

Legal Research & Writing

Friday, September 20

First rule of legal writing:

**The audience is
always right**

First rule of legal writing:

The audience is
always right

Second rule of legal writing:

**Know your
audience**

Clear

Concise

Four C's of
Communication

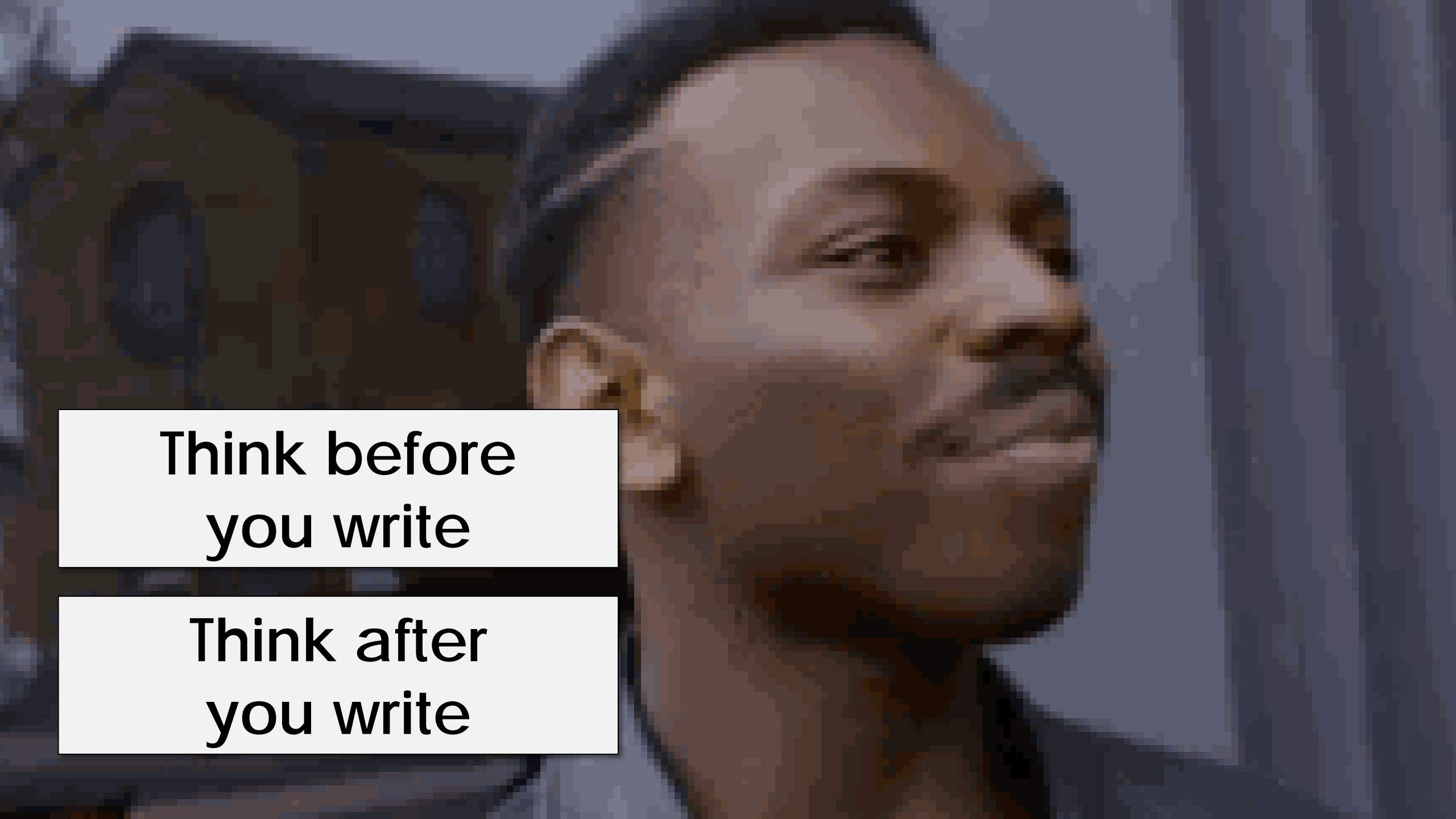
Legal writing

Clear

Concise

Complete

Correct



**Think before
you write**

**Think after
you write**



Mustapha v. Culligan

Mustapha v. Culligan

Mustapha v. Culligan

Facts and history

Mustapha noticed a dead fly (and part of another dead fly) in the unopened replacement bottle.

Culligan supplied bottles to plaintiff for past 15 years.

Mustapha became obsessed with “revolting implications” for the health of his family, suffering major depressive disorder with associated phobia and anxiety.

Mustapha sued defendant for damages.

Claimed \$80,000 in general damages, \$24,174 in special damages, and \$237,600 in damages for loss of business.

Mustapha won at trial, but lost his two appeals.

Mustapha v. Culligan

How is this case written?

I

Issue

R

Rule

A

Application

C

Conclusion

Mustapha v. Culligan

I

R

A

C

1. Did the defendant owe the plaintiff a duty of care?

2. Did the defendant's behaviour breach the standard of care?

3. Did the plaintiff sustain damage?

4. Was the damage caused, in fact and in law, by the defendant's breach?

I

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Narrow issue 1
Narrow rule
Apply this rule to the facts
Conclude narrow issue 1

Narrow issue 2
Narrow rule
Apply this rule to the facts
Conclude narrow issue 2

Narrow issue 3
Narrow rule
Apply this rule to the facts
Conclude narrow issue 3

Narrow issue 4
Narrow rule
Apply this rule to the facts
Conclude narrow issue 4

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Mustapha v. Culligan

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Mustapha v. Culligan

Issue

Did the defendant *legally* cause the plaintiff's damage?

Rule

It is the foresight of the reasonable man which alone can determine responsibility. Wagon Mound No. 1.

The test is what would a person of 'ordinary fortitude' suffer? Unusual or extreme reactions to negligent events are imaginable but not reasonably foreseeable.

Application

Here, no evidence that a person of ordinary fortitude would have suffered injury from seeing flies in the bottle.

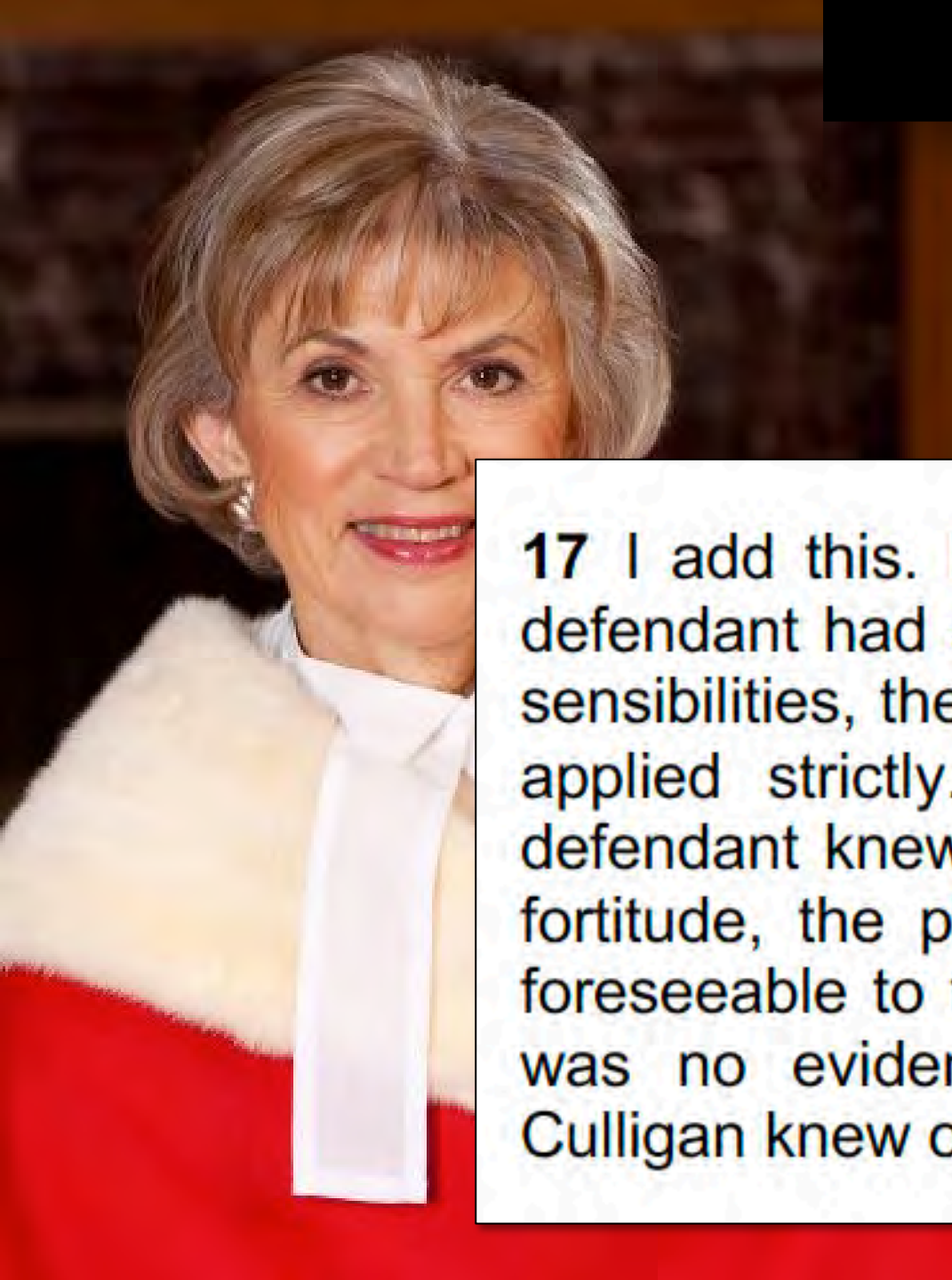
Medical examiners suggested plaintiff's reaction was "highly unusual" and "very individual."

Conclusion

The plaintiff's damage is too remote to warrant recovery.

Mustapha v. Culligan

Mustapha v. Culligan



17 I add this. In those cases where it is proved that the defendant had actual knowledge of the plaintiff's particular sensibilities, the ordinary fortitude requirement need not be applied strictly. If the evidence demonstrates that the defendant knew that the plaintiff was of less than ordinary fortitude, the plaintiff's injury may have been reasonably foreseeable to the defendant. In this case, however, there was no evidence to support a finding [page123] that Culligan knew of Mr. Mustapha's particular sensibilities.

Today's task

Maria Lopez is our client.

Maria recently purchased two pillowcases from Comfy.

One of the pillowcases contained a dead fly and fly eggs.

Maria suffers from severe entomophobia (fear of insects).

She became obsessed with the event and the “revolting implications” – it has affected every part of her life.

Maria now suffers from severe depression, insomnia, and anxiety. Her business has suffered dramatically.

Today's task

What makes this case different to Mustapha?

Maria has purchased linen from Comfy for the past ten years.

Comfy had been informed on multiple occasions, both verbally and in writing, that Maria suffers from an extreme fear of insects, which triggers panic attacks and intense anxiety.

Maria had specifically asked Comfy to ensure that no materials had traces of insects.

Comfy assured Maria that they understood her condition and that they would take all necessary precautions.

Important task

There are a number of different causes of actions and issues.

Your task is to focus on this issue only:

Is Maria's psychological damage is too remote? Was it legally caused by Comfy's breach?

This is **objective legal writing**.

Issue

The issue that is being presented in the case at bar, in all its complexity and nuance, asks whether or not the highly unfortunate plaintiff, Maria Lopez, might, by some means, be precluded, denied, or otherwise barred from successfully advancing her negligence claim against the defendant Comfy, on the grounds that the damages, which are of a psychiatric and psychological nature, were not proximately or legally caused by the aforementioned breach, or whether, in the alternative, said damages may be deemed by the court to be of a remote nature.

Brief answer

As the lawyer for Maria, it is my opinion, stated with a certain measure of uncertainty, that the plaintiff, our client, will not be, in the ordinary course of events, and given the facts as they are presently understood, prevented from bringing forth her negligence claim on the basis that her psychological, or perhaps one might say psychiatric, injuries were too remote to have been caused legally by the breach of Comfy given the highly pertinent fact that Comfy had been duly and thoroughly informed of Maria's somewhat unique and, as it happens, rather extreme phobia of insects.

Rule

My reasons are based on the law of negligence in Canada. In the realm of negligence claims, which encompass a wide variety of potential harms, it is essential, and indeed a critical aspect of such claims, that the plaintiff, or complainant, as they are sometimes called, is able to demonstrate that the damage they suffered is the result, not only in fact, but also in law, of the defendant's breach. Furthermore, the question of remoteness, that is to say, the inquiry into whether the damage was so distant, indirect, or otherwise unexpected that it ought not to give rise to liability, comes into play.

One must bear in mind, however, that in *Mustapha v. Culligan*, a Supreme Court of Canada case widely regarded as setting a high bar for foreseeability in cases involving psychological harm, Chief Justice McLachlin, writing on behalf of the Court, argued that it was not foreseeable that a person of ordinary fortitude (a legal term denoting the average person's emotional and mental resilience) would suffer psychiatric injury merely upon seeing flies in a water bottle. It is crucial to highlight that the term "ordinary fortitude" played a prominent role.

Chief Justice McLachlin (as she then was) wrote an important passage in paragraph 17 of the *Mustapha* decision. She wrote this:

“In those cases where it is proved that the defendant had actual knowledge of the plaintiff's particular sensibilities, the ordinary fortitude requirement need not be applied strictly. If

the evidence demonstrates that the defendant knew that the plaintiff was of less than ordinary fortitude, the plaintiff's injury may have been reasonably foreseeable to the defendant.”

Application

In Maria Lopez's case, given that Comfy, which provided her with pillows, was unquestionably informed, in writing and verbally no less, of her extreme sensitivities—entomophobia being a condition that renders her unusually vulnerable to insects—this particular knowledge changes the situation quite considerably. I will now reason by analogy – or, rather, by distinction. Maria's case is different to *Mustapha's* case on a number of dimensions. Some of these dimensions are more (legally) important than others. Here, there was particular knowledge. In *Mustapha*, there was no such knowledge. This is demonstrated by the last line of paragraph 17 in Chief Justice McLachlin's decision:

“There was no evidence to support a finding that Culligan knew of Mr. Mustapha's particular sensibilities.”

As a result of this specific, clear, and unambiguous awareness, it is likely -- if not certain -- that the Court would conclude that the damage Maria suffered is not too remote, as the defendant had a direct, explicit, and undeniable understanding of the potential for psychiatric harm. Thus, the standard of “ordinary fortitude” may not, as it were, apply with the same strictness in this instance.

Conclusion

In conclusion, as has been extensively discussed in the preceding sections, Maria Lopez, it seems, will not, by virtue of the circumstances presented, find herself precluded from pursuing her claim, as Comfy's breach was both factually and legally linked to her injury, and the damage was, under the particular circumstances of this case, far from remote. Hence, the court would likely, barring any unforeseen developments, find in her favour.

(718 words)



***"I'm sorry I wrote you
such a long letter;
I didn't have time to
write a shorter one."***

Blaise Pascal, 1657

Issue

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Brief answer

As the lawyer for Maria, it is my opinion, stated with a certain measure of uncertainty, that the plaintiff, our client, will not be, in the ordinary course of events, and given the facts as they are presently understood, prevented from bringing forth her negligence claim on the basis that her psychological, or perhaps one might say psychiatric, injuries were too remote to have been caused legally by the breach of Comfy given the highly pertinent fact that Comfy had been duly and thoroughly informed of Maria's somewhat unique and, as it happens, rather extreme phobia of insects.

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Chief Justice McLachlin (as she then was) wrote an important passage in paragraph 10 of the *Mustapha* decision. She wrote this:

"In those cases where it is proved that the defendant had actual knowledge of the plaintiff's particular sensibilities, the ordinary fortitude requirement need not be applied strictly. If

the evidence demonstrates that the defendant knew that the plaintiff was of less than ordinary fortitude, the plaintiff's injury may have been reasonably foreseeable to the defendant."

Application

In Maria Lopez's case, given that Comfy, which provided her with pillows, was unquestionably informed, in writing and verbally no less, of her extreme sensitivities—entomophobia being a condition that renders her unusually vulnerable to insects—this particular knowledge changes the situation quite considerably. I will now reason by analogy – or, rather, by distinction. Maria's case is different to *Mustapha's* case on a number of dimensions. Some of these are more (legally) important than others. Here, there was particular knowledge. *Mustapha* had no such knowledge. This is demonstrated by the last line of paragraph 10 of the Court's decision:

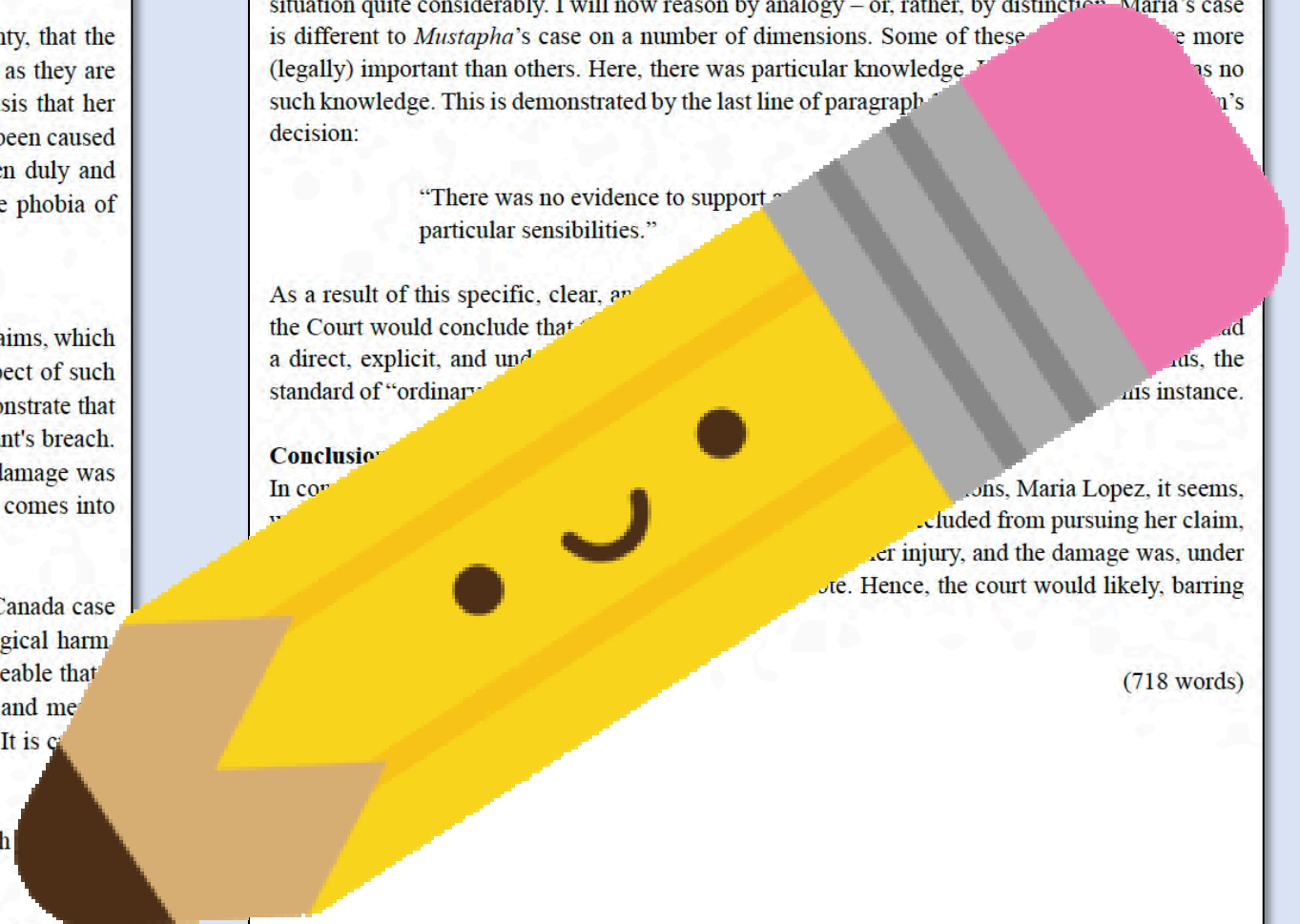
"There was no evidence to support a finding that Comfy had actual knowledge of Maria's particular sensibilities."

As a result of this specific, clear, and unambiguous finding, the Court would conclude that the standard of "ordinary fortitude" does not apply in this instance.

Conclusion

In conclusion, Maria Lopez, it seems, is not precluded from pursuing her claim, as the damage was, under the circumstances, foreseeable. Hence, the court would likely, barring

(718 words)



Issue

The issue that is being presented in the case at bar, in all its complexity and nuance, asks whether or not the highly unfortunate plaintiff, Maria Lopez, might, by some means, be precluded, denied, or otherwise barred from successfully advancing her negligence claim against the defendant Comfy, on the grounds that the damages, which are of a psychiatric and psychological nature, were not proximately or legally caused by the aforementioned breach, or whether, in the alternative, said damages may be deemed by the court to be of a remote nature.

Brief answer

As the lawyer for Maria, it is my opinion, stated with a certain measure of uncertainty, that the plaintiff, our client, will not be, in the ordinary course of events, and given the facts as they are presently understood, prevented from bringing forth her negligence claim on the basis that her psychological, or perhaps one might say psychiatric, injuries were too remote to have been caused legally by the breach of Comfy given the highly pertinent fact that Comfy had been duly and thoroughly informed of Maria's somewhat unique and, as it happens, rather extreme phobia of insects.

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the evidence demonstrates that the defendant knew that the plaintiff was of less than ordinary fortitude, the plaintiff's injury may have been reasonably foreseeable to the defendant."

Application

In Maria Lopez's case, given that Comfy, which provided her with pillows, was unquestionably informed, in writing and verbally no less, of her extreme sensitivities—entomophobia being a condition that renders her unusually vulnerable to insects—this particular knowledge changes the situation quite considerably. I will now reason by analogy – or, rather, by distinction. Maria's case is different to *Mustapha's* case on a number of dimensions. Some of these are more (legally) important than others. Here, there was particular knowledge. *Mustapha* had no such knowledge. This is demonstrated by the last line of paragraph 10 of the *Mustapha* decision:

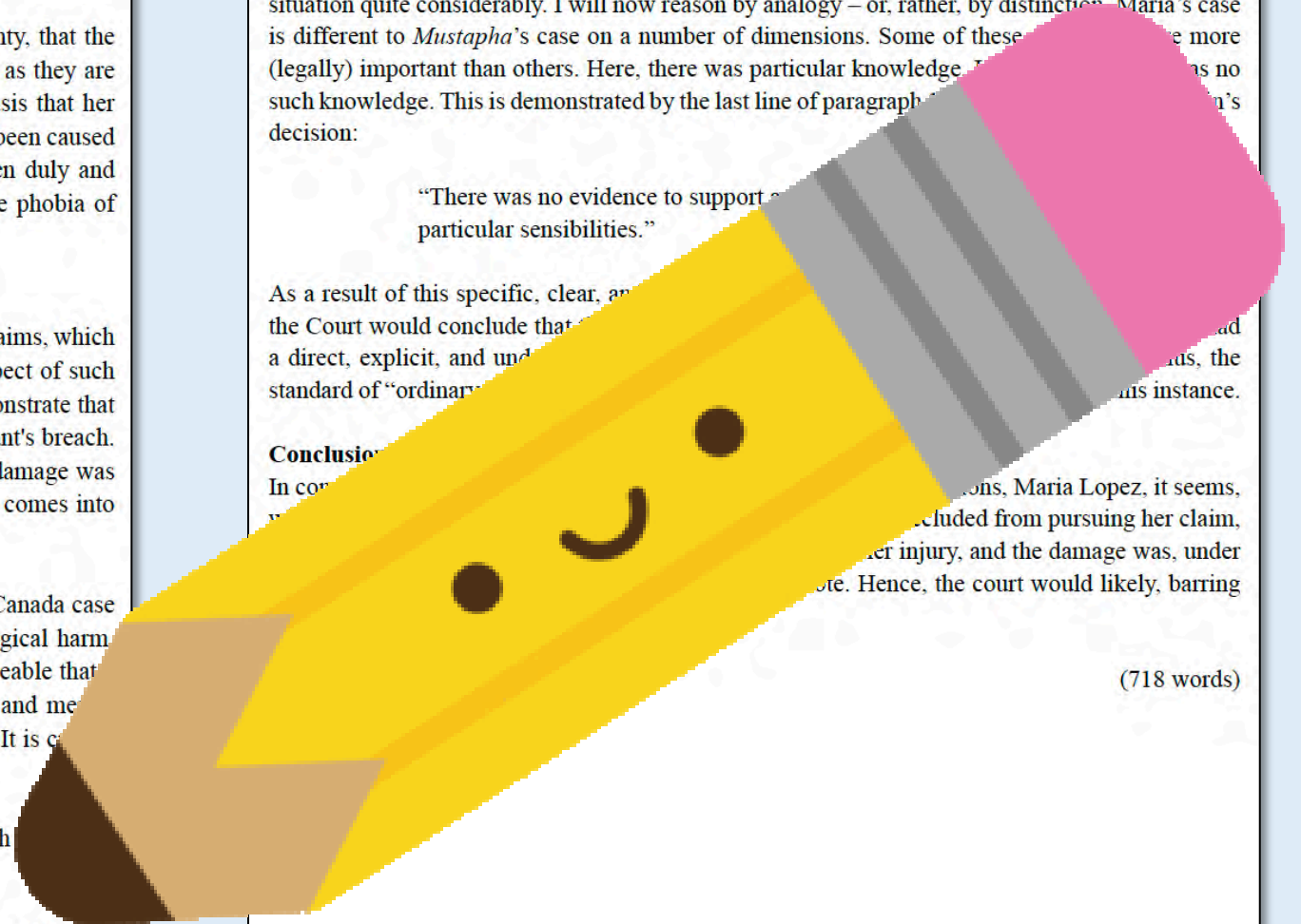
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As a result of this specific, clear, and unambiguous finding, the Court would conclude that the standard of "ordinary fortitude" does not apply in this instance.

Conclusion

In conclusion, given the facts of the case, Maria Lopez, it seems, will not be precluded from pursuing her claim, as the damage was, under the circumstances, foreseeable. Hence, the court would likely, barring

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Exercise

Issue

The issue that is being presented in the case at bar, in all its complexity or not the highly unfortunate plaintiff, Maria Lopez, might, by some means or otherwise barred from successfully advancing her negligence claim against the defendant Comfy, on the grounds that the damages, which are of a psychiatric and psychological nature, were not proximately or legally caused by the aforementioned breach, or whether, in the alternative, said damages may be deemed by the court to be of a remote nature.

Application

In Maria Lopez's case, given that Comfy, which provided her with pillows, was unquestionably informed, in writing and verbally no less, of her extreme sensitivities—entomophobia being a

You can assume the legal analysis is correct.

Maria's psychiatric injury is likely not too remote.

This answer you have is 718 words.

But there is less than 300 words of "content".

Can you cut this down to under 300 words?

(For the purpose of this exercise, you do not need to provide full citations. Case name is sufficient here.)

Take 15 minutes to read through and edit.

In those cases where it is proved that the defendant had actual knowledge of the plaintiff's particular sensitivities, the ordinary fortitude requirement need not be applied strictly. If

any unforeseen developments, find in her favour.

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I would like you to write an answer that has exactly four paragraphs.

Exercise

EXERCISE

Exercise

EXERCISE

I would like you to write an answer that has exactly four paragraphs.

(No need for a brief answer.)

Try for < 300 words

I You have asked whether . . .

R In Canada, . . .

A In our case, . . . Here, . . .

C Therefore, . . .

15 minutes

You have asked whether Maria's psychiatric damage is too remote or whether it was legally caused by Comfy's breach.

In Canada, the plaintiff in a negligence claim is required to prove that the defendant's breach caused the damage both in fact and in law. Legal causation requires the damage to be a reasonably foreseeable result of the breach. Foreseeability, generally, considers whether a person of "ordinary fortitude" would suffer the same harm (*Mustapha*). When the defendant has actual knowledge of the plaintiff's particular sensitivities, however, the ordinary fortitude standard can be relaxed (*Mustapha*). That is, if the defendant knew of the plaintiff's vulnerabilities, the plaintiff's injury may be foreseeable, even if it would not occur in someone of ordinary fortitude.

In this case, Comfy knew of Maria's severe entomophobia. Comfy assured Maria that they understood Maria's condition and would take all necessary precautions. This distinguishes Maria's case from *Mustapha*. In *Mustapha*, the plaintiff's psychiatric injury was deemed too remote because no reasonable person of ordinary fortitude would have suffered similar harm. Importantly, the defendant had no knowledge of the plaintiff's "highly unusual" or "very individual" sensitivities. Maria's psychiatric injury is a foreseeable consequence of the breach *because* Comfy had direct knowledge of Maria's phobia.

Therefore, Maria's psychiatric injury is likely not too remote. Her injury was likely legally caused by Comfy's breach *because* Comfy's knowledge of Maria's entomophobia made the harm foreseeable.

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In this case, Comfy knew of Maria's condition and was aware of the case from *Mustapha*. In *Mustapha*, the court held that because no reasonable person of ordinary fortitude would suffer the same harm as the plaintiff's particular sensitivities, the ordinary fortitude standard can be relaxed. Maria's psychiatric injury was a reasonably foreseeable result of Comfy's breach because Comfy had direct knowledge of Maria's particular sensitivities.

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