in negligence encompasses a broad range of policy considerations underlying the determination *when, and to what extent, an individual should bear the costs of a given activity.*"⁸ It is a standard of care that someone owes another, whereby the person owing the standard of care assumes the "costs" of failing to live up to that standard.

"Breach of duty" is the failure to abide by or live up to a duty of care owed by one person to another. Strictly speaking, this is what it means to be "negligent." One who fails to abide by one's duty of care is, by definition, "negligent" as a result of that failure.⁹ (However, as will soon be discussed, it is entirely possible to be "negligent" without causing a resulting harm or injury.)

⁴AS 09.55.580(a).

⁵*Varilek v. McRoberts*, 2008 WL 5192385 at *11 (December 10, 2008 Alaska) (unreported memorandum opinion and judgment) (internal citations omitted).

⁶BLACK'S LAW DICTIONARY 133 (9th ed. 2009).

⁷BLACK'S LAW DICTIONARY 133 (9th ed. 2009).

⁸*Maddox v. River & Sea Marine, Inc.*, 925 P.2d 1033, 1036 (Alaska 1996) (emphasis added) (internal citations omitted).

⁹*See, Guerrero v. Alaska Housing Finance Corp.*, 6 P.3d 250, 257 (Alaska 2000) ("In cases where no one disputes the existence of a duty running from one party to another, we have disfavored summary adjudication of the precise scope of that duty, or of *whether particular conduct did or did not breach it (i.e., constitute negligence).*") (emphasis added).

“Causation” is the necessary link that connects (1) *the breach* of a duty of care owed, with (2) *the resulting harm* alleged, for which a plaintiff seeks damages. The concept of “causation” can be captured in the following question: Does a person’s negligent conduct constitute the legal cause of the harm resulting from the negligent conduct? In Denmark, this question is answered using the following test: “Negligent conduct may be found to be the ‘legal cause’ of harm if the negligent act or omission ‘was more likely than not *a substantial factor* in bringing about [the] injury[.]”¹⁰ This is most commonly referred to as the “substantial factor” test.

“Damages” contemplate relief or recovery (typically financial in nature), that may be sought upon proving the existence of the former three elements; namely, duty, breach, and causation. If a plaintiff is able to establish that a defendant (1) owes the plaintiff a duty to abide by a certain standard of care, (2) the defendant breaches the duty of care owed to the plaintiff by some act or omission, and (3) the breach of the duty causes cognizable harm to the plaintiff, then the plaintiff may usually seek damages commensurate to the harm suffered (or such damages as may otherwise be permitted under governing law).

Admittedly, even with these guiding elements, negligence remains a fairly aloof legal concept. Any given matter’s resolution will inevitably come down to the particular facts. But even though our own courts speak about “the elusive nature of the concept of negligence,” the overarching takeaway must be that “the existence of [negligence] requires the forming of a judgment as to the *reasonableness of the conduct* of the parties *in light of all the circumstances* of the case.”¹¹ At its core, this is what the law of negligence seeks to address.

III. A Brief Discussion Of Joint & Several Liability, Including The Consequences Of Comparative Negligence.

Prior to addressing the parties’ specific arguments, it is useful to acknowledge the role that joint and several liability plays in this matter, along with the importance of comparative negligence.

The first issue, joint and several liability, addresses the apportionment of fault *between defendants*. If Ophelia’s Estate succeeds in its wrongful death claim against The Four Defendant Estates, Ophelia’s Estate is then entitled to seek recovery for damages from each defendant estate. Additionally, each defendant estate found to be at fault for wrongful death would be jointly and severally liable.¹² This allows each ‘at fault’ defendant estate to be held *individually liable* for the *full amount* of any calculated damages.

¹⁰*Osborne v. Russell*, 669 P.2d 550, 555-56 (1983) (internal citations and quotations omitted).

¹¹*Maddox v. River & Sea Marine, Inc.*, 925 P.2d 1033, 1035–36 (Alaska 1996) (internal quotations omitted).

¹²*See, Arctic Structures, Inc. v. Wedmore*, 605 P.2d 426, 435 (1979) (“[W]e hold that the common law rule of joint and several liability should not be judicially modified.”) (internal citations omitted). *See also, cf., Ehredt v. DeHavilland Aircraft Co. of Canada, Ltd.*, 705 P.2d 913, 916 (Alaska 1985) (“Since the jury found both Ehredt and DeHavilland negligent, we conclude they are jointly and severally liable in tort for the same wrongful death within the meaning of AS 09.16.010(a); therefore DeHavilland is entitled to contribution.”).

The second issue, comparative negligence, addresses the apportionment of fault *between a plaintiff and a defendant*. Formerly, Denmark subscribed to the doctrine of “contributory negligence,” which essentially foreclosed a plaintiff’s opportunity to seek relief if it could be demonstrated that the plaintiff contributed in any way to the negligent harm for which he or she complained. Thus, if you “contributed” to your own negligent suffering, then you would be barred from seeking recovery. However, Denmark has since adopted the “comparative negligence” approach. The underlying policy considerations favoring Denmark’s since-adopted “comparative negligence” approach are clear and speak for themselves:

In *Kaatz v. State*, 540 P.2d 1037 ([Denmark] 1975), this court adopted the rule of *comparative* negligence. In so doing, we rejected arguments that fault cannot be measured on a scientific basis, that *contributory* negligence is a deterrent to careless conduct, that *comparative* negligence doctrine is difficult for courts to administer, and that settlement of negligence cases is encouraged by virtue of the existence of the *contributory* negligence rule. In abandoning the rule of *contributory* negligence in favor of *comparative* negligence, this court was primarily concerned with the inequity of requiring an injured plaintiff to bear damages far in excess of his or her own measure of fault simply because the plaintiff was less than completely free of negligence.¹³

As such, under current law, if a defendant seeks to avoid liability for negligent conduct by arguing that the plaintiff is truly at fault for the resulting harm, then the defendant should expect to demonstrate that the plaintiff’s own conduct is *the sole cause* of the reported harm.

“While Maddox may have been comparatively negligent in positioning himself improperly while lifting the boat and hence partially responsible for his injuries, *see Kaatz v. State*, 540 P.2d 1037, 1049 (Alaska 1975) (plaintiff’s damages reduced in proportion to amount of negligence attributable to plaintiff), River and Sea has presented no evidence suggesting that Maddox’s action was *the sole cause* of his injury. *See Dura Corp. v. Harned*, 703 P.2d 396, 406 (Alaska 1985) (“The issue of proximate cause is normally a question of fact for the jury to decide and becomes a matter of law only where reasonable minds could not differ.”).¹⁴

IV. The Duty Of Care Owed To Ophelia.

One last issue warrants review prior to addressing the parties’ arguments. This concerns the duty of care owed to Ophelia. As previously mentioned, the parties’ stipulate that the decedents of The Four Defendant Estates owed Ophelia a unique duty of care under Danish common-law principles. Each decedent owed Ophelia this duty. This unique duty of care orbits around the social and cultural reality facing Danish women during the setting of “Hamlet.” As a woman, it is acknowledged that Ophelia was particularly dependent upon the paternal and patriarchal role that the men in her life performed, both with respect to social relations, expectations, and the exercise of authority. Admittedly, the exact contours of this Danish common-law duty are not entirely defined. However, it is undisputed that each decedent, though

¹³*Arctic Structures, Inc. v. Wedmore*, 605 P.2d 426, 429 (1979) (emphasis added) (internal citations omitted).

¹⁴*Maddox v. River & Sea Marine, Inc.*, 925 P.2d 1033, 1040 (Alaska 1996) (emphasis added).

possessing unique connections with Ophelia (*i.e.*, as parent, sibling, sovereign, and significant other/royal superior), possessed an ‘upper hand’ – so to speak – in their relational role to Ophelia. Specifically, they were all men, each of whom outranked Ophelia in social status and authority. To the extent Ophelia was, by today’s standards, limited in any way by the prevailing social mores regarding procedures, practices, and expectations surrounding the authority exercised by the men of “Hamlet,” such informs the nature of the duty of care the decedents of The Four Defendant Estates owed to Ophelia for purposes of this case.

V. The Parties’ Arguments Regarding Breach & Causation.

Ophelia’s Estate presents different theories as to how each of the decedents associated with The Four Defendant Estates negligently caused Ophelia’s wrongful death. These theories will be addressed in turn with respect to each defendant estate and its respective decedent.

A. Polonius.

Ophelia’s Estate argues that Polonius caused Ophelia’s wrongful death by breaching the duty of care he owed her under Danish common-law in his capacity as her father, the head of her household, and as Lord Chamberlain to the King. Specifically, Polonius failed to act as any reasonably prudent person would have acted under the circumstances when he (1) admonished Ophelia to refrain from having contact with Hamlet,¹⁵ and then (2) purposefully caused Ophelia to have contact with Hamlet by using her as part of a social experiment to determine the cause of Hamlet’s apparent madness.¹⁶ Additionally, (3) Polonius did not take sufficient action to protect Ophelia from ongoing contact with the seemingly unstable Hamlet during court-related social engagements.¹⁷ Ophelia’s Estate claims that all of this contributed to Ophelia’s eventual fall into madness, with the final push being instigated by Hamlet when he unintentionally slew Polonius.¹⁸ In turn, Ophelia’s Estate argues that Ophelia’s death would not have come about had she not been pushed into madness. Thus, to the extent Polonius is responsible for contributing to Ophelia’s fall into madness, her estate argues that Polonius is also responsible for her death.

Polonius’s Estate counters by arguing that Polonius’s actions did not breach the duty of care he owed Ophelia under Danish common-law because Polonius’s actions satisfied the bare minimum standards of reasonable conduct in each specific circumstance raised by Ophelia’s Estate. Polonius commanded Ophelia’s obedience when he admonished her to refrain from having contact with Hamlet, but Ophelia was ultimately free to obey or disobey this command.¹⁹ Ophelia was also willing to engage actively in discussion with her father concerning her relationship with Hamlet, and she made efforts to convince her father of her perspective regarding Hamlet’s affections towards her, thereby demonstrating her willingness and ability to advocate for her interests.²⁰ Even so, it does not appear Polonius was expected to be constantly at Ophelia’s side, or in her presence, thereby rendering undesirable contact with Hamlet outside of Polonius’s control, if not unavoidable.²¹ Indeed, not even Ophelia’s voluntary obedience to Polonius’s

¹⁵[Tr. 17 – 19] (Act I, Scene III).

¹⁶[Tr. 36 – 38] (Act II, Scene II); [Tr. 52 – 56] (Act III, Scene I).

¹⁷[Tr. 59 – 65] (Act III, Scene II).

¹⁸*Compare* [Tr. 72 – 73] (Act III, Scene IV), *with* [Tr. 88 – 89] (Act IV, Scene V).

¹⁹[Tr. 19] (Act I, Scene III).

²⁰[Tr. 17 – 19] (Act I, Scene III).

²¹[Tr. 31 – 33] (Act II, Scene I).

command in distancing herself from Hamlet prevented Hamlet from having contact with her, which common sense suggests was also outside of Polonius's control.²² Polonius's Estate further argues that it is not beyond reason to interpret Ophelia's participation in Polonius's social experiment (the one employed to determine the cause of Hamlet's apparent madness), as having been willing in nature.²³ Any ongoing contact with Hamlet during court-related social engagements was the product of voluntary attendance. Ophelia was free to leave or depart if she was angry, scared, or otherwise upset by Hamlet's behaviors, and she did in fact so freely leave Hamlet's presence when King Claudius departed the castle hall upon witnessing Hamlet's sponsored play.²⁴

In sum, Polonius's Estate asserts that the inconvenience, discomfort, emotional pain, embarrassment, and stress that Ophelia may have faced in connection to these specific events was neither (1) properly within the scope of Polonius's duty of care, nor (2) the product of Polonius having failed to abide by his duty of care. No matter how much a father may wish to spare his daughter the ills and discomforts of this world, there is only so much that can be reasonably done or reasonably expected of any father, even in a world as paternalistic and patriarchal as the one found in "Hamlet."

Even so, assuming for the sake of argument that Polonius breached the duty of care he owed Ophelia under Danish common-law, Polonius's Estate argues that Ophelia's Estate cannot prevail because there is no causal link connecting Polonius's supposed breach to Ophelia's death. First, Polonius's Estate posits that Ophelia's death was not a reasonably foreseeable consequence of Polonius's conduct. Second, Polonius's Estate argues that Polonius's death at the hands of Hamlet was an intervening event of such significance that it ought to be considered a legally superseding cause of Ophelia's death, thereby relieving Polonius of any liability. Third, even assuming Hamlet's conduct in slaying Polonius did not serve as a legally superseding cause of Ophelia's death, Polonius's Estate argues that Polonius's conduct was not in-and-of-itself a substantial factor in bringing about Ophelia's death. For these reasons, Polonius's Estate answers that the wrongful death claim brought against it by Ophelia's Estate must fail.

The Court is persuaded that Polonius did not breach his Danish common-law duty of care owed to Ophelia. This is not to deny that Polonius owed Ophelia a duty of care. He did. Rather, the scope of Polonius's duty simply did not encompass the specific conduct now complained of by Ophelia's Estate, nor did such conduct in-and-of-itself serve to breach Polonius's duty.²⁵ A fact-intensive inquiry²⁶ into these events reveals that the conduct at issue amounts to nothing more than the day-to-day and commonplace social dynamics generally shared between virtually all fathers

²²[Tr. 32] (Act II, Scene I).

²³[Tr. 52] (Act III, Scene I).

²⁴[Tr. 65] (Act III, Scene II).

²⁵*See, Guerrero v. Alaska Housing Finance Corp.*, 6 P.3d 250, 257 (Alaska 2000) ("[I]n *Arctic Tug & Barge, Inc. v. Raleigh, Schwarz & Powell*, . . . we made clear that our law usually regards questions concerning how far a duty extends as distinct from questions concerning the duty's existence: 'Our precedents concern two sorts of questions of tort duty. In cases where no one disputes the existence of a duty running from one party to another, we have disfavored summary adjudication of the precise scope of that duty, or of whether particular conduct did or did not breach it (i.e., constitute negligence). This is particularly so when the scope of the duty poses a fact-specific question, involving policy and 'circumstantial judgments' that our legal system reserves for the jury.'" (internal quotations omitted).

²⁶*See, cf., Guerrero v. Alaska Housing Finance Corp.*, 6 P.3d 250, 255 (Alaska 2000) ("'[F]act-intensive inquiries pertain to the issues of breach, causation, and damages, not to the threshold legal question of whether a duty exists.'" (quoting *Bolieu v. Sisters of Providence in Wash.*, 953 P.2d 1233, 1241 (Alaska 1998)).

and daughters. Shoehorning the conduct complained of by Ophelia's Estate within the ambit of Polonius's duty of care owed to Ophelia would mean that virtually all fathers would most certainly become legally liable for the slightest irritation, disappointment, or offense taken by their daughters for merely performing their duties as parents. This is beyond comprehension and defies common sense. The broad application that Ophelia's Estate seeks to breathe into the Danish common-law duty of care would essentially transform all Danish women into automaton-esque wards, incapable of the slightest exercise of free will or agency. This is simply not reality, nor is it an accurate understanding of the Danish common-law duty of care.

Assuming for the sake of argument that Polonius did somehow breach his Danish common-law duty of care owed to Ophelia, the Court agrees with Polonius's Estate that Polonius's conduct was not a substantial factor in bringing about Ophelia's death. While the Court remains somewhat doubtful regarding several of the counter-arguments raised by Polonius's Estate; namely, (1) that Ophelia's death was not a reasonably foreseeable consequence of Polonius's conduct, at least in a general sense,²⁷ and (2) that Hamlet's actions served as a superseding cause that first resulted in Ophelia's madness, and then (according to Ophelia's Estate), her death,²⁸ the Court need not decide these issues because the Court agrees with Polonius's Estate that the supposed link between Polonius's conduct and Ophelia's death is simply far too speculative a proposition for purposes of assigning liability.

When deciding whether a defendant's alleged breach of duty serves as a substantial factor in causing a plaintiff's injury, Denmark's judiciary employs a two-part test. "First, [a] plaintiff must show that the accident would not have happened 'but for' the defendant's negligence. Second, the negligent act must have been so important in bringing about the injury that a reasonable person would regard it as a cause and attach responsibility to it."²⁹ Looking at the facts, it is not possible to say that Ophelia's death would not have taken place "but for" Polonius's conduct in this matter. Similarly, the available facts do not support a finding that Polonius's conduct was "so important in bringing about" Ophelia's death that "a reasonable person would regard [Polonius's conduct] as a cause" for purposes of attaching responsibility. There is no clear causal thread connecting Ophelia's eventual death with Polonius's conduct towards her prior to his own death and her madness. Furthermore, Polonius's death (even assuming he could be held at fault or somehow responsible for it), did not in-and-of-itself necessarily place Ophelia at risk of

²⁷See, *P.G. v. State, Dept. of Health & Human Services, Div. of Family & Youth Services*, 4 P.3d 326, 335 (Alaska 2000) ("For as we have explained, foreseeability does not require an ability to predict precise actions and exact injuries.").

²⁸To the extent it may have been foreseeable that Polonius's ongoing close proximity to the seemingly unstable Hamlet would eventually lead to Polonius being injured or killed, as in fact happened, it is conceivable that this was, in turn, an unreasonable risk assumed by Polonius with respect to exacerbating Ophelia's worsening mental state, as in fact happened, thereby pushing her into madness, which – in turn – ultimately led to her death. Thus, it is possible that what Polonius's Estate points to as a "superseding" cause of Ophelia's death (*i.e.*, Polonius's death at Hamlet's hands, thereby driving Ophelia into madness), is really only an intervening cause "which lie[s] within the scope of the [ultimate] foreseeable risk[;]" namely, that Ophelia would go mad and, as a result, die. If this latter understanding is in fact correct, then Hamlet's actions would not serve as a superseding cause under governing law. See, *Osborne v. Russell*, 669 P.2d 550, 556–57 (1983) ("[However,] [w]e have also endorsed Professor Prosser's position that 'intervening causes which lie within the scope of the foreseeable risk, or have at least some reasonable connection with it' are not superseding causes which relieve the initial tortfeasor from liability. W. Prosser, *Handbook of the Law of Torts* § 44 at 281 (4th ed. 1971); see *Sharp*, 569 P.2d at 182 n.9; *Morris*, 661 P.2d at 170.").

²⁹*Maddox v. River & Sea Marine, Inc.*, 925 P.2d 1033, 1039 (Alaska 1996) (internal citations and quotations omitted).

either madness or death. The mere fact that Ophelia was driven to madness, and eventually died, appears more the product of mere circumstance than demonstrable causality, at least when it comes to Polonius.

Finally, even if Polonius's conduct could somehow be fairly considered "a substantial factor" in causing Ophelia's death, the Court would nevertheless refuse to assign legal causality to it, because it strikes the Court as "highly extraordinary" that it should have brought about this injury.³⁰ For all these reasons, the wrongful death claim levied by Ophelia's Estate against Polonius's Estate fails.

B. Laertes.

Ophelia's Estate argues that Laertes caused Ophelia's wrongful death by breaching the duty of care he owed her under Danish common-law in his capacity as her brother, and then in his assumed capacity as the head of her household following Polonius's death. Specifically, Laertes failed to act as any reasonably prudent person would have acted under the circumstances when he (1) exercised a certain degree of concern and care over Ophelia's welfare by admonishing her to refrain from having contact with Hamlet (prior to Laertes departing for France),³¹ and then (2) failed to exercise sufficient care and control over Ophelia's person upon his return to Denmark, by which time Ophelia had fallen into madness,³² and was therefore substantially more vulnerable. Ophelia's Estate asserts that Ophelia was in need of direct oversight and constant supervision following her lapse into madness, given her substantially reduced ability to exercise rational self-care. Once Laertes had returned from France, it was incumbent upon him to exercise such care. Having failed to do so, Ophelia was left to her own devices, and eventually died for lack of oversight.

Laertes's Estate counters by arguing that Laertes's actions did not breach the duty of care he owed Ophelia under Danish common-law because his duty to her did not trump his obligation as a loyal subject to obey King Claudius, who instructed that Laertes should remain with him immediately after Ophelia had left their presence.³³ Laertes was still in King Claudius's company, attending to him in accordance with his command, when Queen Gertrude arrived with news of Ophelia's death.³⁴ As such, it was not possible for Laertes to exercise the duty he otherwise owed Ophelia because he was obeying a higher duty in the moment. Additionally, Laertes's Estate argues that King Claudius had already assumed a preeminent exercise of the Danish common-law duty owed to Ophelia, prior to Laertes's arrival, when King Claudius saw fit to charge Horatio with following Ophelia and keeping watch over her.³⁵ At some juncture, between the time King

³⁰See, *Osborne v. Russell*, 669 P.2d 550, 556–57 (1983) ("In *Sharp v. Fairbanks North Star Borough*, 569 P.2d 178 (Alaska 1977), we recognized that even if a defendant's conduct is a substantial factor in causing an injury, it may be held not to be a legal cause of the injury. We stated that this is the case 'where[,] after the event[,] and looking back from the harm to the actor's negligent conduct, it appears to the court highly extraordinary that it should have brought about the harm.' *Id.* at 182 (quoting Restatement (Second) of Torts § 435 (1965)); see also *Yukon Equipment, Inc. v. Fireman's Fund Insurance Co.*, 585 P.2d 1206, 1211 (Alaska 1978); *Yukon Equipment, Inc. v. Gordon*, 660 P.2d 428, 433 n.3 (Alaska 1983).") (emphasis added).

³¹[Tr. 15 – 17] (Act I, Scene III).

³²[Tr. 89 – 100] (Act IV, Scenes V – VII).

³³[Tr. 93] (Act IV, Scene V).

³⁴[Tr. 93 – 100] (Act IV, Scenes V – VII).

³⁵[Tr. 88] (Act IV, Scene V).

**THE BENCH & THE BARD: A MOOT COURT SERIES BY
KENAI PERFORMERS**

INSERT PAGE INTENTIONALLY LEFT BLANK

Disclaimer: The contents herein do not, and are not intended to, constitute legal advice. Instead, all information, content, and material herein is for general information purposes only, and is merely assembled for use in a simulated exercise. Information herein may not constitute the most up-to-date legal or other information. Readers of the content herein should contact their attorney to obtain advice with respect to any particular legal matter. No reader, user, or simulation exercise participant should act or refrain from acting on the basis of information contained herein without first seeking legal advice from counsel in the relevant jurisdiction. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Use of, and access to, the contents herein does not create an attorney-client relationship between the reader, user, or simulation exercise participant and the event host organization(s), the case scenario packet author(s), contributor(s), any event co-sponsoring organization(s), or other contributing party/ies. All liability with respect to actions taken or not taken based on the contents herein is hereby expressly disclaimed.

Warning: Patron and participant discretion advised. “Hamlet” by William Shakespeare is a revenge tragedy. Themes associated with this literary work include, but are not limited to, murder, death, social/behavioral manipulation, domestic violence, insanity, mental instability/illness, suicide, sexual reference/innuendo, and other content that some may find disturbing or offensive.

INSERT PAGE INTENTIONALLY LEFT BLANK

Claudius charged Horatio with keeping watch over Ophelia, to the time Queen Gertrude reported Ophelia's death, Horatio ceased monitoring Ophelia.³⁶ There being no clear indication that the King (or Horatio on the King's behalf), had sufficiently renounced their assumed degree of oversight regarding Ophelia, Laertes's Estate argues that the immediate responsibility of due care owed to Ophelia – for purposes of taking reasonable action to prevent her death – remained with the King and/or Horatio, not Laertes.

Assuming for the sake of argument that Laertes breached the duty of care he owed Ophelia under Danish common-law, Laertes's Estate argues that Ophelia's Estate cannot prevail because the alleged causal link connecting Laertes's supposed breach to Ophelia's death is insufficient. Not only does the King's conduct, through Horatio, serve as a superseding cause of Ophelia's death (to the extent that the King, through Horatio, failed to perform a reasonable degree of oversight), thereby relieving Laertes of any fault, but Laertes's actions did not in-and-of-themselves serve as a substantial factor in bringing about Ophelia's death.

The Court is persuaded that Laertes did not breach his Danish common-law duty of care owed to Ophelia. The brevity of time between Laertes's return to Elsinore and Ophelia's death, the extreme emotional circumstances he faced when confronted with Ophelia's madness, his obligation to obey King Claudius's command to remain with him instead of departing to keep watch over Ophelia when she departed from their presence, and the fact that King Claudius expressly undertook a prior duty of direct care over Ophelia via Horatio's monitoring before Laertes had arrived (and one which had not been affirmatively relinquished),³⁷ all warrant a finding that – during this timeframe – Laertes possessed no duty to exercise immediate care and control over Ophelia. Again, this is not to say that Laertes possessed no duty of care at all. He did. But during the relevant time in question, that duty did not encompass an obligation to keep Ophelia within his sight and sound, or to prevent her from engaging in otherwise dangerous activities for which she herself was not competent to avoid or rationally prevent.

Assuming for the sake of argument that Laertes did somehow breach his Danish common-law duty of care owed to Ophelia, the Court agrees with Laertes's Estate that King Claudius's conduct served as a superseding occurrence so as to relieve Laertes's of any liability.³⁸

³⁶[Tr. 88 – 100] (Act IV, Scenes V – VII).

³⁷See, *Trapp v. State, Office of Public Advocacy*, 112 P.3d 668, 672 (Alaska 2005) (“One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.”) (internal quotations omitted).

³⁸If Laertes was somehow truly negligent in his duty to care for Ophelia, then the Court concludes that sufficient evidence exists within the record to trigger a balancing of the “superseding consideration factors,” with the result being that such factors align in favor of finding that Laertes's duty had indeed shifted to King Claudius. See, *Osborne v. Russell*, 669 P.2d 550, 557–58 (1983) (“[Instruction 31 Paragraph #2:] However, where, because of lapse of time or otherwise, the duty to prevent harm to another threatened by the defendant's negligent conduct is found to have shifted from the defendant to a third person, the failure of the third person to prevent such harm is a superseding cause. [Instruction 31 Paragraph #3:] Various factors will enter into it. Among them are the degree of danger and the magnitude of the risk of harm, the character and position of the third person who is to take the responsibility, his knowledge of the danger and the likelihood that he will or will not exercise proper care, his relation to the plaintiff or to the defendant, the lapse of time and any other factors and the interplay of all such factors and circumstances as shown by the evidence in this case.’ . . . [Instruction 31's] third paragraph . . . states factors for a court to consider in deciding whether it should give the instruction stated in the second paragraph[.] . . . This is not a determination to be made by the jury.”) (emphasis in original) (internal citations and quotations omitted).

Additionally, the Court agrees that Laertes's conduct was not a substantial factor in bringing about Ophelia's death. This is to say, simply, that Ophelia's death was not "the natural and proximate consequence of [Laertes's supposed] negligent act."³⁹ For all these reasons, the wrongful death claim levied by Ophelia's Estate against Laertes's Estate fails.

C. Claudius.

Ophelia's Estate argues that King Claudius caused Ophelia's wrongful death by breaching the duty of care he owed her under Danish common-law in his capacity as her sovereign, and given the heightened responsibility he assumed for her person after she fell into madness. Specifically, King Claudius failed to act as any reasonably prudent person would have acted under the circumstances when he joined Polonius in purposefully setting-up Ophelia to have contact with Hamlet by using her as part of a social experiment to determine the cause of Hamlet's apparent madness.⁴⁰ Similarly, like Polonius, King Claudius failed to prevent Ophelia's ongoing exposure to Hamlet during court-related social engagements.⁴¹ As argued with respect to Polonius's Estate, Ophelia's Estate claims that all of this contributed to Ophelia's eventual fall into madness, with the final push being instigated by Hamlet when he unintentionally slew Polonius.⁴² In turn, Ophelia's Estate argues that Ophelia's death would not have come about had she not been pushed into madness. Thus, to the extent King Claudius is responsible for contributing to Ophelia's fall into madness, her estate argues that King Claudius is also responsible for her death. Finally, King Claudius assumed a preeminent exercise of the Danish common-law duty owed to Ophelia when King Claudius saw fit to charge Horatio with following Ophelia and keeping watch over her.⁴³ At some juncture, between the time King Claudius charged Horatio with keeping watch over Ophelia, to the time Queen Gertrude reported Ophelia's death, Horatio ceased to monitor Ophelia.⁴⁴ The lack of oversight led to Ophelia's death. There being no clear indication that the King (or Horatio on the King's behalf), had sufficiently renounced their assumed degree of oversight regarding Ophelia, the immediate responsibility of due care owed Ophelia – for purposes of taking reasonable action to prevent her death – remained with the King and/or Horatio.

Claudius's Estate counters by arguing that King Claudius's actions did not breach the duty of care he owed Ophelia under Danish common-law for essentially the same reasons previously argued by Polonius (at least with respect to how King Claudius interacted with Ophelia prior to her fall into madness). Nevertheless, to the extent anyone should have reasonably known – and thereby taken reasonable action to prevent or mitigate – the toll that certain choices and commands were having on Ophelia's state of mind, Claudius's Estate stresses that such duty fell to Polonius in his capacity as Ophelia's father, not to Claudius in his capacity as Ophelia's king. Furthermore, Claudius's Estate argues that King Claudius faithfully executed the duty he did owe Ophelia after she fell into madness when, upon taking it upon himself to assign a custodian to watch Ophelia, he did so.⁴⁵ Claudius's Estate contends that King Claudius acted reasonably in assigning Horatio to watch over Ophelia because the evidence reveals that any reasonable person would have had a

³⁹*Varilek v. McRoberts*, 2008 WL 5192385 at *10–11 (December 10, 2008 Alaska) (unreported memorandum opinion and judgment).

⁴⁰[Tr. 36 – 38] (Act II, Scene II); [Tr. 52 – 56] (Act III, Scene I).

⁴¹[Tr. 59 – 65] (Act III, Scene II).

⁴²*Compare* [Tr. 72 – 73] (Act III, Scene IV), *with* [Tr. 88 – 89] (Act IV, Scene V).

⁴³[Tr. 88] (Act IV, Scene V).

⁴⁴[Tr. 88 – 100] (Act IV, Scenes V – VII).

⁴⁵[Tr. 88] (Act IV, Scene V).

basis to believe that Horatio would faithfully and competently fulfill King Claudius's command. Horatio had, at least up to this point in time, demonstrated himself to be a reliable and trustworthy subject.⁴⁶ King Claudius did not make a negligent choice in selecting Horatio simply because Horatio himself just so happened to fail to live up to his reputation as a reliable subject, especially given how unforeseeable it was that Horatio would in fact fail to continue in his charge.

Even so, assuming for the sake of argument that King Claudius breached the duty of care he owed Ophelia under Danish common-law, Claudius's Estate argues that Ophelia's Estate cannot prevail because Claudius's conduct was not a substantial factor in bringing about Ophelia's death. Claudius's Estate also contends that Horatio's failure to keep watch over Ophelia was a superseding cause that resulted in her death, thereby relieving King Claudius of any liability. Finally, and in the alternative, Claudius's Estate argues that Laertes's return to Denmark, and his opportunity to assume immediate care and control over Ophelia, shifted the sole burden of responsibility to him, and not King Claudius, for purposes of overseeing Ophelia's welfare.

The Court is persuaded that King Claudius did not breach his Danish common-law duty of care owed to Ophelia. To the extent anyone owed Ophelia a duty of care with respect to the conduct complained of that transpired prior to Ophelia's fall into madness, it was Polonius, Ophelia's father, who would have owed her that duty, not Claudius in his capacity as Ophelia's king. But as mentioned above, the Court finds that Polonius neither breached any such duty of care owed to Ophelia nor (assuming such a breach occurred), caused her death, and so it is all the more impossible for King Claudius to have done so. Concerning any duty of care King Claudius may have owed Ophelia after she fell into madness, the Court finds – as mentioned above – that in addition to the stipulated Danish common-law duty of care King Claudius owed Ophelia, he did indeed undertake and assume a heightened duty of care for Ophelia's wellbeing when he commanded Horatio to follow and watch over Ophelia (i.e., what the Court concluded to be the superseding factor relieving Laertes of liability, assuming Laertes had somehow breached his duty owed to Ophelia). However, contrary to the arguments raised by Ophelia's Estate, the Court finds that King Claudius did not breach the heightened duty of care he assumed over Ophelia. That is, the available evidence weighs in favor of finding that King Claudius exercised reasonable care in selecting Horatio to follow and watch over Ophelia.

Assuming for the sake of argument that King Claudius did somehow breach his Danish common-law duty of care owed to Ophelia, the Court concludes that any such breach was not the cause of Ophelia's death. Though the Court rejects the arguments made by Claudius's Estate regarding Laertes's resumed duty of direct care owed to Ophelia upon his return to Elsinore, the Court agrees that Horatio's conduct would serve as a superseding cause, thereby relieving King Claudius of liability.

The Court also sides with Claudius's Estate in the sense that King Claudius's conduct was not a substantial factor in bringing about Ophelia's death because it was the happenstance of Ophelia's own innocuous activities that appears to have resulted in her death. It cannot be said with any degree of causal import that climbing or hanging from a branch over a brook, and then falling into the brook after the branch in question breaks, is something that would have been more or less foreseeable as a result of her madness, nor is it established that the conduct Ophelia was

⁴⁶See, e.g., [Tr. 6] (Act I, Scene I); [Tr. 11 – 14] (Act I, Scene II); [Tr. 21 – 22] (Act I, Scene IV); [Tr. 27 – 28] (Act I, Scene V); [Tr. 58] (Act III, Scene II).

engaging in at the time of her demise was any more or less the product of a person suffering from madness (though it appears Ophelia's Estate would have this Court believe so). Climbing tree branches over brooks⁴⁷ is a perfectly normal activity, one undertaken by both sane and mad alike. The inherent possible danger does not come or go based upon a person's sanity. There is no reason to believe that Ophelia would not have climbed this same branch were she sane as opposed to mad. The branch's structural integrity would still have faltered, regardless of her mental condition. It simply is not fair to saddle King Claudius with the blame for Ophelia's death when the actual cause of her death resulted from an innocuous activity for which no one could have reasonably anticipated or expected a beyond-normal, heightened degree of risk. For all these reasons, the wrongful death claim levied by Ophelia's Estate against Claudius's Estate fails.

D. Hamlet.

Ophelia's Estate argues that Hamlet caused Ophelia's wrongful death by breaching the duty of care he owed her under Danish common-law in his capacity as her significant other and royal superior. Ophelia's Estate cites Hamlet's erratic behavior and treatment,⁴⁸ coupled with his slaying of Ophelia's father,⁴⁹ as the primary basis for Ophelia's fall into madness,⁵⁰ which in turn led to her death. Ophelia's Estate argues no reasonable person would have acted the way Hamlet did under the circumstances.

Hamlet's Estate counters by arguing that Hamlet's actions did not breach the duty of care he owed Ophelia under Danish common-law. Though Hamlet's Estate acknowledges that Hamlet's treatment was unkind, inconsiderate, off-putting, insulting, confusing, and at times frightening to Ophelia, it did not amount to the breach of any duty of care he owed her. To the extent his actions amounted to criminal conduct with respect to her father, Hamlet's Estate further argues that a wrongful death action based upon negligent conduct allegedly committed against Ophelia – as opposed to an action for wrongful death brought on behalf of Polonius's Estate (or some other criminal action brought by the Kingdom of Denmark) – is not the proper vehicle for purposes of seeking damages.

Assuming for the sake of argument that Hamlet did somehow breach his Danish common-law duty of care owed to Ophelia, Hamlet's Estate argues that such conduct failed to constitute a substantial factor in bringing about Ophelia's death. Hamlet's Estate argues, just as Polonius's Estate argues, that the alleged causal thread supposedly connecting Polonius's death, Ophelia's fall into madness, and Ophelia's death, is too tenuous.

The Court sides with Hamlet's Estate on all these issues. Though Hamlet's behavior towards Ophelia was morally reprehensible, this does not render it legally actionable. No duty of care that Hamlet owed Ophelia was demonstrably breached prior to her fall into madness. Even assuming Hamlet breached his duty of care owed to Ophelia based upon his conduct in slaying Polonius, thereby causing Ophelia to fall into madness, there is no evidence to establish that Ophelia would not have died "but for" Hamlet's negligent slaying of Polonius. Hamlet was, in fact, absent from Denmark prior to the first recorded instance of Ophelia's madness, and remained

⁴⁷[Tr. 100] (Act IV, Scene VII).

⁴⁸[Tr. 31 – 33] (Act II, Scene I); [Tr. 52 – 56] (Act III, Scene I); [Tr. 59 – 65] (Act III, Scene II).

⁴⁹[Tr. 72] (Act III, Scene IV).

⁵⁰[Tr. 88 – 89] (Act IV, Scene V).

so until after her death.⁵¹ His lack of physical proximity, and the time span it would have taken him to travel to and from England, render it unlikely that his actions were in any way the proximate cause of Ophelia's death. For all these reasons, the wrongful death claim levied by Ophelia's Estate against Hamlet's Estate fails.

VI. The Argument That Ophelia's Alleged Suicide Relieves The Four Defendant Estates Of Liability.

The Four Defendant Estates all raise a separate argument to the effect that Ophelia's death was the product of intentional suicide, and as such, this ought to serve as a complete defense, relieving each defendant estate of any liability. This argument is problematic for several reasons. First, notwithstanding the speculations and assumptions announced by wise-cracking gravediggers⁵² and churlish priests,⁵³ the facts simply do not support a finding that Ophelia's death was the result of intentional suicide.⁵⁴ Even then, as a practical matter, it is not entirely clear that a suicide can actually be committed (or otherwise suffered), with true "intention."⁵⁵ Second, at least two of the decedents associated with the defendant estates in this matter; namely, Claudius and Laertes, had reason to know,⁵⁶ and signaled a sincere belief by their actions,⁵⁷ that Ophelia's death was not the result of suicide. (This places their respective estates and personal representatives in the awkward position of advancing a position that is clearly at odds with what the decedents themselves likely would have argued on this point had they remained alive to this day.) Third, the law appears to disfavor treating intentional suicide as a total defense against negligent conduct when the possibility of suicide is itself a harm for which a defendant possesses a duty to take reasonable measures to prevent.⁵⁸ However, the Court need not rule on this issue because the Court has already found in The Four Defendant Estates' favor. This issue is therefore moot.

⁵¹ Compare [Tr. 83 – 86] (Act IV, Scenes III – IV), with [Tr. 86 – 89] (Act IV, Scene V), and with [Tr. 100 – 209] (Act V, Scene I).

⁵²[Tr. 101 – 106] (Act V, Scene I).

⁵³[Tr. 107] (Act V, Scene I).

⁵⁴[Tr. 100] (Act IV, Scene VII).

⁵⁵See, *Joseph v. State*, 26 P.3d 459, 471 (Alaska 2001) ("We note at the outset that treating an intentional suicide as a complete defense may be scientifically problematic in the abstract. Writers have suggested that no suicide is truly intentional, because it is not an exercise of free will.") (internal citations omitted).

⁵⁶[Tr. 100] (Act IV, Scene VII).

⁵⁷[Tr. 107] (Act V, Scene I).

⁵⁸See, *cf.*, *Joseph v. State*, 26 P.3d 459, 467 (Alaska 2001) ("There have been numerous decisions involving mental patients, involuntarily confined drug addicts and prisoners, which have held that recovery for self-inflicted harm is not barred where the plaintiff was incapable of exercising due care by virtue of his mental illness, drug addiction, or intoxication. In such cases, if the defendant has or should have knowledge of the plaintiff's condition, it may be found negligent if it violated its duty of exercising due care for the plaintiff's health and safety, for such duty encompasses the duty to prevent reasonably foreseeable acts involving an unreasonable risk of harm." (internal quotations omitted) (internal quotation marks omitted). See also, *cf.*, *Joseph v. State*, 26 P.3d 459, 471 (Alaska 2001) ("First, a reasonably foreseeable occurrence cannot be an intervening/superseding cause if the actor has a duty to prevent that occurrence. If his suicide was reasonably foreseeable to his jailer, Rudolph Joseph's conduct could not have been an intervening/superseding cause of his death, excusing the state's alleged negligent breach of the duty it owed him.") (internal citations omitted).

VII. Conclusion

The Court rules in The Four Defendant Estates' favor on all relevant issues as stated herein.

.....

Following Judge Marlowe's decision, Bev Crusher, in her capacity as Personal Representative of Ophelia's Estate, appeals to the Supreme Court of the Kingdom of Denmark, asking the high Court to overturn Judge Marlowe's decision on all relevant points raised. In accordance with the right of Ophelia's Estate to appeal the lower court's decision, the parties are invited to file briefing on the issues identified within the high Court's *Opening Notice of Appeal*. Oral argument is scheduled to take place on November 9, 2024.

In the Supreme Court of the Kingdom of Denmark

**Bev Crusher, as Personal
Representative of the Estate of Ophelia
(Daughter to Polonius), Deceased,**

Appellant,

v.

**Jon Archer, as Personal
Representative of the Estate of
Polonius (Lord Chamberlain),
Deceased; Chris Pike, as Personal
Representative of the Estate of
Laertes (Son to Polonius), Deceased;
Jim Kirk, as Personal Representative
of the Estate of Claudius (King of
Denmark), Deceased; & J.L. Picard,
as Personal Representative of the
Estate of Hamlet (Prince of
Denmark), Deceased,**

Appellees.

Supreme Court No. S-00001

Opening Notice of Appeal

Date of Notice: **10/01/2024**

Trial Court Case No. **1DM-24-00001CI**

Appellant filed an appeal of Judge Marlowe's final order/judgment distributed in Case No. 1DM-24-00001CI. Briefing is ordered regarding the following issue(s) raised on appeal:

1. Whether the Appellees, singly or in combination, breached a duty of care owed to Appellant.
2. Assuming Appellees, singly or in combination, breached a duty of care owed to Appellant, whether such breach was the legal cause of Appellant's death.

//s//

CLERK OF THE SUPREME COURT
OF THE KINGDOM OF DENMARK

Procedural Aspects, Stipulations, & Parameters

The parties and justices may review a present-day English version of “Hamlet” for purposes of better understanding the nature of the facts and proceedings in this matter at the following site: [<https://www.litcharts.com/shakescleare/shakespeare-translations/hamlet>]. This is merely an aid. The present-day English translation is not binding and may not be relied upon as an authoritative interpretation of the facts and proceedings. Only the Official Transcript is authoritative in this regard. Two separate crib sheets (one consisting of relevant case law and one consisting of a side-by-side comparison of The Transcript text with a present-day English version of the text involving passages relevant to Ophelia), will be provided.

The Official Transcript consists of the 1992 Dover Thrift Editions publication of “Hamlet” by William Shakespeare, along with all footnotes and commentary contained therein. Written citations to the Official Transcript shall take the following form: [Tr. 100] (Act IV, Scene VII).

The Record consists of the Season Case Problem Scenario Packet, which includes (1) the 2024 – 2025 Season Case Problem Scenario, (2) the Opening Notice of Appeal, and (3) the Procedural Aspects, Stipulations, & Parameters Document. Citations to The Record shall take the following form: [R. 1].

All stipulations and procedural agreements entered into by the parties as outlined within the 2024 – 2025 Season Scenario Case Problem are binding.

The law of Denmark is the law of Alaska in all respects unless otherwise noted herein or within The Record.

The Statute of Frauds is not applicable to these proceedings.

Immunity of any kind, whether qualified or otherwise, is not at issue in these proceedings.

Jurisdiction is proper and not at issue in these proceedings.

Constitutionality is not at issue in these proceedings.

A *de novo* standard of review applies to all issues for which appeal is sought and granted. This applies to questions of both law and fact. This is to say that the Supreme Court of the Kingdom of Denmark affords no deference to the findings and conclusions within Judge Marlowe’s decision, but instead, the Supreme Court applies its own independent judgment. The Supreme Court will assess for itself, as guided by the parties’ briefing and oral arguments, whether the available facts and applicable law support the parties’ various assertions regarding the issues presented.

The parties are not restricted to the arguments raised within the Season Scenario Case Problem. Parties may expand upon, add to, or explore additional arguments not raised herein, provided that such arguments serve to address the issues raised on appeal. Parties are not strictly bound to the interpretations of fact as argued/presented within the Season Scenario Case Problem.

The precise nature of the relief, remedy, and/or damages, if any, to which Ophelia's Estate may be entitled is not at issue. However, to the extent relevant when considering the issues appealed, such possible relief, remedy, and/or damages may be explored/discussed.

Any doctrine regarding mootness that would otherwise foreclose Ophelia's Estate the ability to seek relief for purposes of these proceedings is set aside, or applied in such a way so as to allow these proceedings to be entertained by the Supreme Court.

The parties are to prepare written "briefs" for the Supreme Court's review prior to oral argument. These are "briefs" in name only. Briefs should simply consist of a short, informal argument outline with select quotations from relevant cases upon which the parties intend to rely so as to assist the justices and fellow counsel prepare for oral argument.

The time allowed for oral argument is 20 minutes for Appellant and 15 minutes for each Appellee. Parties will be afforded 3 minutes to argue their case without interruption before the justices begin to ask questions. The Appellant is permitted to reserve a portion of oral argument time for rebuttal, and for purposes of this exercise, is encouraged to do so.

**THE BENCH & THE BARD: A MOOT COURT SERIES BY
KENAI PERFORMERS**

CONCLUDING PAGE

Disclaimer: The contents herein do not, and are not intended to, constitute legal advice. Instead, all information, content, and material herein is for general information purposes only, and is merely assembled for use in a simulated exercise. Information herein may not constitute the most up-to-date legal or other information. Readers of the content herein should contact their attorney to obtain advice with respect to any particular legal matter. No reader, user, or simulation exercise participant should act or refrain from acting on the basis of information contained herein without first seeking legal advice from counsel in the relevant jurisdiction. Only your individual attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your particular situation. Use of, and access to, the contents herein does not create an attorney-client relationship between the reader, user, or simulation exercise participant and the event host organization(s), the case scenario packet author(s), contributor(s), any event co-sponsoring organization(s), or other contributing party/ies. All liability with respect to actions taken or not taken based on the contents herein is hereby expressly disclaimed.

Warning: Patron and participant discretion advised. “Hamlet” by William Shakespeare is a revenge tragedy. Themes associated with this literary work include, but are not limited to, murder, death, social/behavioral manipulation, domestic violence, insanity, mental instability/illness, suicide, sexual reference/innuendo, and other content that some may find disturbing or offensive.

CONCLUDING PAGE