Justice rides a sloe horse.

IOLA APEL (pronounced "eye-OH-lah a-PELL") had taken too long with her favorite beverage. She left one of her watering holes, Channel Number 5, running late. Her little Pinto took her to the rear parking lot at Sluggers, the dive bar on her way home, the place she always stopped at for last call. She looked at her watch. The numbers were blurry. Was that 2 a.m.?

Sluggers' back door was locked, so Iola pounded on it, waited, and pounded louder. She pounded a few more times as hard as she could and was getting really upset when the door swung outward and smashed into her face, cutting her off in the middle of a string of choice expletives creatively combined. She staggered back, hand to her mouth, bleeding profusely. Probing tenderly with her finger tips, she could not locate her two upper front teeth. Only then did the throbbing become intense.

Iola had never felt such pain. Her mouth was so swollen, all she could eat for a week were liquids through a straw. She lost weight, but it wasn't worth the misery. Two false teeth later, she sat in the office of Lester Buckholdtz, counselor and attorney at law. He filled a brown leather chair as shiny as his hair.

The case of Iola Apel vs. Martin R. Palfrey, doing business as Sluggers, began ordinarily. Attorney Buckholdtz filed the cause of action in the 36th District Court, Detroit, Michigan for damages of less than $10,000. The complaint alleged, *inter alia,* that Mr. Palfrey, owner and operator of Sluggers, tending bar that night, violated the duty of due care owed an invitee to the premises when he opened the rear door with

excessive force and without warning, knowing that an invitee, to wit the Plaintiff Iola Apel, was outside of said door. Further, the complaint alleged, said door had no window through which the parties could see each other, by which window, if it had existed, Plaintiff's injuries could easily have been avoided.

Defendant Palfrey was represented by a young attorney from The Livery Insurance Company, headquartered on the west side of Michigan in Grand Rapids. They denied most of the statements in the complaint and claimed affirmative defenses including that Plaintiff Iola Apel was responsible for her own injuries because, upon information and belief, prior to arrival at Sluggers, she had imbibed an unknown number of alcohol drinks which intoxicated her, and that she was verbally abusive and careless in her efforts to enter Sluggers. If she had been sober and calm, the insurance attorney posited, she could've moved out of the way when the door opened. Alcohol made her sluggish, pun intended. The defense further stated, somewhat gratuitously, that as a regular patron of Sluggers, the Plaintiff knew or should've known that Sluggers had already closed for the night.

The lawsuit proceeded through discovery. Deposition testimony was taken from the parties about the events of the night. In an effort to resolve the matter short of going to trial, the case was mediated, which resulted in a recommended award to Plaintiff Apel in the amount of $2,500 plus her dental expenses. Attorney Buckholdtz accepted the mediation award, but the attorney for Sluggers did not. Attorney Buckholdtz said

half-heartedly to him, "I think you're making a mistake." The Sluggers attorney said in return, also half-heartedly, "I don't have authority from my client to offer that much."

Trial preparation came easily, for both attorneys wanted to spend the minimum amount of time on the case. Spurred by that overriding motivation, they stipulated to admit the dentist's records at trial instead of calling in the dentist to testify. Additionally, at Attorney Buckholdtz's suggestion, instead of trial by jury, which would've resulted in considerable time for *voir dire* and seating of jurors, the attorneys agreed to a bench trial in which the judge would decide both the law and the facts. It was mostly a question of damages, of how much fair compensation should be.

Defendant Palfrey, the bar owner, didn't want to testify at trial. He had closed Sluggers the day he gave his deposition testimony, and he had no desire to miss another day's revenue. The last thing he wanted was to see any more of Iola Apel and, besides, that's why he had insurance. Given Mr. Palfrey's reluctance to testify at trial, Attorney Buckholdtz graciously and generously allowed that his deposition testimony would be admitted into evidence in lieu of him testifying at the trial.

And so it happened that Ms. Apel was the only witness at the trial. She wore her least old clothes and, not withstanding a bad case of nerves, answered all the questions to the best of her ability as Attorney Buckholdtz had told her. In direct examination from Attorney Buckholdtz, she relived the events of the fateful night and described her pain and suffering in the days that followed. Her testimony didn't take long at all.

Direct testimony ended when she professed gratitude to her dentist for the fine restoration. The judge took note.

The young insurance attorney cross-examined Ms. Iola Apel. She cautiously, but politely, responded to his questions, leading questions though they were, establishing that she was a regular customer ("I've known Marty for years"), that it was after closing time when she arrived that night ("it could've been"), and that she'd been drinking at another bar ("Channel Number Five, sloe gin fizz, I love those"). However, she denied that she was drunk ("I only had one"), and she professed ignorance about the high alcohol content of sloe gin ("I don't know, I can hold my liquor").

"You were cursing at Marty, weren't you?" the defense attorney challenged Ms. Apel. Attorney Buckholdtz objected that the question was irrelevant, but the Court denied him and directed the witness to answer the question, please. "I might have said something," Ms. Apel conceded. "I have no further questions," said the attorney for Sluggers, ending cross-examination ended. Attorney Buckholdtz had no redirect, foreclosing any re-cross examination by the defense attorney.

Throughout Ms. Apel's testimony, the judge had been flipping through Mr. Palfrey's deposition testimony, and the Court had a few questions of its own. Most memorable was this: "Ms. Apel, do you know why Sloe Gin is called 'Sloe Gin'?"

"Because it takes longer to hit you?"

The judge smiled gently. "No, not because it's 'slow,' s-l-o-w. It's spelled s-l-o-e. It's called 'sloe' because juice from the berries of the sloe bush is what gives the gin its purple-red color."

"I never knew that," testified Ms. Apel, confused. She was sure 'slow' was spelled s-l-o-w, and how could a bush be slow?

"How impertinent," thought the attorneys. But not wanting to hurt their cases, the lawyers clenched their teeth.

The judge continued, "this Court has had occasion to enjoy a variety of gin beverages. My understanding is that the alcohol content of sloe gin is actually lower than that of other gins. I could be mistaken, but no matter. That distinction will not be a factor in the Court's judgment."

The attorneys gave brief closing statements and rested their cases.

"Thank you, gentlemen," said the judge. "Your cases were ably and expeditiously presented, for which this Court is grateful. The Court has harnessed all the pertinent facts and is prepared to rule." Everyone stiffened and sat straight up.

"The Court has received stipulated dental records of Dr. Fager and has heard testimony from the Plaintiff. The Court has read the deposition testimony of Marty R " - the judge looked at the cover page of the deposition - "Martin R. Palfrey. On the question of liability, the Court finds in favor of Plaintiff. This unfortunate accident was completely avoidable, not only by having a door with a window, but more importantly if the bar owner had opened the door slowly.

"On the question of damages, the Court assesses the amount of $7,500 for pain and suffering, plus Plaintiff's out-of-pocket dental expenses. That is the Court's judgment." It was three times the amount of the mediation award that the insurance company had rejected.

"Counsel," the Court addressed Attorney Buckholdtz, "you will prepare the Judgment?"

Attorney Buckholdtz reared up to his feet. "Of course, your honor!" Iola Apel stood up because Attorney Buckholdtz had stood up. She hadn't heard anything after the judge said "$7,500." Her mouth was open, her new teeth sparkling in the verdict.

Also with mouth agape, the attorney for Martin R. Palfrey, d.b.a. Sluggers, seemed attached to his seat at a loss to understand why the damages were three times the mediation recommendation. It was registering with him that he'd been hosed, hosed without knowing that the water was running, registering the same dazed way as when you see the first blood from a cut before you feel pain from the cut. Registering the way a horse's whole field of vision comes into view only after the race is over and the blinders come off.

"Your Honor, if it please the Court, Counsel for Defendant," the insurance attorney said, referring to himself in the third person and reining in his incredulity, "Counsel for Defendant would like to inquire, respectfully inquire, did the Court read the entirety of Defendant's deposition testimony during trial, during Counsel's *short* cross-examination of Plaintiff?"

"This Court is a speed-reader, Counsel. This Court has an eidetic memory," said the judge, pronouncing it 'eye-DEET-ick' and not exactly answering the question. "We are still on the record, Counsel."

The attorneys and His Honor duly and ceremoniously thanked one another. The judge recessed to his chamber in plenty of time for lunch. The out-of-town insurance lawyer, frowning, trotted out of the courtroom.

"What does that word mean, about the judge's memory?" Iola Apel asked her attorney.

"It's 'eye-DEHT-ick,' not 'eye-DEET-ick," said Attorney Buckholdtz. "Today it meant 'flipping through the pages.' Some other day, we might not be so lucky."

Attorney Buckholdtz hitched up his pants, cinched his brief case, and checked his watch. The entire trial had taken less than an hour. It was a quick case yet unexpectedly sloe.

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Written by K.G. Jones.