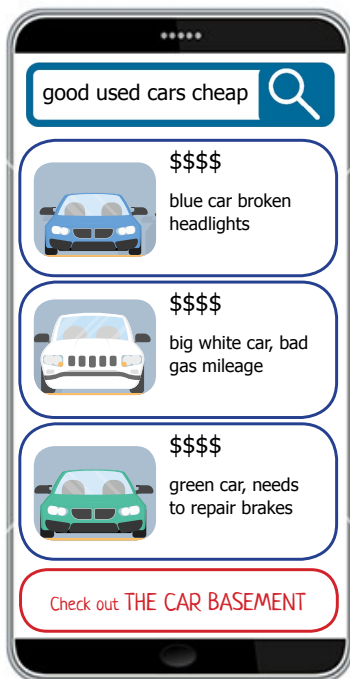




Directions: Here's your first tool. Blair Bayer's signed witness statement. The statement is a summary of the evidence Blair will give when she testifies in court. Read what Blair has to say about what happened. As a lawyer, her evidence will help you prepare before you go to trial.

Statement of Blair Bayer

1. My name is Blair Bayer. I make this statement under oath and based on my own personal knowledge. I swear, under the pains and penalties of perjury, that the following statement is true and accurate to the best of my recollection.
2. I graduated high school last Spring. I was admitted to Civicus Community College and planned to enroll there in the fall. Civicus is about 20 miles from my house, so I needed a car to get me to my classes. I had saved some money from my job waiting tables on weekends, and my parents gave me money for the car as a graduation present, but I still didn't have much—just over \$3,000. I knew I needed to find a good deal.
3. I wanted to make sure that the car ran well, so that it wouldn't break down when I was trying to get to class. And I wanted to get a fuel-efficient car, so that I wouldn't have to spend too much on gas. I didn't care what it looked like, as long as it got me to where I needed to be.



4. A few days after graduation, I googled "good used cars cheap" and saw an ad for Skyler Cellar's "Car Basement." ("The cars are above ground, only our prices are in the basement!") I went there that afternoon and met Skyler Cellar. I told Skyler about my situation, how I needed an inexpensive, fuel-efficient car so that I could get to school in the fall. Skyler said that there were no cars on the lot that matched what I needed—the only cheap cars were old pickup trucks that didn't run well, and the only fuel-efficient cars were outside of my price range.
5. When it looked like I was about to give up and try somewhere else, Skyler suddenly said, "Wait a minute, kid. I just had a thought. Let me make a phone call." Skyler went into the office for about ten minutes and then came back, looking pleased. "You're in luck, kid. I have a friend who is looking to sell an old Honda Accord hatchback. He says it runs great, gets good gas mileage, and he's willing to do a deal within your price range. Only catch is that he needs it until mid-August because he's got a summer job delivering pizzas. But once that's done, he says he just wants to get rid of it, so he'll let it go cheap."
6. I asked how much the owner was selling the car for. Skyler said, "I'm sure we can make it work for you. What's the most you can afford?" I told Skyler I only had \$3,000 to spend. Skyler said, "Okay, let me see what I can do. Wait here." Skyler left again for another ten minutes, then came back and gave me a piece of paper. It looked like it was a page from a notepad with the Car Basement logo on it. Skyler had written down the model of the car, a date, and the price—\$3,000.



7. I was relieved that there was going to be something available in my price range, but I was worried about buying a car without seeing it. I told Skyler that I wanted to think about it. Skyler said that was fine, and asked for my phone number in case anything changed. I gave Skyler my cell number and said I would be in touch. I took the piece of paper with the information about the car.



8. A few hours later, I got a text from Skyler. The document marked as Exhibit A is an accurate copy of a screenshot of the text message exchange I had with Skyler. After we exchanged texts, I wrote down a few of the details we had discussed on the piece of paper Skyler had given me. I went back to the Car Basement the following morning to drop off the deposit. Skyler was busy, but the receptionist took my money and asked me to sign the piece of paper, which I did. Then he made me a copy. Exhibit B is an accurate copy of the piece of paper, with my signature at the bottom.

9. I spent that summer waiting tables and filling out forms for loans so that I could pay tuition at Civicus Community College. August 15 came and went, but I hadn't received a call from Skyler to say that the car was ready to be picked up. Finally, on August 22, I went back to the Car Basement to find out what was going on. I only had a week until classes started, and there was an orientation day on August 25.

10. What happened next was infuriating. First, Skyler pretended not to remember me, and acted like we had never spoken. When I showed Skyler the piece of paper with the car information, Skyler looked embarrassed. "Oh right, I remember now," Skyler said. "Yeah, that deal didn't work out, kid. Sorry. The car was in rough shape and it required a lot of work. I don't want to sell you something that doesn't run well. But we have some other cars that came in last week that are perfect for you..."

11. Skyler showed me two other cars. One was a big SUV with a dented fender, the other was a Mini Cooper that was just a few years old. Skyler wanted \$2,800 for the SUV, and \$4,000 for the Mini Cooper. I told Skyler I didn't want an SUV, and that the Mini Cooper was too expensive. "Sorry, kid, that's the best price I can do on that car," Skyler responded. I was furious. I told Skyler that I planned to post a negative review online, and then I went home.

12. In order to have a car in time for orientation, I had to buy one of the first cars I found in a used car online bulletin board. It cost \$3,700, and it needed a \$500 brake repair a month after I bought it. I also hate the color—a metallic, mint green. Every time I drive the car, I think of how angry I am at Skyler and the Car Basement.

13. While the car was in the shop to get the brakes fixed, I had to miss one day of classes. I told the whole story to my professor in order to explain why I hadn't been in class. The professor told me that I should think about filing a claim in Small Claims Court, which is what I did. I have a family friend who is a lawyer, who agreed to help me present my case at the Small Claims trial.

Signed under the pains and penalties of perjury,

Blair Bayer

Blair Bayer



Directions: Next, read Skyler Cellar's witness statement. This is a summary of the evidence Skyler will give when he testifies in court. As a lawyer, his evidence will help you prepare before you go to trial.

Statement of Skyler Cellar

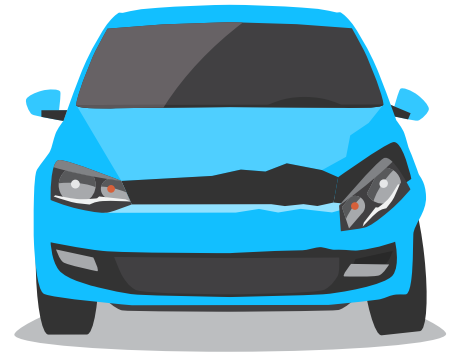
1. My name is Skyler Cellar. I make this statement under oath and based on my own personal knowledge. I swear, under the pains and penalties of perjury, that the following statement is true and accurate to the best of my recollection.
2. I run a used car dealership called the "Car Basement." I've been the owner and manager for about ten years now. Before that, I sold cars at the dealership when the previous owner, Frank, still ran it. Back then it was called "Vinnie's Car Lot." I never asked who Vinnie was. I bought the business from Frank about ten years ago and I've been running it ever since.
3. After I bought the business and re-named it, I hired someone who could work on cars, in addition to the sales team. That way, if we bought a car that needed a bit of body work, or a quick engine repair, we could improve the car and sell it for more money. The repair business really took off a few years ago, and now the repairs department is so busy fixing cars for customers, they hardly have any time to fix cars that I want to sell.
4. I see dozens of customers and potential customers every week, so I don't remember every person I talk to or what was said. But I do remember Blair Bayer, because I really went out of my way to help that kid and all I got in return for my efforts was a nasty online review and this lawsuit.
5. Blair first came to the Car Basement looking for a steal—a car that ran great, was fuel-efficient, and still cost less than \$2,500. That's not easy to find. Cars like that don't stay on the lot for very long. I spent about a half hour with Blair, talking about options and looking at cars we had in inventory. It wasn't looking good. But I really wanted to help Blair find the right car, so I decided to call around to see if there was a car available on another used car lot nearby that I could buy and then sell to Blair.
6. On my third phone call, I got lucky. My friend Harper Mendax, who runs "Max's Used Cars" a few towns over, said that he had a mechanic who was planning to move away at the end of the summer to go to college, and that he was looking to sell his Honda Civic when he moved. I asked Harper how much the mechanic was looking for. He said he would find out. I went back outside to tell Blair the good news.



7. Blair didn't say thank you or anything. Instead, Blair immediately asked how much it was going to cost. I asked how much Blair was prepared to spend to get the car, so that I could negotiate with Harper. Blair said \$3,000 was the maximum. I said I would do my best, and went back inside to call Harper.



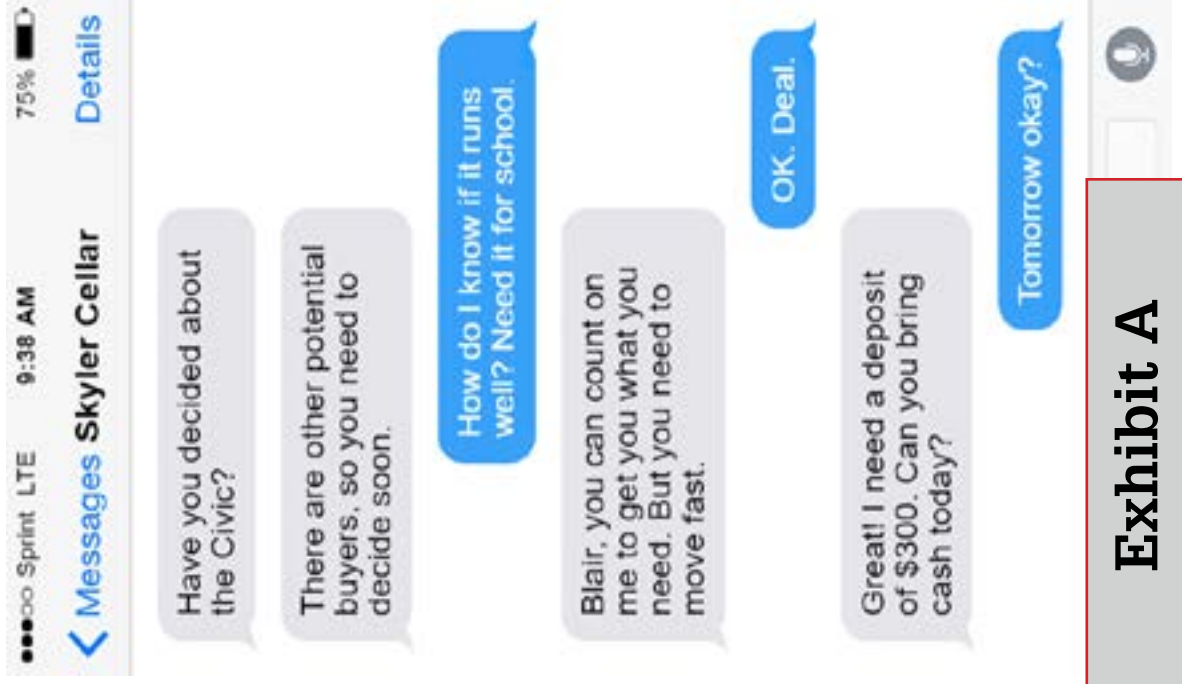
8. As soon as Harper answered the phone, he said "The kid will sell it for \$2,000." I said, "That's a great price, what's the catch? Does the thing run?" Harper said, "As far as I know, it runs great. The mechanic takes great care of it. But you know, it's an old Civic. It's got a lot of miles on it." I thanked Harper for the opportunity and told him I would buy the car as soon as the mechanic was done with it. I figured even if Blair didn't want it, I couldn't pass up a deal like that one.
9. I wrote down the make of the car and the price. I've learned that it's better to let the customer read the price on a piece of paper, rather than saying it out loud. For whatever reason, prices don't seem as big when they're written down. I also wrote down a date in August when I thought the car would probably be available.
10. I brought the piece of paper out to Blair, expecting that Blair would be thrilled and that we'd have a deal. Instead, Blair starts backing out of the agreement again, even though I got the car Blair wanted at the price we had discussed. It was annoying. Blair took the paper, mumbled something about having to think about it, and started to leave. I asked Blair to at least give me a phone number, so I could send a text message to follow up. Blair gave me a cell phone number.
11. After Blair left, I was annoyed. I had spent a lot of time trying to help Blair, with nothing to show for it. I decided to use some salesmanship to try to rescue the situation. The document marked as Exhibit A is an accurate copy of the text messages that I exchanged with Blair that afternoon. As it says in the text messages, Blair agreed to bring by a deposit the next day. I told my receptionist to make sure that Blair signed something.
12. Sometime in early August, I was at Max's Used Cars to pick up a used 1974 Dodge Monaco that one of my customers really wanted for some reason. While I was there, I asked Harper to show me his mechanic's Honda Civic. He did. The car was a wreck—dented passenger door, one cracked taillight, two tires needed to be replaced, and it sounded to me like the exhaust had a leak. My guess was that the car needed about \$700 in parts (assuming you could get used parts), plus an additional \$600 in labor. I told Harper to forget it.
13. The next couple weeks were pretty busy, and I forgot all about Blair and the Civic. When Blair showed up at the Car Basement one morning, I confess I didn't remember who Blair was or anything about our discussion. When Blair showed me that paper, the one marked as Exhibit B, it came flooding back. I tried to explain to Blair that things hadn't worked out with the Honda Civic, and I offered to find another car that would suit Blair's needs. Blair wasn't interested, though, and eventually stormed off again, this time muttering something about a negative review online.
14. Exhibit B is not a contract. I never signed it, and I never saw the stuff that Blair wrote on it before signing. I never agreed to a specific price for the Civic, or to deliver it on a specific date. This whole lawsuit is ridiculous.



Signed under the pains and penalties of perjury,

Skyler Cellar

Skyler Cellar



— Fold —



This is a dispute between Blair Bayer and Skyler Cellar. Bayer has sued Cellar, claiming that Cellar broke (“breached”) a contract for the sale of a car. Bayer is the **plaintiff**—the person who started the lawsuit and is seeking money. Cellar is the **defendant**, the person who is accused of having done something wrong. Your group represents Bayer. You are trying to help Bayer tell a persuasive story at trial, one that is likely to convince a jury that she is entitled to money. Read the statements of Bayer and Cellar, look at the two exhibits, and start to think about the best and worst facts that would support Bayer’s claim.

What Are the Key Facts? So, how do you decide which facts are the most important? Start by thinking about what the plaintiff needs to prove in order to win. Then figure out which of those facts are in dispute—meaning the two parties don’t agree on whether they are true. Finally, decide which facts are most likely to make someone listening to the story believe that your side is right.

Directions: With that in mind, and with the members of your group, discuss how each fact helps Bayer’s case, weakens it, or doesn’t matter. You can mark the facts *H* for helps, *W* for weakens, or *DM* if it doesn’t matter.

1. Bayer told Cellar what she wanted in a car. _____
2. Cellar learned from Harper Mendax that the Honda Civic had a lot of miles on it. _____
3. Cellar wanted to sell the car to Bayer for more than he was going to pay for it. _____
4. Cellar gave Bayer a piece of paper with the car’s model, a price, and a date. _____
5. Cellar had not seen the Honda Civic when he talked to Harper Mendax. _____
6. Bayer signed that piece of paper. _____
7. Cellar never signed that piece of paper. _____
8. Cellar texted Bayer “You can count on me to get you what you need.” _____
9. Cellar showed Bayer other cars that she could buy. _____
10. Cellar and Harper Mendax are friends. _____
11. Cellar has a mechanic who works for him at the Car Basement. _____
12. Cellar did not buy the Honda Civic. _____
13. Bayer would not have wanted to buy the Honda Civic if it did not run well. _____
14. The Honda Civic was not in good working order and required work. _____
15. Bayer had not seen the Honda Civic when she agreed to buy it. _____
16. Bayer ended up paying more than \$3,000 for a car. _____
17. The car Bayer bought needed work. _____



Directions: Now that you've reviewed the key facts in this case, which do you think are most important in helping you build your client's defense? List them here.

As the lawyer for the plaintiff, I need to prove: _____

The facts that will help me do this are:

Fact	This is important because...

Opening Statement for the Plaintiff

As a lawyer, you will also be asked by the judge to give an **opening statement**. This statement should give a preview of what you believe the evidence will show based on what you expect each witness to testify about. It should also tell a compelling and persuasive story that begins to put the evidence in context and help the jury see things your way.

Good morning, members of the jury. I represent Blair Bayer, _____

_____ (give a brief description of Blair).

During today's trial you will learn _____

_____ (sum up what Blair wanted).

But when Blair went to pick up the car, the defendant breached their contract. Cellar _____

_____ (describe what Cellar did wrong).

As a result, Blair had to pay for _____

_____ (state what damages you will argue Blair is entitled to). Thank you.

Roles:

Judge
Court Clerk
Bayer's Lawyer
Cellar's Lawyer
Blair Bayer
Skyler Cellar

COURT CLERK: Calling the case of Bayer vs. Cellar, Small Claims Case Number 19-3726.

JUDGE: Counsel, are you ready to proceed?

BAYER'S LAWYER: Yes, your honor.

CELLAR'S LAWYER: Ready for trial, your honor.

JUDGE: Very well. Counsel for the plaintiff, please proceed with your opening statement.

BAYER'S LAWYER [stands up and moves in front of the jury box]: Good morning, members of the jury. I represent Blair Bayer, a student at Civicus Community College. Blair worked hard to get into Civicus, and Blair worked hard to be able to afford all of the expenses that come with going to school, including transportation. In order to get to classes and back home again, Blair needed a car. So Blair went to a used car lot, the "Car Basement," owned by the defendant, Skyler Cellar. You will learn today that Blair wanted three things in a car: (1) one that was fuel-efficient; (2) one that ran well and wouldn't need much work; and (3) one that cost less than \$3,000. You will hear today that the defendant offered Blair a deal—for \$3,000, Blair could buy a car that met those criteria. The only catch was that Blair had to wait until August to pick it up. You will hear today that Blair accepted that deal, and that Skyler Cellar was therefore obligated to sell Blair that car in August. But when Blair went to pick up the car, the defendant breached their contract. Cellar had not acquired the car he was supposed to sell to Blair, and instead tried to sell her cars that were more expensive, or which didn't suit Blair's needs. Blair has suffered financial harm as a result of Cellar's failure to honor the contract, and Blair seeks compensation for those losses. Thank you.

JUDGE: Counsel for the defense, do you wish to make your opening statement at this time?

CELLAR'S LAWYER [stands up]: Yes, your Honor. [Moves in front of the jury box.] Members of the jury, my client, Skyler Cellar, runs a used car dealership. Cellar is in the business of helping out people like Blair Bayer—people who need to find quality cars that are within their budgets. You will hear today that Cellar went above and beyond to help Blair Bayer, that Cellar went out and found a car that wasn't even on the lot at the Car Basement because that was the car that Bayer wanted. You will hear that there was an agreement that Bayer would purchase that car, and you will hear that the purchase didn't take place. But you will learn that the reason the purchase didn't take place had nothing to do with Skyler Cellar, or anything that was within Cellar's control. When Cellar and Bayer entered into that contract, they both assumed that the car Cellar was going to buy from his friend, Harper Mendax, was in good working order. It turned out that assumption was wrong. And so it didn't make any sense for Cellar to buy the car from Mendax, and that meant Cellar didn't have a car to sell to Bayer. Cellar didn't keep any of Bayer's money, and Cellar tried to sell Bayer a different car, but Bayer wasn't interested. Now Bayer has filed this lawsuit, claiming that Cellar somehow harmed Bayer by not having Bayer's dream car for sale. There was no breach of contract here and, even if there was, Bayer wasn't actually harmed in any way by anything that Cellar did. Thank you.

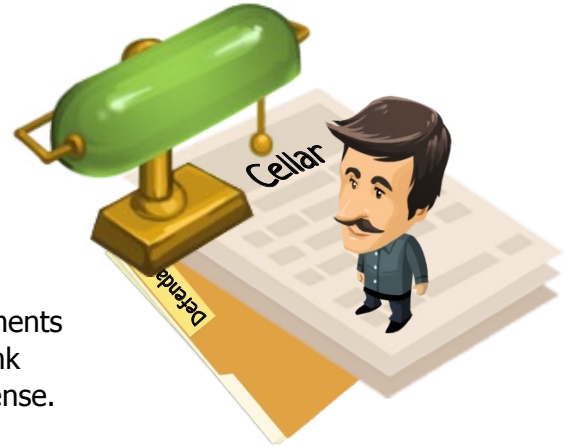
JUDGE: Thank you. Members of the jury, please remember that nothing that the attorneys say in opening statements or closing arguments counts as evidence. Evidence consists of exhibits that have been admitted in the course of the trial, as well as the sworn testimony of the witnesses. Plaintiff, please call your first witness.

• • • • •

BAYER'S LAWYER: Your honor, the plaintiff calls Blair Bayer to the stand.



This is a dispute between Blair Bayer and Skyler Cellar. Bayer has sued Cellar, claiming that Cellar broke ("breached") a contract for the sale of a car. Bayer is the **plaintiff**—the person who started the lawsuit and is seeking money. Cellar is the **defendant**, the person who is alleged to have done something wrong. Your group represents Cellar. You are trying to help Cellar tell a persuasive story at trial, one that is likely to convince a jury that Bayer is not entitled to any money. Read the statements of Bayer and Cellar, look at the two exhibits, and start to think about the best and worst facts when supporting Cellar's defense.



What Are the Key Facts? So, how do you decide which facts are the most important? Start by looking at what the plaintiff needs to prove in order to win. Then figure out which of those facts are in dispute—the two parties don't agree on whether they are true. Finally, decide which facts are most likely to make someone listening to the story believe that your side is right.

Directions: With that in mind, and with the members of your group, discuss how each fact helps Cellar's case, weakens it, or doesn't matter. You can mark the facts *H* for helps, *W* for weakens, or *DM* if it doesn't matter.

1. Bayer told Cellar what she wanted in a car. _____
2. Cellar learned from Harper Mendax that the Honda Civic had a lot of miles on it. _____
3. Cellar wanted to sell the car to Bayer for more than he was going to pay for it. _____
4. Cellar gave Bayer a piece of paper with the car's model, a price, and a date. _____
5. Cellar had not seen the Honda Civic when he talked to Harper Mendax. _____
6. Bayer signed that piece of paper. _____
7. Cellar never signed that piece of paper. _____
8. Cellar texted Bayer "You can count on me to get you what you need." _____
9. Cellar showed Bayer other cars that she could buy. _____
10. Cellar and Harper Mendax are friends. _____
11. Cellar has a mechanic who works for him at the Car Basement. _____
12. Cellar did not buy the Honda Civic. _____
13. Bayer would not have wanted to buy the Honda Civic if it did not run well. _____
14. The Honda Civic was not in good working order and required work. _____
15. Bayer had not seen the Honda Civic when she agreed to buy it. _____
16. Bayer ended up paying more than \$3,000 for a car. _____
17. The car Bayer bought needed work. _____



Directions: Now that you've reviewed the key facts in this case, which do you think are most important in helping you build your client's defense? List them here.

As the lawyer for the defendant, I need to prove: _____

The facts that will help me do this are:

Fact	This is important because...

Opening Statement for the Defendant

As a lawyer, you will also be asked by the judge to give an **opening statement**. This statement should give a preview of what you believe the evidence will show based on what you expect each witness to testify about. It should also tell a compelling and persuasive story that begins to put the evidence in context and help the jury see things your way.

Good morning, members of the jury. I represent Skyler Cellar, _____

_____ (give a brief description of Skyler).

During today's trial you will learn _____

_____ (sum up what Skyler did to help Blair).

But Skyler was unable to obtain the car that Blair wanted because _____

_____ (describe why Skyler didn't buy the car).

As a result, Blair had to pay for _____

_____ (state why Blair isn't entitled to any money). Thank you.

COURT CLERK: Blair Bayer to the stand, please. [Bayer approaches the witness stand.] Please raise your right hand. Do you swear that the testimony you give in this matter will be the truth, the whole truth, and nothing but the truth?

BAYER: I do.

COURT CLERK: You may be seated.

JUDGE: Counsel, you may proceed.

BAYER'S LAWYER: Please introduce yourself to the jury.

BAYER: My name is Blair Bayer. I am 19 years old. I attend school at Civicus Community College for the moment, but I am hoping to transfer to State University next year.

BAYER'S LAWYER: Where do you live?

BAYER: I live at home, with my parents.

BAYER'S LAWYER: How far is that from school?

BAYER: It's about 20 miles from my house.

BAYER'S LAWYER: So how do you get to class?

BAYER: I drive. Once I was admitted, I knew I would need a car, and I had some money saved up to buy one.

BAYER'S LAWYER: When did you start looking for a car?

BAYER: A few days after I graduated from high school. I knew I couldn't afford a new car, so I googled "good used cars cheap" and I saw an ad for the Car Basement. So I went there hoping to buy a car.

BAYER'S LAWYER: Were you looking for anything particular?

BAYER: Yes. I wanted a car that was fuel-efficient, that ran well, and that didn't cost too much.

BAYER'S LAWYER: Why were those things important to you?

BAYER: Well, I didn't have too much money to spend on the car or on gas, and because I was going to use it to get to school, I didn't want to have to miss classes to fix it.

BAYER'S LAWYER: When you got to the Car Basement, who helped you?

BAYER: The owner, Skyler Cellar.

BAYER'S LAWYER: Did you tell Cellar what you were looking for?

BAYER: Yes, I did. I explained the whole situation, and Cellar said it wouldn't be a problem, that I was exactly the kind of customer Cellar liked to help.

BAYER'S LAWYER: Did Cellar show you any cars that fit your needs?

BAYER: No. Everything there was either too old, too expensive, or too big. I started to think I would need to look somewhere else, and I said that to Cellar.

BAYER'S LAWYER: How did Cellar react when you said that?

BAYER: Cellar seemed worried that I might leave without buying something. Suddenly Cellar said, "Wait right here, I need to make a phone call." Then Cellar went to the office and didn't come back for like ten minutes.

BAYER'S LAWYER: When Cellar finally came back, what did Cellar say?

BAYER: Cellar said I was in luck, because Cellar had a friend who was selling an old Honda Accord hatchback. Cellar said it ran great, got good gas mileage, and was within my price range. Then Cellar said that there was a catch, that I couldn't buy the car until mid-August because the owner needed it until then.

BAYER'S LAWYER: You said that Cellar told you the car was within your price range. Had you told Cellar how much you could afford at that point?

BAYER: No, I hadn't. And when I asked how much the car was going to cost, that's when Cellar asked. Cellar said, "What's the largest amount you can possibly spend?" So I answered the question honestly. I said I had \$3,000 to spend, and not a penny more.

BAYER'S LAWYER: What happened then?

BAYER: Cellar left again for another ten minutes. I had been waiting a long time by this point. When Cellar came back, Cellar gave me a piece of paper with the make and model of the car and a price—\$3,000.

BAYER'S LAWYER: What was your reaction when you saw the price?

BAYER: Well, I was annoyed that I was going to have to spend my entire budget on the car, but I was glad that I would be able to afford something. But I didn't want to say yes without thinking it over, so I told Cellar I needed some time.

BAYER'S LAWYER: How did Cellar respond?

BAYER: Cellar said that was fine, but made sure to get my phone number. Then I left the Car Basement and went home.

BAYER'S LAWYER: When did you next hear from Cellar?

BAYER: That same day, just a few hours later. Cellar texted me and said that there were other buyers interested in the car, so I needed to decide soon.

BAYER'S LAWYER [handing a copy of Exhibit A to Bayer]: I'm showing you what has been marked as Exhibit A for identification—do you recognize it?

BAYER: Yes, this is a copy of a screenshot showing the text messages I exchanged with Cellar on that day.

BAYER'S LAWYER: Is it a fair and accurate copy?

BAYER: Yes, it is.

BAYER'S LAWYER: Your honor, I ask that Exhibit A be admitted in evidence.

JUDGE: Is there any objection?

CELLAR'S LAWYER: No objection, your honor.

JUDGE: Exhibit A is admitted in evidence as Exhibit 1.

BAYER'S LAWYER: Why did you agree to buy the car?

BAYER: I trusted what Cellar told me about it running well, and I felt pressured to agree before I lost the opportunity.

BAYER'S LAWYER: Did you deliver the \$300 deposit?

BAYER: Yes, I did, the following morning.

BAYER'S LAWYER: What happened when you dropped it off?

BAYER: Well, Cellar wasn't there, but the receptionist took the money and asked me to sign the piece of paper that had the information about the car on it, so I did. I also made sure to write down what we had agreed to during the text exchange. The receptionist gave me a copy of the paper after I signed it.

BAYER'S LAWYER [handing a copy of Exhibit B to Bayer]: I'm showing you what has been marked as Exhibit B for identification—do you recognize it?

BAYER: Yes, this is a copy of the contract that I signed with Cellar.

BAYER'S LAWYER: Is it a fair and accurate copy?

BAYER: Yes.

BAYER'S LAWYER: At this time, I ask that what has been marked as Exhibit B be admitted in evidence.

JUDGE: Any objection?

CELLAR'S LAWYER: No objection, your honor.

JUDGE: Exhibit B is admitted as Exhibit 2.

BAYER'S LAWYER: Were you able to purchase the car that Cellar agreed to sell you in that contract?

BAYER: No, I wasn't.

BAYER'S LAWYER: What happened?

BAYER: When I went to pick it up, at first Cellar pretended not to remember me at all. Then Cellar told me that Cellar had never purchased it because it needed work. Then Cellar tried to sell me some other cars, which were either too expensive or not right for me. I was furious and I left.

BAYER'S LAWYER: Were you able to purchase a car before classes started?

BAYER: Just barely. I had to rush, so I found something online, but it cost me \$3,700 and it needed a \$500 brake repair a month after I bought it. When I was fixing the brakes, I had to miss a day of classes.

BAYER'S LAWYER: Why did you file this lawsuit?

BAYER: Because I don't think it's fair that Cellar tried to pull a bait-and-switch on me, making me desperate to buy something and then trying to sell me something I didn't want. I should have had time to buy the car I wanted for \$3,000. Instead, I had to spend much more. Cellar owes me the difference.

BAYER'S LAWYER: Thank you. [To the judge] Nothing further, your honor.

• • • • •

JUDGE: Very well. Defense counsel, do you have any questions for this witness?

CELLAR'S LAWYER [standing up]: Yes, your honor. [Turning to Bayer] You needed a car so that you could drive to school, correct?

BAYER: Correct.

CELLAR'S LAWYER: And you tried to buy one at the Car Basement, yes?

BAYER: That's right.

CELLAR'S LAWYER: And there wasn't any car at the Car Basement that fit your criteria, correct?

BAYER: No, there wasn't.

CELLAR'S LAWYER: So Cellar tried to find you one that did meet your needs, isn't that right?

BAYER: I guess.

CELLAR'S LAWYER: Well, you know that Cellar made a phone call and found a car that might work for you, correct?

BAYER: That's what Cellar told me.

CELLAR'S LAWYER: Cellar didn't have to do that, right?

BAYER: If Cellar wanted to make a sale, Cellar needed to find a car I wanted to buy.

CELLAR'S LAWYER: And Cellar did find a car you wanted, isn't that right?

BAYER: That's what Cellar said.

CELLAR'S LAWYER: Now, you never saw this car, did you?

BAYER: No, I didn't.

CELLAR'S LAWYER: The car wasn't on the lot, was it?

BAYER: No, it wasn't.

CELLAR'S LAWYER: So you didn't know if it was in good shape or not, did you?

BAYER: No, I didn't. I trusted what Cellar was telling me.

CELLAR'S LAWYER: But Cellar couldn't look at the car either, isn't that right?

BAYER: No, it wasn't there.

CELLAR'S LAWYER: So both you and Cellar assumed that the person Cellar was buying it from was being honest when he said that the car was in good shape, isn't that right?

BAYER: Yes.

CELLAR'S LAWYER: And it turned out that both of you were wrong, didn't it?

BAYER: I guess so.

CELLAR'S LAWYER: You didn't want to buy a car that needed a lot of work, isn't that right?

BAYER: That's right.

CELLAR'S LAWYER: So if Cellar had bought the Honda Civic from Harper Mendax, and it had been in bad shape, you wouldn't have agreed to buy it from Cellar, would you?

BAYER: If it needed a lot of work? No, of course not.

CELLAR'S LAWYER: Let's talk about after you learned that the Civic wasn't available from the Car Basement. Cellar offered you other cars that you could buy, correct?

BAYER: Yes, but they weren't right.

CELLAR'S LAWYER: And one of them cost less than \$3,000, isn't that right?

BAYER: The SUV.

CELLAR'S LAWYER: But you chose not to buy it, isn't that right?

BAYER: It was an SUV. It probably got terrible gas mileage.

CELLAR'S LAWYER: You never asked Cellar what kind of gas mileage the SUV got, did you?

BAYER: It's an SUV. Everyone knows they get terrible gas mileage.

CELLAR'S LAWYER: So that's correct, you never asked?

BAYER: No, I didn't.

CELLAR'S LAWYER: And eventually you chose to buy a more expensive car, didn't you?

BAYER: I was running out of time.

CELLAR'S LAWYER: My question is, did you choose to buy a more expensive car?

BAYER: Yes, I had to.

CELLAR'S LAWYER: And that car required a repair sometime after you bought it, correct?

BAYER: Yes. \$500 for brakes.

CELLAR'S LAWYER: Did you have someone check the brakes before you bought it?

BAYER: No.

CELLAR'S LAWYER: Thank you. [To the judge] No further questions for this witness.

JUDGE: The witness may step down. Plaintiff, do you have any further witnesses?

BAYER'S LAWYER: No, your honor, the plaintiff rests.

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JUDGE: Very well. Defense, do you intend to call any witnesses?

CELLAR'S LAWYER: Yes, your honor. The defense calls Skyler Cellar to the stand.

COURT CLERK: Skyler Cellar to the stand, please. [Cellar approaches the witness stand.] Please raise your right hand. Do you swear that the testimony you give in this matter will be the truth, the whole truth, and nothing but the truth?

CELLAR: I do.

COURT CLERK: You may be seated.

JUDGE: Counsel, you may proceed.

CELLAR'S LAWYER: Please introduce yourself to the jury.

CELLAR: My name is Skyler Cellar. I own a used car dealership called the Car Basement. "Only our prices are in the basement." I've owned the business for about ten years, since I took it over from the previous owner.

CELLAR'S LAWYER: Are you familiar with the plaintiff, Blair Bayer?

CELLAR: Yes. I tried to help Bayer find a car last summer, but it didn't work out. Next thing I know, Bayer filed this lawsuit, claiming I owe money because Bayer wasn't able to buy a particular car from me.

CELLAR'S LAWYER: Do you remember what kind of car Bayer was looking for?

CELLAR: Sure. Bayer wanted what everyone wants when they are looking at used cars—something inexpensive that runs well. Bayer also wanted it to get good gas mileage, so no pickup trucks or anything like that.

CELLAR'S LAWYER: Did you have anything like that in your inventory?

CELLAR: Not at the time, no. When that happens, I usually call around to other used car dealers to see if they have something that the customer might want. If they are willing to sell it for less than the customer is willing to pay, I can still make a profit on the deal.

CELLAR'S LAWYER: And did you call around looking for a car for Bayer?

CELLAR: Yeah, Bayer seemed like a nice kid, so I wanted to help out. So I called a few other dealerships. Finally I got a good answer from my friend Harper Mendax.

CELLAR'S LAWYER: What did Mr. Mendax tell you?

CELLAR: Harper said that he had a mechanic who was moving away at the end of the summer, and that I could have his Honda Civic when he left. I told Harper to find out what the mechanic wanted for it, and then I went out to discuss the situation with Bayer.

CELLAR'S LAWYER: What did Bayer say when you described the opportunity?

CELLAR: Well, I can tell you what Bayer didn't say, and that's "thank you." Instead, Bayer immediately asked how much it was going to cost. It was apparent that Bayer really wanted to get the deal done, so I asked what the maximum amount was that Bayer was willing to pay.

CELLAR'S LAWYER: How much was that?

CELLAR: Three thousand dollars.

CELLAR'S LAWYER: What did you do then?

CELLAR: I called Harper back. By then, Harper had found out that the owner of the Civic was willing to sell it for \$2,000. I asked Harper to confirm that the vehicle ran well, and Harper assured me that it did. So I told Harper I wanted the car. I figured that even if Bayer didn't want it, it was too good a deal to pass up.

CELLAR'S LAWYER: What happened next?

CELLAR: I wrote down the make of the car and price on a piece of paper and brought the paper out to Bayer.

CELLAR'S LAWYER [handing Cellar a copy of Exhibit B]: I'm showing you a document that has been entered in evidence as Exhibit 2. Have you seen this before?

CELLAR: Yes, except for the handwriting at the bottom that Blair Bayer added.

CELLAR'S LAWYER: The model of the car, the price, and date are your writing?

CELLAR: Yes.

CELLAR'S LAWYER: And the writing in the lower right, you've never seen that before?

CELLAR: Correct. I didn't write that, and I never saw it.

CELLAR'S LAWYER: Did you eventually go to Harper Mendax's lot to buy the Civic?

CELLAR: I did, but once I saw the car, I backed out of the deal.

CELLAR'S LAWYER: What was wrong with the car?

CELLAR: It wasn't as Harper had described it at all. It had dents, a cracked taillight, two bad tires, and it sounded like the exhaust had a leak. I told Harper to forget about it.

CELLAR'S LAWYER: When did you next hear from Blair Bayer?

CELLAR: Later that summer. Bayer showed up at the lot. I didn't remember Bayer at first, but when I saw the piece of paper Bayer showed me, I remembered about the Civic. I explained to Bayer that things hadn't worked out with that car and I offered to sell Bayer a different car.

CELLAR'S LAWYER: What was Bayer's reaction?

CELLAR: Bayer just stormed off again, muttering threats about negative reviews and such.

CELLAR'S LAWYER: Did you believe that you had a contract with Bayer?

CELLAR: Absolutely not.

CELLAR'S LAWYER: Thank you. [To the judge] No further questions for this witness.

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JUDGE: Any cross-examination?

BAYER'S LAWYER [standing up]: Yes, your honor. [Turning to Cellar] When Blair Bayer visited the Car Basement, Bayer told you what kind of car Bayer was looking for, correct?

CELLAR: Yes.

BAYER'S LAWYER: And you offered to sell Bayer a car that fit those criteria, didn't you?

CELLAR: I did.

BAYER'S LAWYER: You even wrote your offer on a piece of paper, isn't that right?

CELLAR: Well, I wrote down the type of car and the price.

BAYER'S LAWYER: That was the car you were offering to sell to Bayer, wasn't it?

CELLAR: Yes.

BAYER'S LAWYER: Now, at the time that you made that offer, you had discussed with Harper Mendax the condition of the Honda Civic, hadn't you?

CELLAR: I asked about it during our phone call, yes.

BAYER'S LAWYER: And you had the opportunity to ask Harper whatever you wanted to about the car, didn't you?

CELLAR: Well, it was a quick call.

BAYER'S LAWYER: But it was your decision not to ask any more, isn't that right?

CELLAR: I suppose so.

BAYER'S LAWYER: And this wasn't your first conversation with Harper Mendax, was it?

CELLAR: No, of course not. We're friends.

BAYER'S LAWYER: So you had some ability to tell whether Harper Mendax was telling you the truth about the condition of the car?

CELLAR: Well, obviously I was wrong about that.

BAYER'S LAWYER: The owner of the Civic was going to sell it to you for \$2,000, isn't that right?

CELLAR: Yes.

BAYER'S LAWYER: And you were going to sell it to Bayer for \$3,000, correct?

CELLAR: Correct.

BAYER'S LAWYER: You never told Bayer what you were paying for the car, did you?

CELLAR: Of course not.

BAYER'S LAWYER: But that low price that you were paying made you concerned about the condition of the car, didn't it?

CELLAR: I don't know what you mean.

BAYER'S LAWYER: You gave a statement in connection with this case, didn't you?

CELLAR: Yes.

BAYER'S LAWYER: And in that statement, you wrote that when Harper told you the kid would sell the car for \$2,000, you responded, "What's the catch? Does the thing run?" Isn't that right?

CELLAR: Yes.

BAYER'S LAWYER: As part of your used car business, you have an auto repair shop, correct?

CELLAR: Yes, it's a big part of the business these days.

BAYER'S LAWYER: So if you had purchased the Civic, you could have fixed everything that was wrong with it, isn't that right?

CELLAR: Well, I still would have had to pay for the parts.

BAYER'S LAWYER: And your estimate for how much the parts would have cost was \$700, correct?

CELLAR: Correct.

BAYER'S LAWYER: Which still would have left you with a \$300 profit on the sale, isn't that right?

CELLAR: It would have taken time away from my mechanic's other work.

BAYER'S LAWYER: So the reason you didn't deliver a working Honda Civic to Bayer is that you wanted your mechanic working on other things, do I have that right?

CELLAR: Well, that's part of it.

BAYER'S LAWYER: Thank you. [To judge] No further questions, your honor.

JUDGE: The witness is excused. Defense, do you have any further witnesses?

CELLAR'S LAWYER: No, your honor. The defense rests.

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JUDGE: Very well, we will proceed to closing arguments, beginning with the defense.

CELLAR'S LAWYER [stands up and moves in front of the jury box]: "No good deed goes unpunished." That's the expression that springs to mind as I reflect on this evidence in this case. Cellar tried to help Bayer find a car, went to great lengths to do so, but ultimately it turned out that the car Bayer wanted just wasn't available. It didn't exist. Is that Cellar's fault? No. Did Cellar know that when Cellar offered to buy the Honda Civic? Obviously not. Is Cellar responsible for the fact that Bayer then needed to buy a different car? No. There was no enforceable contract between Cellar and Bayer, and even if there had been, Cellar's performance was frustrated by the fact that the Honda Civic was not in good shape. You heard Bayer's own testimony that Bayer would not have wanted to buy the Civic if it was not going to run well. Cellar understood that perfectly well. There was no Honda Civic that ran well and was within Bayer's budget. That car simply didn't exist. Cellar would have had an easier time selling Bayer a unicorn. And Cellar can't be held liable for failing to do so. Thank you.

JUDGE: Closing for the plaintiff.

BAYER'S LAWYER [stands up and moves in front of the jury box]: Cellar made an offer, Bayer accepted it. That's a contract. Cellar was obligated to sell Bayer a working Honda Civic for \$3,000. Cellar failed to do so. That's breach of contract. Bayer was harmed by Cellar's failure to sell a working Honda Civic for \$3,000, because Bayer had to spend more on a car that required repairs. If Cellar had not breached the contract, Bayer would have a working Honda Civic within Bayer's budget. It's that simple. Now Cellar argues that Cellar was unable to provide a working Honda Civic, and that Cellar could not have foreseen that situation. Both of those assertions are false. You heard Cellar admit that Cellar could have had the mechanic at the Car Basement fix the Civic. And you heard Cellar acknowledge that Cellar could have asked more questions about the condition of the Civic, but chose not to. This was not an unforeseen "Act of God" that made the Honda Civic unavailable, it was Cellar's own greed. That is not a defense to a contract claim. Cellar owes Bayer \$700 to cover the additional cost of the car Bayer purchased, plus \$500 to cover the brake repair that car required, plus whatever amount you feel is appropriate for the time that Bayer missed from class, and the cost of the additional gas that Bayer will have to buy over the life of the car. Thank you.

JUDGE: Thank you. Members of the jury, this concludes the trial presentation. I will now instruct you on the law and then you will retire to deliberate until you reach your verdict. For now, we will take a short recess.

CLERK: All rise. Court is in recess.



Jury Instructions

Your Duty as Jurors. As the judge, it is my duty to instruct you in the law that applies to this case. As jurors, you must follow these instructions. Your duty will be to decide what the facts are in this case based on the evidence you heard. You must then apply the rules of law to those facts.



Consider Only the Evidence. Evidence consists of the witnesses' testimony and the exhibits you saw. Any arguments or opinions the lawyers expressed are not evidence. You may not use any other source of information to help you decide this case.

Contract Law. A *contract* is a promise, or set of promises, between two or more persons to do or not to do a certain thing. Ordinarily, for there to be a contract, the parties must by their words or conduct express their mutual assent—that is, their agreement—to exchange promises. For example, in a contract for the purchase and sale of a house, the buyer promises to pay a certain amount of money to the seller on a certain date, and the seller promises to deliver to the buyer on that date a deed to the seller's house. Each party has agreed to exchange a promise for a promise by the other party.

Terms of the Contract. If you determine that a binding contract was formed, you must determine the *terms of the contract*. The terms of the contract are the details to which the parties mutually agreed to with reasonable certainty. Parties may enter into contracts orally or in writing. An oral contract is just as lawful as one that is in writing. If you find that a contract was formed either orally or in writing, you should consider whether the plaintiff has proven a breach of contract.

Breach of Contract. A *breach of contract* is a failure to fulfill one or more terms of the contract. In order to succeed in a breach of contract claim and collect damages, a party must prove four elements:

1. That there is a contract,
2. That the party performed its obligations under the contract (or is excused from performance),
3. That the other party breached the contract, and
4. That the non-breaching party suffered damages as a result of the breach of contract.

Discharge by Existing Frustration. A party may be excused from not performing its obligations under a contract if the purpose of the contract is substantially *frustrated*, or prevented, by circumstances that were not known at the time the contract was formed. Such circumstances will only relieve a party of its duty if (a) they are not the party's fault; (b) the party had no reason to know of the circumstances; and (c) the non-existence of those circumstances was a basic assumption of both parties when entering into the contract.

Damages. If you find that the defendant breached the contract, you must then decide the amount of the plaintiff's *damages*, if any. Damages are money awarded for an injury or loss. In order to recover damages against the defendant, the plaintiff must demonstrate that the damages complained of were caused by the defendant's breach. If the damages were caused by the plaintiff or by someone other than the defendant, then the plaintiff is not entitled to damages from the defendant.

In determining the amount of damages, your goal should be to put the plaintiff in the same position that she or he would have been in if there had not been any breach of contract. In other words, the injured party should be returned to the same position as if the other party had fully performed its obligations under the contract.



Verdict Form

As a group use the jury instructions to help you deliberate and decide on the outcome of the case. You and your group of fellow jurors must reach a unanimous decision.

We, the jury, find as follows:

1. Has the plaintiff proven that there was a contract between Bayer and Cellar?

_____ Yes

_____ No

(If your answer is Yes, proceed to Question 2. If your answer is No, your deliberations are concluded.)

2. Has the plaintiff proven that the plaintiff performed its obligations under the contract (or is excused from performance)?

_____ Yes

_____ No

(If your answer is Yes, proceed to Question 3. If your answer is No, your deliberations are concluded.)

3. Has the plaintiff proven that Cellar breached that contract?

_____ Yes

_____ No

(If your answer is Yes, proceed to Question 4. If your answer is No, your deliberations are concluded.)

4. Was the defendant's performance under the contract excused due to frustration of purpose? (In order to find that it was, you must find that (a) the purpose of the contract was frustrated by circumstances that were not known when the contract was formed, (b) the defendant did not have reason to know of those circumstances, and (c) the circumstances were not the fault of the defendant.)

_____ Yes

_____ No

(If your answer is No, proceed to Question 5. If your answer is Yes, your deliberations are concluded.)

5. Has the plaintiff proven that Cellar's breach of the contract caused harm to the plaintiff?

_____ Yes

_____ No

(If your answer is Yes, proceed to Question 6. If your answer is No, your deliberations are concluded.)

6. What amount of money would fairly compensate the plaintiff for the harm caused by the defendant? As the jury, you'll need to decide both what Bayer should be compensated for, if anything, and the amounts. Check and fill in the amounts for what you think is fair and then tally the total below.

☐ \$700 to cover the additional cost of the car Bayer purchased

☐ \$500 to cover Bayer's brake repair

☐ \$ _____ to compensate Bayer for time missed from class

☐ \$ _____ to pay for cost of additional gas Bayer will have to buy over the life of the car

\$ _____ (number) _____ (words)