

State Bar of New Mexico  
2009 Student Essay Contest

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English Assignment

## **I. Introduction**

The following is about a girl named Amy Smith who decided to take a drivers' education course through Great Drivers R Us, LLC. Great Drivers R Us, LLC is run by Coach Smith, a coach at Amy's high school. Amy attends City High School which is part of the Metro School District. Great Drivers R Us, LLC is not tied to the school. The school does promote the corporation but does not require that their students learn to drive through the corporation. The course was to appear on the students' transcript but would not affect the students' GPA. Amy was informed on all the rules of taking the course. These rules include obtaining a permit, earning a pass or fail grade, driving with parents, and taking a driving test at the end of the semester. The driving test would entail parallel parking and driving in a school zone, a neighborhood, a retail area, and on Main Street, which is probably one of the busiest streets in town. Amy did not get a lot of practice time due to parents' busy schedules. At the end of the semester, Coach Smith scheduled Amy's driving test using his personal car. Amy was directed to drive toward Main Street. Amy explained to Coach Smith that she had not practiced enough on that street and did not feel ready to drive on it. Coach Smith then told Amy that he would have to give her a zero on that part of the test. Amy was concerned about maintaining a high GPA for college scholarships and wanted to avoid a low mark on the test and decided to try. Amy turned onto Main Street, accelerated and got too close to a car on the left. Coach Smith yelled that there was a car she was about to hit. Amy veered to the right, causing her to run off the road into a ditch and to flip the car two times. Amy's seat belt failed and she was ejected from the car, suffering severe injuries. Facing months of rehabilitation, it is unlikely she will ever regain her previous mental functions or ever attend college. Coach Smith knew

the driver's seat belt would sometimes not lock unless it was pushed hard, but he failed to tell Amy. He had not gotten around to getting it fixed. Coach Smith suffered a broken arm and leg.

## **II. Questions**

**A.** Coach Smith was negligent in allowing Amy to drive on Main Street.

Negligence (Statute 13-1601) may relate to an act or the failure to act. Coach Smith showed his negligence of failing to act by not informing Amy that the seat belt would sometimes not work. Coach Smith also showed his negligence by being irresponsible and allowing Amy to go onto Main Street when she clearly wasn't ready. Coach Smith should have taken "ordinary care" of Amy. Ordinary care of a minor (Statute 13-1605) is that degree of care which a reasonably careful minor of the age, mental capacity and experience equal to Coach Smith's would use under circumstances similar to those shown by the evidence in this case. By taking ordinary care of Amy, Coach Smith would have also taken "ordinary care" of himself. Ordinary care (Statute 13-1603) is that care which a reasonably prudent person would use in the conduct of the person's own affairs. Coach Smith should have first gotten the seat belt fixed for the safety of himself. Coach Smith should not have let Amy drive, knowing that the seatbelt would not always lock. Coach Smith should have also been responsible by using one of the driving school's cars instead of his own personal car. The facts do not state that the car could have been purchased through the corporation's name but through Coach Smith's name.

**B.** Amy was negligent in deciding to drive on Main Street.

Negligence (Statute 13-1601) may relate to an act or the failure to act. Amy showed her negligence by deciding to drive on Main Street. Amy was not forced by

Coach Smith to drive on Main Street. Amy was thinking about having to take a zero for the course thus causing her grade point average (GPA) to drop, when in fact, the drivers' education course was not tied to her GPA. The course was not required and not for a school grade. The grade would only show on her student transcript but not be averaged in. Amy should not have driven on Main Street if she was simply not prepared. She knew that she hadn't received enough practice time. Amy could have retaken the course or asked for an extended amount of practice time before taking the test.

C. Assuming Coach Smith was negligent the following assumptions may also be made:

1. The Metro School District can be held liable.

The Metro School District can be held liable. City High School had no control over Great Drivers R Us, LLC, but Coach Smith is an employee of City High School. According to Section 41-4-5 NMSA, 1978, a person is allowed to sue a governmental entity for bodily injuries, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any motor vehicle, aircraft or watercraft. Section 41-4-3(G) defines "scope of duty" in part as "performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance." Although the drivers' education course is not held through the school, Coach Smith, who owns Great Drivers R Us, LLC, is still an employee of City High School. Also, Coach Smith may not have been requested or required to perform his duties of being a drivers' education teacher by City High School, but City High School

did authorize his actions. City High School authorized Coach Smith's actions by putting a link on their website, leaving parents and students to access this link at any time. Amy's mother filled out a release and paid the \$250 fee, leaving the school district liable for anything that might happen to her daughter.

2. Great Drivers R Us, LLC can be held liable.

Coach Smith's driving school is under a limited liability contract. This contract states that the entity has legal rights, can sign contracts, own property, conduct business or charitable operations and sue and be sued for legal wrongs committed against or by the entity. Amy was under the care of Great Drivers R Us, LLC, when she wrecked Coach Smith's car. Even though the car might have been insured through Coach Smith's personal name instead of through his company, Coach Smith personally is covered under his LLC according to Section 53-19-13 NMSA 1978. This provides in part, "Except as otherwise provided in the Limited Liability Company Act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company. No member or manager of a legal liability company... shall be obligated personally for any debt, obligation or liability of the limited liability company solely by reason of being a member or manager of the limited liability company... A person may be liable for any act or omission performed in his capacity as a manager of a limited liability company if there is a basis for liability. Nothing in this section shall be construed to immunize any person from liability for the consequences of his own acts or omissions for which he otherwise may be liable. So Coach Smith may be held liable as the manager of Great Drivers R Us, LLC. But, Coach Smith may not be held liable personally due to being held liable as a

manager.

3. Coach Smith can not personally be held liable.

Coach Smith's company is a limited liability company. According to Section 59-19-13 NMSA 1978, "No member or manager of a limited liability company... shall be obligated personally for any debt, obligation or liability of the limited liability company solely by reason of being a member or manager of the limited liability company. Section 53-19-14 NMSA 1978 provides in part that a member of a limited liability company is not a proper party to a proceeding by or against the limited liability company solely by reason of being a member of the limited liability company. Due to these statutes, Coach Smith may not be held personally liable because he is covered through his business, Great Drivers R Us, LLC. Yes, Coach Smith should have used one of the driving school's vehicles and yes, Coach Smith should have fixed the seat belt in his car but legally, he can not be sued.

### **III. Conclusion**

If Amy Smith's parents choose to sue, they may sue the Metro School District and Great Drivers' R Us, LLC. Amy Smith and Coach Smith can both be held negligent due to the definition of negligence and for the decisions they made and actions that they took.