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Socratic Litigation: Imagining the curious case of the hamstrung hemlock

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Did Socrates really die after ingesting that hemlock? Check out *Socrates v. the Republic of Greece and Olympus Bigpharm Ltd.*, decision of the Ancient High Court of Southern Athens, no doubt recently discovered by anthropologist lawyers.

Ouzo J.: This is an action by the plaintiff for damages arising out of the consumption by him of hemlock served by the defendant, the Republic of Greece (the Republic) and manufactured by the defendant Olympus Bigpharm Ltd. (Bigpharm).

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The facts are simple.

The plaintiff is a prominent philosopher. Two years ago, he was charged with corrupting the young in contravention of Section 1321 of the Criminal Code, which reads: "Any person who knowingly corrupts the young is guilty of: (i) a felonious offense and shall be sentenced to death; or (ii) A misdemeanor offense."

The prosecution proceeded by way of felony, and the plaintiff was convicted and sentenced to death. He decided not to appeal after reviewing the matter carefully with the public defender.

The execution was to have taken place in the plaintiff's cell, where he was to drink two tablespoons of hemlock. Just prior to his execution, the plaintiff was asked by the jailer, one Zeno the Elder, whether he had any last requests. The plaintiff, rather perturbed at this stage, said, "I could sure use a good drink." The jailer thereupon gave him a small flask of Metaxa brandy, which the plaintiff hastily gulped down. The plaintiff then said that he was all set, so Zeno the Younger, the jailer's son, proceeded to pour the hemlock manufactured by Bigpharm into a goblet. The plaintiff drank the hemlock, and he was expected to die instantly. But he did not die. Instead, he developed a sudden and severe skin rash all over his body.

The Zenos were astonished. The authorities were baffled, fearing this to be an omen from the gods, and they immediately released the plaintiff. The skin rash persisted, and the plaintiff sent a letter to Bigpharm complaining about this side effect. The defendant promptly replied as follows (Exhibit 5):

Dear Sir,

> *Thank you for bringing this matter to our attention. As you know, all our products are subjected to stringent measures of quality control. We have examined the sample sent to us by the Republic, and we must say that we have found nothing wrong with it. As a gesture of good faith, however, we are sending you under separate cover, with our compliments, a case of Bigpharm hemlock.*
>
> *Sincerely,*
>
> *Xenoppedopolous*

(Pronounced Xenoppedopolous)

Public Relations

The plaintiff subsequently commenced this suit.

Liability

Bigpharm argues that the plaintiff's damages are unforeseeable and remote. Evidence was led that Bigpharm has been the purveyor of hemlock to the Republic for over 100 years, and that there never have been any complaints, other than some isolated complaints about the product having an aftertaste.

Counsel suggests that the plaintiff survived the hemlock only as a result of a physiological idiosyncrasy. This argument does not hold water. It is well-established in law that a tortfeasor takes his victim as he finds him. The defendant clearly owes a duty to its potential consumers to unequivocally warn them of possible side effects if they consume the product. I find that in this case, the defendant did not go far enough merely by affixing a label on the bottle bearing the inscription "Shake Well Before Using." The court makes a finding of negligence against this defendant.

Focusing on the issue of liability of the Republic, the plaintiff argues that the Republic was negligent in the way it carried out its abortive execution. He says that he relied upon the representations of the defendant that the hemlock would knock him out with the speed of Hermes. Had he known otherwise, he would have asked for another form of execution, perhaps to be thrown into a wrestling ring with two Spartan women.

The Republic argues that the plaintiff undertook a voluntary assumption of risk. Counsel has attempted to persuade the court that the skin rash resulted from a chemical change in the plaintiff's body as a consequence of the interaction of the hemlock with the Metaxa, which was requested the plaintiff. The Republic attempted to file as proof of this proposition a report of its deputy soothsayer containing his findings and conclusions of his examination of a calf's entrails. On the objections of counsel for the plaintiff, the court did not admit this evidence as the defendant neglected to serve a copy of this report at least seven days before the trial. The provisions of the Evidence Act concerning the opinions of experts including physicians,

toxicologists and soothsayers are clear on this point.

I have no hesitation in holding that the Republic was also negligent.

This leads the court to adjudicate upon the claim over the Republic has instituted against Bigpharm. The Republic relies on the provisions of Section 15(2) of the Sale of Goods Act and claims that the hemlock sold to it by Bigpharm was not merchantable.

Section 15(2) reads: "2) Where goods are bought by description from a seller who deals in goods of that description there is an implied condition that the goods will be of merchantable quality, but if the buyer has examined the goods, there is no implied condition as regards the effects that such examination ought to have revealed."

Bigpharm argues that the Republic in fact examined the hemlock prior to purchase, in that a representative of the Republic, one Pappanodekolis (pronounced Pappanodekolis) attended at the Bigpharm plant before ordering the hemlock in question. He followed the usual practice and brought along with him three slaves to sample the product. He testified that two of the slaves overpowered him and fled minutes before they were to have tasted the hemlock. The third slave did indeed sample the hemlock. Mr. Pappanodekolis ought to have realized at the time that there was something wrong with the hemlock when the slave, instead of dropping down, delusionally asked, "Is this the Pepsi?"

The court finds that the exclusionary provision of section 15 applies and the claim over is dismissed. I apportion liability to the plaintiff equally between the two defendants.

Damages

We now turn to damages. The plaintiff's dermatitis (pronounced dermatitis) prevented him from resuming his duties as a philosopher in the marketplace for over 18 months. This resulted in a loss of income of about 9,000 drachma. The court accepts this amount for out-of-pocket loss.

As for general damages for pain and suffering, the dermatitis is all over his body. The assessment here is more difficult, as all the physicians in Greece have been afraid to examine the plaintiff for fear of contracting his rash. The

plaintiff testified that even when he confronted Dr. Hippocrates, the good doctor replied, "What oath?"

I have considered this matter carefully, and in view of the gravity of the dermatitis, the profound effect it has had upon the plaintiff's personal and social life, and furthermore, in view of the fact that insurance companies will be paying for all of this, I assess general damages at 20,000 drachma. I also award 100,000 drachma for punitive damages as a general deterrent.

Judgment accordingly.

Marcel Strigberger, after 40-plus years of practicing civil litigation in the Toronto area, closed his law office and decided to continue his humor writing and speaking passions. His latest book is First, Let's Kill the Lawyer Jokes: An Attorney's Irreverent Serious Look at the Legal Universe (https://www.amazon.com/dp/B0DFHJGX1R?ref=cm_sw_r_cp_ud_dp_JNBV4X3RA8XVQ845YECR&ref_=cm_sw_r_cp_ud_dp_JNBV4X3RA8XVQ845YECR&social_share=cm_sw_r_cp_ud_dp_JNBV4X3RA8XVQ845YECR&starsLeft=1). *Visit MarcelsHumour.com, and follow him at @MarcelsHumour on X, formerly known as Twitter.*

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