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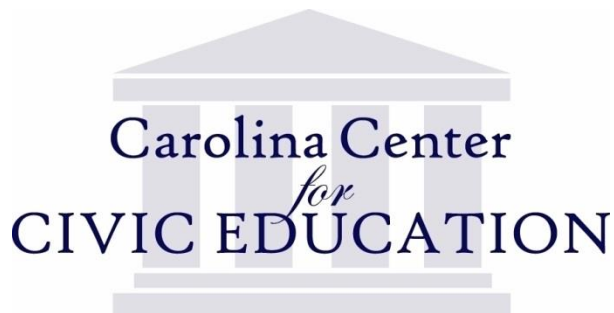
*2019-2020*

# ***MALCOLM***

***V.***

# ***UTOPIA ZOO***

**A SPECIAL THANK YOU to Carolina Center for Civic Education and the North Carolina Advocates for Justice who have graciously allowed us to adapt and use their case for our competition.**



Our 2014 Summer Camp Case has been modified from the 2010-11 NCAJ High School Mock Trial Program competition case. The original case was created by Lionel F. Earl III, a 2008 graduate of Terry Sanford High School and participant in the NCAJ High School Mock Trial Program. Mr. Earl, who now attends law school at Penn State, devised the case while an undergraduate at the University of North Carolina at Chapel Hill. Many thanks to Gordon Widenhouse, CCCE Case Committee Chair, and to Lionel F. Earl III, Katy Parker, Michelle Robertson, and Ken Campbell for their leadership and talents in editing and adapting the case for use in 2010-11, and to Susan H. Johnson for the 2014 camp modifications.

# **MALCOLM v. UTOPIA ZOO**

## **CASE SUMMARY**

In 2012, successful business owner Jordan Hammond purchased the Utopia Zoo. In addition to acquiring exotic animals for new exhibits, Hammond constructed a safari tour on which visitors could see animals up close in a simulated habitat. During construction, Hammond employed engineer Devin Grant to assess the safety of the new attraction. Grant expressed doubts about the security of the safari tram and was promptly fired.

On August 9, 2018, star basketball player Taylor Malcolm visited the safari at Utopia Zoo. During the tour, Malcolm imitated the call of the gorillas as a prank. Upon hearing Malcolm, the gorillas became agitated and approached the tram. Malcolm continued making noise, and the gorillas attacked the tram. Unable to manually drive the tram to safety, tour guide Sammy Dundee shot a tranquilizer dart in the direction of the gorillas.

The tranquilizer dart hit Malcolm, causing the student to slump over the side of the tram. Malcolm's arm was bitten by one of the gorillas. Dundee quickly recovered and tranquilized the attacking gorilla. Malcolm was taken to the hospital and received months of physical therapy for the arm injury. As a result of those injuries, Malcolm was unable to pursue a promising career in basketball.

Malcolm has now brought a claim of negligence against the Utopia Zoo, arguing that the zoo failed to ensure Malcolm's safety during the tour. Malcolm further alleges that the injuries from the gorilla bite could have been prevented if proper regulations had been followed. Utopia Zoo denies the allegations, asserting that its employee, Sammy Dundee, followed proper protocol. The zoo further alleges that Malcolm endangered other guests by his/her own negligent actions and caused his/her own injuries.

# MALCOLM v. UTOPIA ZOO

## WITNESSES

PLAINTIFF	DEFENSE
Taylor Malcolm, Plaintiff Devin Grant, Engineer Robin Thomas, Journalist	Jordan Hammond, Zoo Owner Dr. Morgan Goodall, Professor Sammy Dundee, Tour Guide

## CASE DOCUMENTS

### Affidavits

#### *Plaintiff*

1. Affidavit of Taylor Malcolm
2. Affidavit of Devin Grant
3. Affidavit of Robin Thomas

#### *Defense*

6. Affidavit of Jordan Hammond
7. Affidavit of Dr. Morgan Goodall
8. Affidavit of Sammy Dundee

### Exhibits

1. Medical Record for Taylor Malcolm
2. Utopia Zoo Safety Evaluation  
Memorandum
3. Utopia Zoo Safari Map
4. Utopia Zoo Welcome Letter
5. Curriculum Vitae for Dr. Morgan Goodall
6. Warning sign posted in all tram cars

## LEGAL DOCUMENTS

1. Utopia Civil Code (UCC)
2. Sample Jury Instructions
3. Relevant Case Law
4. Stipulations

**AFFIDAVITS,  
EXHIBITS, and  
LEGAL DOCUMENTS**

## AFFIDAVIT OF TAYLOR MALCOLM

1 Taylor Malcolm, being duly sworn, hereby deposes and states as follows:

2 My name is Taylor Malcolm. I was born in 1989 and I live in Jordan Hall at the University  
3 of Utopia. Although my grades were good enough to get me into UU, school has never been my  
4 “thing.” First and foremost I am a basketball player. I have been playing since I was big enough  
5 to dribble a ball. My dad always told me to work hard and I guess it paid off. After my senior year  
6 in high school, I was given a full scholarship to play basketball at the University of Utopia. It was  
7 my dream-come-true! I gave it my all during freshman year both on and off the court. During my  
8 first season, we were the Division Champions for the first time since 2001.

9 Naturally with all the success came a lot of attention. Every time I went out for a walk  
10 on campus, students would stop me and ask for an autograph. Pictures of me at the dining hall  
11 would randomly appear on the internet. Even when I went to visit my small hometown,  
12 strangers would tag along just so they could claim they knew me. I guess you could say it went  
13 to my head. Whenever I wanted to show off, my teammates and I would do stupid stunts at  
14 parties to see who was crazier. I always won.

15 The only time I actually got in trouble with the law was after winning the game against  
16 our rivals at Utopia State. Everyone on the team was having a great time at the party. We were  
17 on the balcony of someone’s house and could see straight into the neighbor’s yard. As a  
18 basketball player, I can jump fairly high, so a friend bet me I couldn’t jump into the other yard  
19 and land on the neighbor’s trampoline. I admit, I had a little to drink, but that wasn’t what  
20 motivated me. Once I’m challenged, I can never back down. So I climbed over the balcony and

21 jumped from the ledge onto the trampoline. The neighbors called the police for trespassing,  
22 but I got off with a warning. Mostly, everyone was just grateful I wasn't hurt, or else I would have  
23 missed the next game.

24 Towards the end of sophomore year, I tried to tone down the crazy lifestyle. I made  
25 more of an effort to volunteer in the community and I devoted more time to my true friends.

26 On August

27 9, 2018, my friends decided to surprise me with tickets to Utopia Zoo. We hadn't been there  
28 since we were kids, and I had heard that the new owner had built some cool new exhibits.

29 We arrived just after lunch. My friend, Tom, darted straight for the snake exhibit. I am  
30 terrified of snakes, but I did not want to seem like a wimp so I went anyway. Once inside we  
31 stopped to look at the anaconda. It was asleep, so Tom dared me to knock on the glass. I

32 pointed

33 out the sign above the display and read aloud, "No Flash Photography or Disturbing the  
34 Animals." Tom said I was getting soft. I waited to make sure no one was nearby, and then I  
35 tapped the glass. The snake did not move, but a zoo worker rounded the corner, so all of us ran  
36 from the exhibit. I had forgotten how much fun getting in trouble could be.

37 Later we went to the zoo safari where you can ride a tram and see the animals up close.

38 While waiting in line, we read the signs that said disturbing the animals was prohibited and  
39 cause for expulsion from the zoo. But when we boarded the tram, the tour guide never  
40 explained exactly what the sign meant. The antelopes were fairly boring and by the time we  
41 got to the gorilla exhibit, my friends and I were ready to see something exciting. Most of the

42 gorillas were in the far corner of the exhibit, but two of them were closer to us. Tom said we  
43 should try to get their attention so they would get closer to the tram, so I started making a  
44 gorilla sound.

45           The two larger gorillas came closer to the tram. My friends thought it was hilarious that  
46 my gorilla calls were working, so I kept making noise. When one of the gorillas started howling  
47 back at me, I stopped yelling. I only wanted to see the animals up close, not make them angry.

48           The next thing I remember is waking up at the hospital with my left arm bandaged and  
49 in a lot of pain. Apparently, the incompetent tour guide shot me with a tranquilizer dart  
50 instead of hitting the gorilla. How do you miss a 500 pound gorilla? After I was hit with the dart,  
51 I passed out and slumped over the side of the tram. That's when the gorilla attacked me. It bit  
52 my arm before they finally were able to tranquilize him.

53           My personal sports doctor, Jesse Cruz, told me it would take weeks before I would be  
54 able to fully move my hand, and months before my arm would recover. Dr. Cruz went over my  
55 medical records with me when he explained my injuries and the treatment and physical  
56 therapy I would need. The hospital bills were insane. Even though I have a full scholarship, my  
57 family is not rich, and it has been difficult paying off the bill. To make matters worse, I missed  
58 most of the pre-season workouts because of my injuries. Even though it has been some time  
59 since the injury, my game is still off and I don't think I'll ever reach the level of playing I was at  
60 before I was hurt. Ever since I was little, I set my sights on playing in the pros. Before this  
61 happened, pro scouts were following me, but not anymore. I had so much going for me, it's  
62 hard to take.



63           Of the available exhibits, I am familiar with the following, and only the following:  
64   “Medical Record for Taylor Malcolm,” which my doctor showed to me; the zoo “Welcome”  
65   letter, and “Utopia Zoo Safari Map” which I received in my brochure when I was at the zoo.

66           I hereby attest to the having read the above statement and swear or affirm it to be my  
67   own. By signing this document I swear to or affirm the truthfulness of its content. I understand  
68   that I have an opportunity to update this affidavit and that unless such is done prior to such a  
69   time whereas I may be called upon to testify in court, and that in such an event a copy of my  
70   updated  
71   statement is given to all parties involved in this case, I am bound by the content herein.

72  
73   Elizabeth Eckhardt  
74   Elizabeth Eckhardt, Notary Public

Taylor Malcolm  
Taylor Malcolm

## AFFIDAVIT OF DEVIN GRANT

1 Devin Grant, being duly sworn, hereby deposes and states as follows:

2 My name is Devin Grant. I was born in 1971 and live in Houston, Texas. I attended the  
3 Trinity School of Engineering at Duke University where I received a degree in Mechanical  
4 Engineering. I then went to MIT, but I only completed the master's program. My first job was in  
5 Michigan overseeing the collision testing of automobiles. Through this line of work, I became  
6 familiar with various safety standards and construction processes that determine whether a  
7 structure is safe. In 2000, I noticed a flaw in the production of my company's newest vehicle. I  
8 notified my superiors of the problem with the vehicle, but I was told to keep quiet. The  
9 company had invested a lot into this specific car and if I delayed production, the company  
10 would lose a lot of money. Nonetheless, I independently submitted a report expressing my  
11 lack of faith in the automobile's design. Less than a year later, a lawsuit was filed against the  
12 company. A politician had been injured in a car wreck due to the very flaw I noticed in the car.  
13 My report was discovered and I was called upon by the plaintiff's lawyers to testify. For my  
14 time in court and evidence that I provided, I earned \$50,000! This money allowed me to finally  
15 quit my job and start my own consulting business.

16 The type of jobs I took with my own business varied. Sometimes I was flown out west  
17 to consult with architects about the structural integrity of buildings along the fault lines where  
18 earthquakes can occur. Other times, I've been hired by amusement parks to run tests on  
19 attractions to see if they are safe for the public. Although my training is in mechanical  
20 engineering, I consider myself a jack-of-all-trades. I have experience in physics and civil

21 engineering that allows me to be knowledgeable in any situation.

22 In 2012, I received a phone call from Jordan Hammond, a business owner in Utopia.

23 S/he discussed hiring me to inspect the safari feature of his/her zoo. I offered to fax Hammond

24 my credentials and asked for background information on the zoo to prepare for my

25 inspection. Hammond ignored me. I was annoyed by Hammond's rudeness but I'm not one to

26 refuse a job, so I booked my flight to Utopia for the next day. After our phone conversation, I

27 didn't expect a warm welcome, and I wasn't disappointed. Hammond led me to the

28 construction of the new exhibits and safari and left me alone to conduct my inspection. My

29 investigation of the zoo exhibits yielded no significant conclusions. The steel fences and

30 concrete moats enclosing the animals were sufficient to ensure the safety of both the guests

31 and animals. However, I deemed

32 the safari ride unsafe for visitors.

33 The first problem was the tram itself. Instead of the usual gas propelled vehicle, the

34 tram was a train-like vehicle that ran on an automatic track. This set-up meant that the tour

35 guide had no control over the movement of the vehicle. Secondly, I noted that given the size of

36 the tram and railing, it was likely that the tram could malfunction and become locked on the

37 track. In addition, any animal of significant size could prevent the tram from moving. Thirdly, I

38 noticed that the tram itself was too long for the tour guide to adequately monitor the zoo

39 visitors. Using precise measurements, I found a tour guide sitting at the front of the tram had a

40 25 degree blind spot. Finally, I inspected the walls of the tram itself. Hammond boasted that

41 the "money-maker" of the safari was the lack of fences. The visitors would be able to view the

42 animals in a simulated habitat without any barriers. The structural integrity of the tram's body  
43 was sound, but  
44 the height of the car doors was too low. At three feet from ground level, I felt visitors would be  
45 in danger of animals reaching into the car.

46 Hammond was too busy to speak with me after my inspection, so I summarized my  
47 findings in a report. Additionally, I made recommendations to remedy the problems I  
48 found. I suggested changing the tram to a manually controlled vehicle, redesigning the  
49 head car of the tram to allow the tour guide more visibility, and adding landscaping to  
50 elevate the track onto higher ground. I offered to continue consulting during this process  
51 to ensure that the changes were appropriate and safe.

52 When I returned home, I received a nasty phone call from Hammond. Hammond  
53 asked me how I came up with these conclusions after only one afternoon of inspections. I was  
54 accused of underestimating the safety standards of the safari. Hammond finished by  
55 shouting "You're not going to make an extra buck out of me!" Hammond paid the price we  
56 originally negotiated and told me my services were no longer needed. That was the last I  
57 heard from Hammond or the Utopia Zoo.

58 Back in summer of 2018, I was contacted by a reporter. A college student was attacked  
59 at Hammond's safari and somehow my name came up. The reporter asked about my  
60 connections to the zoo, and we discussed how I was hired briefly as a consultant. Given  
61 Hammond's treatment of me and my lack of surprise at the animal attack, I didn't hold  
62 anything back. I was completely clear about my views regarding Hammond's lack of safety

63 standards and expressed my opinion that the situation could have been avoided if Hammond  
64 had followed my advice.

65 Plaintiff Taylor Malcolm hired me to in this case. In addition to my \$500 per hour fee for  
66 appearing in court, I have received \$3,000 for my time in preparation for this case, for which I  
67 have done 10 hours of work reviewing my documents and figures from the inspection of the  
68 zoo.

69 Of the available exhibits, I am familiar with the following, and only the following:  
70 “Utopia Zoo Safety Evaluation Memo” which I wrote, and the “Utopia Zoo Safari Map” which I  
71 referenced during my day at the zoo.

72 I hereby attest to having read the above statement and swear or affirm it to be my own.  
73 By signing this document I swear to or affirm the truthfulness of its content. I understand that I  
74 have an opportunity to update this affidavit and that unless such is done prior to such a time  
75 whereas I may be called upon to testify in court, and that in such an event a copy of my  
76 updated  
77 statement is given to all parties involved in this case, I am bound by the content herein.

78  
79 Brandy Jo Wilson  
80 Brandy Jo Wilson, Notary Public

Devin Grant  
Devin Grant

## AFFIDAVIT OF ROBIN THOMAS

1 Robin Thomas, being duly sworn, hereby deposes and states as follows:

2 My name is Robin Thomas. I graduated in 1997 from the School of Journalism at the  
3 University of North Carolina at Chapel Hill. After a few small jobs around the area, I landed a  
4 job in Utopia as a newspaper reporter. It was my dream job! I was able to use my sleuth skills  
5 to expose lies and reveal the truth to the people. However, my boss felt my zealous search for  
6 the truth tended to be overly dramatic. As a result, I was told to be cautious in the stories I  
7 wrote.

8 Back in 2012, I was sent to report on the new expansions of Utopia Zoo by the new  
9 owner Jordan Hammond. It was an odd assignment since usually my work is investigative. I  
10 have done reports on embezzlement, fraud, and crime, but nothing on something as mundane  
11 as a zoo reopening. I supposed it was given to me since my other stories had been  
12 controversial. Nevertheless, I took the assignment because I was confident in my ability to  
13 manipulate words to create an interesting story. Luckily enough for me, the story created itself.

14 I arrived at Utopia Zoo around 8:00 am just before the gates opened for visitors. I spoke  
15 to one of the employees and asked if I could take a look around the zoo for my story. He let me  
16 inside the zoo and I went straight for the safari. Rumor had it that naturalist and TV personality  
17 Sammy Dundee was running the safari attraction. Sure enough, Dundee was in one of the  
18 facilities outside the safari. I asked Dundee for a quick interview and Dundee obliged. I first  
19 asked whether Dundee felt qualified for the job. Dundee said, "Not necessarily, but when you  
20 have a pretty face, things turn out well for you." Upon hearing this comment, I pressed further

21 and asked what type of training Dundee had completed to lead the safari attraction. Dundee  
22 stumbled for a moment and admitted there was not much training, but that years of traveling  
23 the world was more than enough experience for the job. I asked Dundee if there was any  
24 pressure after the incident with Dundee's cameraman almost getting killed on a shoot, but  
25 Dundee refused to answer. I thanked Dundee and terminated the interview.

26         After Dundee left, I looked around the building for any information that would help me  
27 with the story. I looked through some files relating to the employees at the zoo. I didn't find  
28 anything on Sammy Dundee. However, I found a document on an engineer named Devin  
29 Grant, and I took it with me. Right after I put the paper away, an office worker caught me as I  
30 was looking through the files and told me to leave.

31         It was nearly 8:30 a.m. and the guests started arriving in the zoo. Based on my  
32 interview, I felt that Dundee was not qualified for the safari. I knew that I could write a great  
33 story about the dangers involved with Utopia Zoo hiring Sammy Dundee. So I bought a hat at  
34 the gift store for a disguise, cut in line at the safari, and managed to get a front seat on the  
35 safari tram. Surprisingly, Dundee was very calm at the beginning of the safari. Dundee gave a  
36 rehearsed speech about the importance of nature and also warned the guests to be safe during  
37 the ride. I do recall seeing warning signs posted in the tram cars.

38         However, Dundee's confidence vanished once the safari arrived in the gorilla sector.  
39 From my seat, I could see a small family of gorillas near the trees. But the main focus was on  
40 two gorillas that were directly on the tram tracks. Based on their size, it appeared that they  
41 were male. The larger male was beating his chest and the smaller gorilla was roaring. Upon

42 seeing this, Dundee became red faced and began to sweat. I asked what was wrong and  
43 Dundee snapped back, “Not now, the males are about to fight again.” Dundee must have  
44 realized that the guests were worried because Dundee turned back and told them it was not a  
45 problem. However, I saw Dundee tremble and reach for a tranquilizer gun.

46         The tram must have been on an automated system because we did not slow down,  
47 even as we approached the two male gorillas on the track. As we got closer, the larger gorilla  
48 walked away, but the smaller one continued to roar and even swiped at the tram. The rest of  
49 the safari went without incident. As I left, however, I noticed a dent where the gorilla hit the  
50 tram.

51         I went straight to my office after leaving the zoo and wrote my entire story in one hour.  
52 I wrote about the incident with the gorilla, Dundee’s interview, and the inherent danger  
53 involved with allowing Dundee to lead the Utopia Zoo safari. It was a great story and  
54 consistent with the other stories I produced. The only problem was the stories for the following  
55 day’s paper were already selected. I called in a few favors, went behind my bosses’ backs, and  
56 got my story submitted for the paper. The next day, I was called into my supervisor’s office. My  
57 boss found out about my snooping at the zoo. Not only was I told that my story was too  
58 sensational, but I was told I needed to seek other employment.

59         After getting fired, I started work as an internet blogger. It was not my ideal job, but it  
60 allowed me to continue writing stories. I usually covered local events, and my recognition in  
61 the area gained me limited advertising and sponsorships that allowed me to support myself.  
62 However, I’m still not happy about the way things turned out, and I blame Utopia Zoo for my



63 situation.

64 In August 2018, I finally got my chance to expose Utopia Zoo. A basketball player from  
65 the University of Utopia was in the news for getting attacked by a gorilla at the safari. This was  
66 exactly the situation I had predicted when the safari first opened. I looked for the document I  
67 took from the zoo office and contacted the engineer, Devin Grant, whose name was  
68 mentioned. Grant was in Houston but agreed to speak by telephone. It turns out that Grant  
69 was hired to assess the safety of the safari, but was ignored after making recommendations  
70 that the zoo did not like. At this point, I knew I had my story. After posting the article, I received  
71 three job offers from local news stations. I never got my original job back as a newspaper  
72 reporter, but as an investigative journalist, I still have a rewarding career.

73 Of the available exhibits, I am familiar with the following, and only the following:  
74 “Utopia Zoo Safety Evaluation Memo”, which I took from the office, and “Utopia Zoo Safari  
75 Map” which I received at the entrance to the zoo.

76 I hereby attest to having read the above statement and swear or affirm it to be my own.  
77 By signing this document I swear to or affirm the truthfulness of its content. I understand that I  
78 have an opportunity to update this affidavit and that unless such is done prior to such a time  
79 whereas I may be called upon to testify in court, and that in such an event a copy of my  
80 updated statement is given to all parties involved in this case, I am bound by the content  
81 herein.

82

83

84     *Fran Chichester*    

85 Fran Chichester, Notary Public

1

    *Robin Thomas*    

Robin Thomas

## AFFIDAVIT OF JORDAN HAMMOND

1 Jordan Hammond, being duly sworn, hereby deposes and states as follows:

2 My name is Jordan Hammond. I was born in 1959. I live at 218 Nirvana Nook in Utopia. I  
3 graduated from San Diego State with a degree in economics and a minor in biology and then  
4 received an MBA from Stanford. My family owns a string of restaurants in California that I ran  
5 for about ten years, learning the trade, but business grew stagnant. My spouse noticed that  
6 many older celebrities were retreating from Hollywood and moving to Utopia. Utopia seemed  
7 like a nice enough place, so I packed up and decided to move my business there. The money  
8 was good, but I soon grew tired of running restaurants and catering to Utopia's "fat cats." I  
9 had always loved working with kids, so I decided to buy out a local amusement park.

10 In 1999 I became the owner of Hedge Gardens. Hedge Gardens used to be a sleepy  
11 amusement park that had extensive landscaping and scenery, but few rides and attractions. It  
12 had virtually no marketing department and relied on locals and word-of-mouth for business.  
13 That's where I came in. I completely revamped the park's image into an exciting theme park  
14 to attract visitors from all over Utopia. I spent thousands of dollars constructing new rides to  
15 cash in on the need of today's youth for extreme fun.

16 But the papers said my ambition to remake the park went too far. In 2001,  
17 construction was completed on a ride called "The Slayer." The Slayer boasted the fastest  
18 speeds of any rollercoaster in the nation! I hired a panel of engineers to ensure the ride's  
19 safety. All but two claimed it was safe. I later found the two engineers that did not approve of  
20 the ride's safety had connections with a competing amusement park in a neighboring county,

21 so I disregarded those opinions as unreliable. In June 2001, three months after The Slayer's  
22 debut, seven park guests received broken noses when their restraints became loose and they  
23 slammed their faces on the ride. Fortunately, they all recovered quickly, but the group sued  
24 and was awarded a small amount of damages. Less than a year later, another suit was  
25 brought against the park when a costumed employee allegedly harassed a small child. The  
26 charges were dropped, but the incident brought bad publicity to the park. I began to seek  
27 other opportunities.

28 In late 2002, I learned that the owner of Utopia Zoo was planning to close it. Public  
29 interest in the zoo had declined sharply, and it was becoming more difficult to care for the  
30 animals and maintain the zoo. I immediately sold Hedge Gardens and bought the zoo. It  
31 seemed risky, but I have always loved animals and I decided it would be much easier to care  
32 for animals than people. Over a period of five weeks, I used all my contacts abroad to acquire  
33 rare and exotic animals so the people of Utopia would be interested in the zoo again. I  
34 coordinated with local schools to plan discounts for field trips so business would thrive. Even  
35 with these elements, I still felt something was missing.

36 In addition to the main zoo exhibits, I decided to feature a safari and began  
37 construction on it. The safari is an interesting concept because it allows the guests to  
38 encounter the animals without fences and barriers. I recognized the risk involved, but with  
39 careful planning I knew this was my chance to make it big and to offer something new and  
40 exciting at the zoo! My plans for the safari included sections for animals from diverse niches,  
41 with the most notable exhibits hosting the antelope, alligators, and gorillas. The antelope

42 and alligators were easy enough to bring to the zoo. But I wasn't able to acquire the group of  
43 gorillas until I contacted an associate from abroad.

44 I wanted to avoid any other "incidents," and I also wanted to be sure that zoo visitors  
45 would be safe. At the suggestion of a colleague, I hired engineer Devin Grant to ensure my  
46 safety precautions and regulations would protect the guests. I had already spent a fortune  
47 hiring new employees and buying the gorillas, so I hired Grant in a strictly advisory role and  
48 not as a full-time employee. That being said, Grant's only job was to inspect the current zoo  
49 structures and observe the construction of the safari in which the gorillas would be displayed.  
50 Grant rated most of the zoo's exhibits as "satisfactory" but claimed the design of the new  
51 safari was insufficient to protect guests. Beyond the scope of his/her job, Grant proposed a  
52 new plan that would cost me an additional \$500,000. Considering the money I had already  
53 invested in the project and the precautions I had taken, Grant's plan was out of the question.  
54 As part of that cost, s/he also expected to be kept on retainer until the proposed changes  
55 were completed. As a part time advisor, Grant never really seemed on board like the rest of  
56 the employees, and I suspected s/he didn't have my company's best interest in mind. I  
57 promptly dismissed Grant and proceeded with construction.

58 Even though I did not follow through with Grant's plan, I did establish safety  
59 guidelines for the zoo. I placed over fifty signs around the park warning guests about  
60 disturbing the animals. In light of recent zoo accidents, I created an emergency plan that all  
61 new employees were required to learn before they began working. I also established a  
62 company motto of caution, care, and credibility. Each employee was taught that caution for

63 the guests, care for the animals, and credibility as knowledgeable animal caretakers are the  
64 paramount concerns for Utopia Zoo. For guests on the safari, there were warning signs in  
65 each car stating: WARNING! STAY INSIDE THE TRAM CAR AND DO NOT EXTEND ARMS OR  
66 HANDS OUTSIDE THE TRAM. DO NOT PROVOKE THE ANIMALS. DO NOT ATTEMPT TO FEED  
67 THE ANIMALS.

68 With the security situation taken care of, the only thing my park did not have was a  
69 recognizable face. I decided to hire naturalist and TV personality Sammy Dundee to run the  
70 new exhibit at the zoo. Dundee had some trouble getting a job with the usual TV networks  
71 because of a stunt that put a cameraman in danger. I saw the footage and personally thought  
72 blaming Dundee was absurd, so I was glad to hire Dundee. Despite the recent notoriety,  
73 Dundee's charisma and dedication to the animals brought new life to the zoo. Dundee also  
74 had significant knowledge of the animals in the park as well as their behaviors. For six years  
75 my management, Dundee's personality, and the safari solidified a renewed success for the  
76 zoo.

77 On August 9, 2018, I received a phone call from Dundee. Dundee told me that there  
78 was an accident at the zoo. I was furious, but I kept it together long enough to drive from my  
79 office to the zoo. The paramedics were leaving just as I arrived, and I rushed to the safari. I  
80 saw Dundee at the scene and Dundee told me that a kid upset the gorillas and got hurt.  
81 Fortunately, no one else was injured, but I knew the gorilla would have to be put down. It  
82 was very sad, especially when there had been no other incidents and, because of this one kid  
83 deciding to torment the gorillas, the zoo and the safari would suffer.



## **AFFIDAVIT OF MORGAN GOODALL**

1 Morgan Goodall, being duly sworn, hereby deposes and states as follows:

2 My name is Morgan Goodall and I am Chair of the Department of Evolution and Ecology at  
3 the University of California-Davis. My specialty is primate behavior, specifically gorillas and  
4 chimpanzees. My studies consist of how these primates interact within small social groups  
5 found both in the wild and captivity. I have been a professor since 1982 and have published a  
6 textbook and articles on the subject of primates. I was asked by the lawyers defending Utopia  
7 Zoo to examine and evaluate the condition of the gorillas at the zoo.

8 Primate behavior is determined by a number of factors such as group size, daily activity  
9 cycle, and the ecological niche in which the primates live. In terms of the gorillas, an average  
10 group consists of about a dozen gorillas: one dominant male, a few adult females, and  
11 offspring. Gorillas are, in fact, diurnal animals and are active during the day. Their time is spent  
12 almost equally between feeding, traveling, and resting. Gorillas' diet consists of fruit and  
13 various types of vegetation. They are not carnivorous animals. Therefore, aggression is  
14 determined by security and not by feeding patterns.

15 On September 16, 2018, I was contacted by Jordan Hammond's attorneys. They asked  
16 me to visit the zoo so I could evaluate the gorillas in the safari exhibit. Usually, when I observe a  
17 primate community, I will spend a week noting the primates' diet, watching their interactions,  
18 and observing any external factors that may influence the community's behavior. However, I  
19 wasn't able to follow my usual protocols when I visited the zoo. Jordan Hammond was under  
20 intense pressure to put down the gorilla responsible for the student's injury, so I only had three



21 days of observation with the full community.

22 My first observation was the composition of the gorilla community. Most groups have a  
23 single male with multiple females. This particular group, however, had multiple females with  
24 two males. One male was older and was the traditional alpha male of the group. The second  
25 male gorilla was younger. Traditionally, when a younger male gorilla reaches maturity, he will  
26 leave the group and seek out mates from another community. Due to the fact the safari is a  
27 closed environment, the younger male had no such opportunity to leave. I believe this was a  
28 source of tension within the safari's community. Upon questioning the safari guide Sammy  
29 Dundee, I learned that conflict between the older and younger males occurred occasionally.

30 Contrary to popular belief, gorillas are not violent animals. I blame Hollywood for this  
31 misconception. Gorillas rarely commit violence against other animals and, instead, resort to  
32 making noise and trampling the ground. When a conflict does arise between two male gorillas,  
33 chest-beating is common, but the display rarely ends in a fight. Because of this typical  
34 behavior, I was surprised to find out that the younger male not only attacked a guest, but also  
35 bit the guest. I decided to see the younger gorilla individually.

36 When I visited the gorilla exhibit, the zoo keeper accompanied me to see the younger  
37 male gorilla, Joe. Joe appeared to be a healthy male of about 17 years old. His head was  
38 defined by a large sagittal crest to which the muscles for a powerful jaw are attached. These  
39 jaws are strong enough to snap bamboo, so it did not surprise me that the victim's arm was so  
40 badly injured. Despite his health, Joe exhibited general irritation and an inability to focus, even  
41 while eating. Unlike the other gorillas, Joe had difficulty sleeping and was highly disturbed by

42 loud noises during the day. Since Joe has spent most of his life in captivity, he is  
43 unaccustomed to the behavior of gorillas outside of his community. It is likely that an  
44 encounter with another gorilla, or even the call of another male, would greatly upset him.  
45 While not notable in their own right, I believe these factors may have arisen due to Joe's  
46 captivity and possibly contributed to his attack.

47           Based on my observations, my conclusion is that Joe did not put the patrons of the zoo  
48 in any significant danger. While the conditions of his captivity were not optimal for his well-  
49 being, he appeared to be a healthy animal and most likely attacked under stress and fear. I  
50 believe that a disturbance of an obnoxious and overt nature would have been necessary to  
51 prompt Joe to violence. However, since I was not present for the attack, I cannot be 100% sure  
52 if the blame can be attributed to Joe or the guest.

53           Of the available exhibits, I am familiar with the following, and only the following:  
54 "Utopia Zoo Safari Map" which I received upon visiting the zoo, and "Curriculum Vitae for Dr.  
55 Goodall" which I wrote and delivered to Jordan Hammond.

56           I hereby attest to having read the above statement and swear or affirm it to be my own.  
57 By signing this document I swear to or affirm the truthfulness of its content. I understand that I  
58 have an opportunity to update this affidavit and that unless such is done prior to such a time  
59 whereas I may be called upon to testify in court, and that in such an event a copy of my  
60 updated statement is given to all parties involved in this case, I am bound by the content  
61 herein.

62 *Beverly Bryson*

63 Beverly Bryson, Notary Public

*Morgan Goodall*

Morgan Goodall

## AFFIDAVIT OF SAMMY DUNDEE

1 Sammy Dundee, being duly sworn, hereby deposes and states as follows:

2 My name is Sammy Dundee. I was born in 1980 in London, but I have lived all over the  
3 world. Both of my parents are naturalists, so my family has traveled many places filming videos  
4 for National Geographic and BBC. Growing up in front of the cameras made me a ham, and I  
5 always enjoyed being in the spotlight. So when it came time for me to move out of the house,  
6 instead of going to college, I went straight into the television business. Even though I was  
7 young, my charisma and knowledge of animals scored me a position on an Animal Adventure  
8 show. Within a year, it was clear that I was too big time for the show. I knew more about  
9 animals than the host! The executives at Animal Adventure recognized my talent and gave me  
10 my own show.

11 I was thrilled at being the host, and my parents were proud that I was following in their  
12 footsteps. But it wasn't all fun and games. Traveling eight months out of the year took its toll.  
13 After spending nearly three years stalking lions, crawling in jungles for snakes, and hiking  
14 through caves to see reclusive species of bats, I considered seeking another program to host.  
15 Unfortunately, things did not turn out as I hoped.

16 In 2002, my crew was filming elephants in Africa. Normally, the elephants are docile and  
17 I told my cameraman to move closer to the herd to get some better footage. Something must  
18 have spooked the elephants, because the next thing I knew, the herd was charging toward us.  
19 As scary as it was, I realized it was a great opportunity to catch a first-hand view of a stampede  
20 on film. I yelled at my cameraman not to move and get everything on camera. He didn't listen

21 and ran  
22 away, nearly getting trampled by the elephants. Once the stampede had cleared, I screamed and  
23 cursed at him for not following my orders. I told him that he ruined my chance to make a big  
24 break so I could find another job. Unfortunately, he caught my rant on camera. Duke basketball  
25 Coach K's behavior pale by comparison. Once the footage was leaked, I was fired for  
26 endangering the lives of my crew.

27         The following year I struggled to find a job. It was a surprise when I received a phone  
28 call from Jordan Hammond, an up-and-coming business owner. Hammond told me about the  
29 purchase of the Utopia Zoo and offered me a job as a guide on the safari. I had always been a  
30 global person and going to Utopia did not appeal to me. However, I needed a job, so I agreed  
31 to work for Hammond. Despite my initial reservations, working at the Utopia Zoo was a great  
32 job. Leading the safari was fun and it allowed me to show off my knowledge of animals. My  
33 original contract was for three years to help bring publicity to the zoo, but I signed on for an  
34 additional three years.

35         Other than some nervousness on my first day, I never had any trouble leading the safari  
36 until August 9, 2018. When the tour started that day, I gave my usual speech about the safety  
37 precautions for the safari and urged the visitors not to disturb the animals. In the first sector of  
38 the safari, we stopped briefly to see the antelope. Usually, the antelope are skittish, but this  
39 time they actually approached the tram. Just as some of the guests were taking pictures, one  
40 guest yelled and scared the animals away. I used the intercom to notify the guests that  
41 disturbing the animals is cause for expulsion from the zoo. I also reminded them to read and

42 review the warning signs at the front of each tram car.

43           We continued on the safari and stopped at the swamp sector with the alligators. No one  
44 yelled this time, but I turned around quickly enough to see a person in a University of Utopia  
45 shirt throwing food towards the gators. The gators splashed towards the food, and I heard  
46 someone scream, “Stop it, Taylor!” I didn’t know if this was the same person from before, but I  
47 was determined to confront this person for failing to follow the rules. The only problem is that  
48 the tram runs on an automatic track, so there is no way for me to end the tour to remove  
49 offenders. I decided to wait until the tour finished. We reached the gorilla sector last. This time  
50 I heard someone imitating gorilla calls. It was the person in the UU shirt again. I announced  
51 over the intercom to stop or else the gorillas would become angry. The person didn’t stop and  
52 the gorillas approached the tram.

53           I knew we were in trouble. Unlike the antelope, the gorillas are powerful and, when  
54 angry, can easily damage the tram or even harm a guest. I used my radio to notify the staff that  
55 we had an incident on our hands. When I turned back, the student was still yelling and the two  
56 gorillas were within ten feet of the tram. The gorillas were males and started beating their  
57 chests,  
58 so I knew I had to do something to prevent them from attacking. I reached for my tranquilizer  
59 gun which I had never had to use before. It was extremely difficult to aim the gun accurately  
60 from my seat at the front of the tram. It happened so quickly but I had to do something to help  
61 that youngster. I aimed and fired the gun, but I wasn’t sure if I hit the gorilla. I stopped for a  
62 moment and saw that I had missed and hit the student instead. The student slumped over the

63 side of the tram. The closest gorilla reached for and bit the person's arm. I panicked for a  
64 moment, then fired a second shot. This time, I hit the gorilla. He was knocked unconscious  
65 and the second gorilla ran away.

66 By now, someone at HQ overrode the tram's controls and brought us back to the  
67 entrance. One of the guests had already called the police by cell phone and the paramedics  
68 were waiting for us. I told the policeman at the scene everything that happened and waited  
69 until the student was taken to the hospital. I later found out that the student was Taylor  
70 Malcolm, a star basketball player at the University of Utopia. It's a shame that Malcolm got  
71 hurt, but star or not, if Malcolm had listened to me in the first place, we would not have had an  
72 incident at the zoo. Malcolm was not following the rules after being told repeatedly. The  
73 student and other innocent visitors and animals were put in danger as a result.

74 Of the following exhibits, I am familiar with the following and only the following:  
75 "Utopia Zoo Safari Map" which I referenced on a regular basis; the "Utopia Zoo Welcome  
76 Letter" which Jordan Hammond required me to read as part of my job; and the "Warning" sign  
77 posted in all tram cars.

78 I hereby attest to having read the above statement and swear or affirm it to be my own.  
79 By signing this document I swear to or affirm the truthfulness of its content. I understand that I  
80 have an opportunity to update this affidavit and that unless such is done prior to such a time  
81 whereas I may be called upon to testify in court, and that in such an event a copy of my updated  
82 statement is given to all parties involved in this case, I am bound by the content herein.

83

84

*Amanda Keely*

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85

Amanda Keely, Notary Public

*Sammy Dundee*

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Sammy Dundee



## **EXHIBITS**

1. Medical Record for Taylor Malcolm
2. Utopia Zoo Safety Evaluation Memorandum
3. Utopia Zoo Safari Map
4. Utopia Zoo Welcome Letter
5. Curriculum Vitae for Dr. Morgan Goodall
6. Warning sign posted in all tram cars

# EXHIBIT 1

## UTOPIA GENERAL HOSPITAL

DATE: 8/9/19 TIME: 1643 ROOM: 7  OHS Arrived  
 HISTORIAN:  patient  parent  paramedic  other  
 AGE: 21 (M) F  
 History limited by \_\_\_\_\_

**HPI**

chief complaint: Bite Gorilla bite LUE

duration / occurred: today where occurred: park  
 just prior to arrival home school  
 today neighbor's park 200  
 yesterday work street

animal: dog cat gorilla other  
 family pet neighborhood animal unknown animal  
 Appearance of animal: appeared well appeared unknown  
 Description:  
 Animal's immunization status: UTD unknown not immunized  
 Observation / capture: animal is known; can be observed for 10 days  
 animal unknown; not captured animal control notified

context of attack: provoked attack  
 provoked attack (see below)  
 approached animal entered animal's domain animals fighting  
 playing with or teasing animal other

severity of injury:  
 bitten scratched mucous membrane contact

pain level: current /10 max /10

location of injury:  
 head face neck shoulder R/L  
 chest abdomen hip R/L  
 back (upper mid- lower) RU LUE RLE LLE

Agree w/ nurse's note for PFSH / ROS

**ROS**  ROS below otherwise negative  
 tingling / numbness distally suspected FB (skin lac.)  
 painful unable to bear weight headache nausea / vomiting

**PAST HX**  Tetanus UTD  
 prior records reviewed  
 diabetes Type I  
 other  
 Meds: none / see list - confirmed  
 Allergies: NKDA / see list - confirmed

**PHYSICAL EXAM**

Gross vital signs BP \_\_\_ Resp \_\_\_ POX \_\_\_ Temp \_\_\_ Pulse \_\_\_  
 Other \_\_\_\_\_  
 Pulse Ox: 100 % RA \_\_\_ O<sub>2</sub> L/min  
 Interpretation: normal abnormal Dx \_\_\_\_\_

Exam limited by \_\_\_\_\_

**CONSTITUTIONAL**  
 no acute distress mild / moderate / severe distress

**NEURO-VASCULAR-TENDON**  
 awake and alert lethargic  
 oriented x3 disoriented to person / place / time  
 no vascular abnl color / warmth / cap refill  
 cap refill pulse deficit  
 sensation intact sensory / motor deficit  
 CN's nml as tested facial droop / EOM palsy / anisocoria  
 ROM nml ROM limited by pain / tendon injury

**PSYCH**  
 mood / affect nml depressed affect  
 anxious

**SKIN**  
 intact see diagram

**HEENT**  
 see diagram  
 normocephalic, TM obscured by cerumen (R/L)  
 atraumatic  
 FB RL  
 ENT nml external inspection  
 eye lids/conjunctiva uninjured

**NECK**  
 see diagram  
 uninjured, nml inspection

**CHEST**  
 see diagram  
 uninjured, wheezes / rales / rhonchi  
 nml inspection

**ABDOMEN**  
 see diagram  
 uninjured, nml inspection  
 non-tender

**BACK**  
 see diagram  
 uninjured, nml inspection

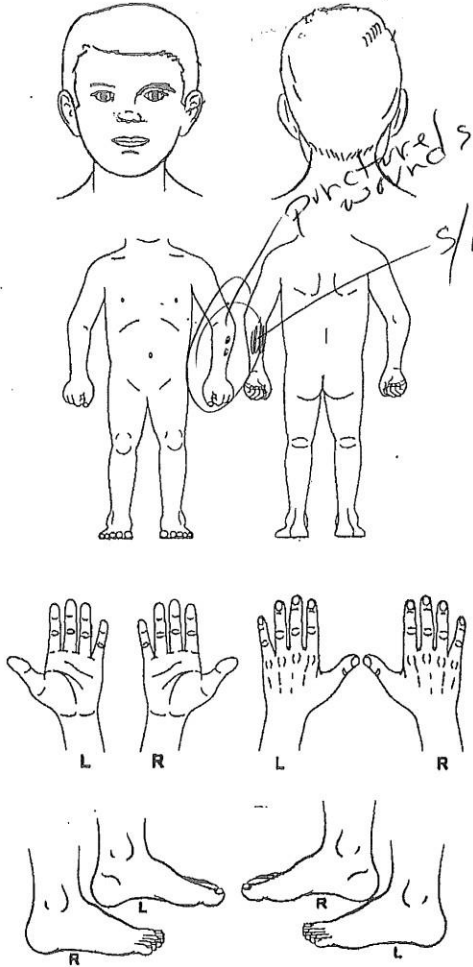
**MUSCULOSKELETAL / EXTREMITIES**  
 uninjured, foreign body suspected  
 nml inspection joint penetration suspected

EMERGENCY PHYSICIAN  
 RECORD  
 Animal Bite  
 Page 1 of 2

Malcolm, Taylor

# EXHIBIT 1

## UTOPIA GENERAL HOSPITAL



### PROCEDURES

Wound description / Repair  
 length 2.5 cm location L forearm  
 superficial  subcutaneous  muscle  linear  stellate  irregular  
 clean  contaminated moderately /  heavily  
 distal NVT:  sensation nml distally  motor nml distally  
 vascular intact  no muscle / tendon injury  
 anaesthesia:  local  digital block  mL  
 lidoc 1% 2% epi / bicarb  marcaine 0.25% 0.5% LET  
 prep:  
 Hibiclens / Betadine / Other \_\_\_\_\_  debrided  
 irrigated / washed w/ saline \_\_\_\_\_  minimal /  mod. /  \*extensive  
 wound explored  underrmined  
 foreign material removed  minimal /  mod. /  \*extensive  
 partially completely  wound margins revised  
 minimal / mod. / \*extensive  
 repair: Wound closed with:  wound adhesive /  suture / strips \_\_\_\_\_  
 SKIN- # \_\_\_\_\_ -0 nylon / prolene / staples \_\_\_\_\_  
 \*SUBCUT. # \_\_\_\_\_ -0 vicryl \_\_\_\_\_  
 MUSCLE/FASCIA- # \_\_\_\_\_ -0 vicryl \_\_\_\_\_  
 \*may indicate intermediate repair. \*\*may indicate complex repair.

### XRAYs

# of views \_\_\_\_\_  
 no fracture  fracture L ulna  
 nml joint  dislocation \_\_\_\_\_  
 nml alignment  soft-tissue swelling \_\_\_\_\_  
 nml soft tissue  fat pad sign \_\_\_\_\_  
 NAD  effusion \_\_\_\_\_  
 foreign body \_\_\_\_\_  
 PRIOR XRAY-  unchgd  unavall.  changed: \_\_\_\_\_  
 interp contemporaneously by me  discussed w/ Radiologist  
 interp by Radiologist  personally reviewed by me

### ED COURSE

Time \_\_\_\_\_ re-examined  unchanged  improved  
 Sprints Med to Ortho notified  
 police / animal control notified  
 see cony's sedation sheet  
 prophylactic antibiotics given  
 Discussed with Dr. Cruz Time \_\_\_\_\_  
 patient will be seen in: ED / hospital / office \_\_\_\_\_  
 Counseled patient / family regarding: \_\_\_\_\_ Rx given Alex  
 lab/rad results diagnosis need for follow-up \_\_\_\_\_ Prior records ordered \_\_\_\_\_  
 EMTALA EMC present  EMTALA EMC absent

### CLINICAL IMPRESSION

Animal Bite  Laceration  Puncture Wound   
Small bite

Follow up with Dr. Cruz  
 DISPOSITION:  discharge  admit  transfer

ARNP / PA \_\_\_\_\_  
 PHYSICIAN: [Signature] Time \_\_\_\_\_  
 PHYSICIAN: \_\_\_\_\_ Time \_\_\_\_\_  
 Complete  Sheet Add-On  Copy PMD  Dictated

T=Tenderness Pt=Point Tenderness S=Swelling E=Echymosis  
 C=Contusion Lac=Laceration A=Abrasion M=Muscle spasm  
 ( ) =without m=mild mod=moderate s=severe  
 Example: Tsv = Tenderness on palpation (severe)

EMERGENCY PHYSICIAN  
 RECORD  
 Animal Bite  
 Page 2 of 2

Malcolm, Taylor

## **EXHIBIT 1**

### **UTOPIA GENERAL HOSPITAL – EMERGENCY DEPARTMENT**

#### CONSULTATION:

Patient: Taylor Malcolm

Date: August 9, 2018

Time: 1700 hours

Consulting Physician: Jesse Cruz, M.D., Sports Medicine

#### EXAMINATION:

##### External Evidence of Injury

1. Puncture Wounds: Two distinct punctures on the left forearm and a pattern consistent with a bite mark.
2. Fractured Left Ulna: X-ray revealed fracture along ulna. Possibility of infection. May require bone grafting procedure.
3. Bruising: Slight bruising above the 7<sup>th</sup> rib on the left side. No other bruising or fractures have been identified.

#### SUMMARY/PLAN:

Injury will require up to 6-8 weeks to heal and an additional 10 weeks of intensive rehabilitation and therapy. Will follow in office and prescribe physical therapy when healing sufficient. Will monitor for infection. There is a high probability that the injury will prevent the patient from performing at previous capability.

*Jesse Cruz, M.D.*

Jesse Cruz, M.D.

## **EXHIBIT 2**

To: Jordan Hammond, Utopia Zoo  
From: Devin Grant, Consultant  
713.234.589.  
Houston, TX 77054  
CC: Utopia Zoo Office File  
Date: March 3, 2012  
Subject: Utopia Zoo Design Safety Assessment

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This memorandum outlines the assessment of safety features in Utopia Zoo.

### Main Zoo:

Satisfactory: The steel fence and concrete moat security scheme is sufficient for the safety of park guests.

### Safari:

A number of features on the tram were noteworthy.

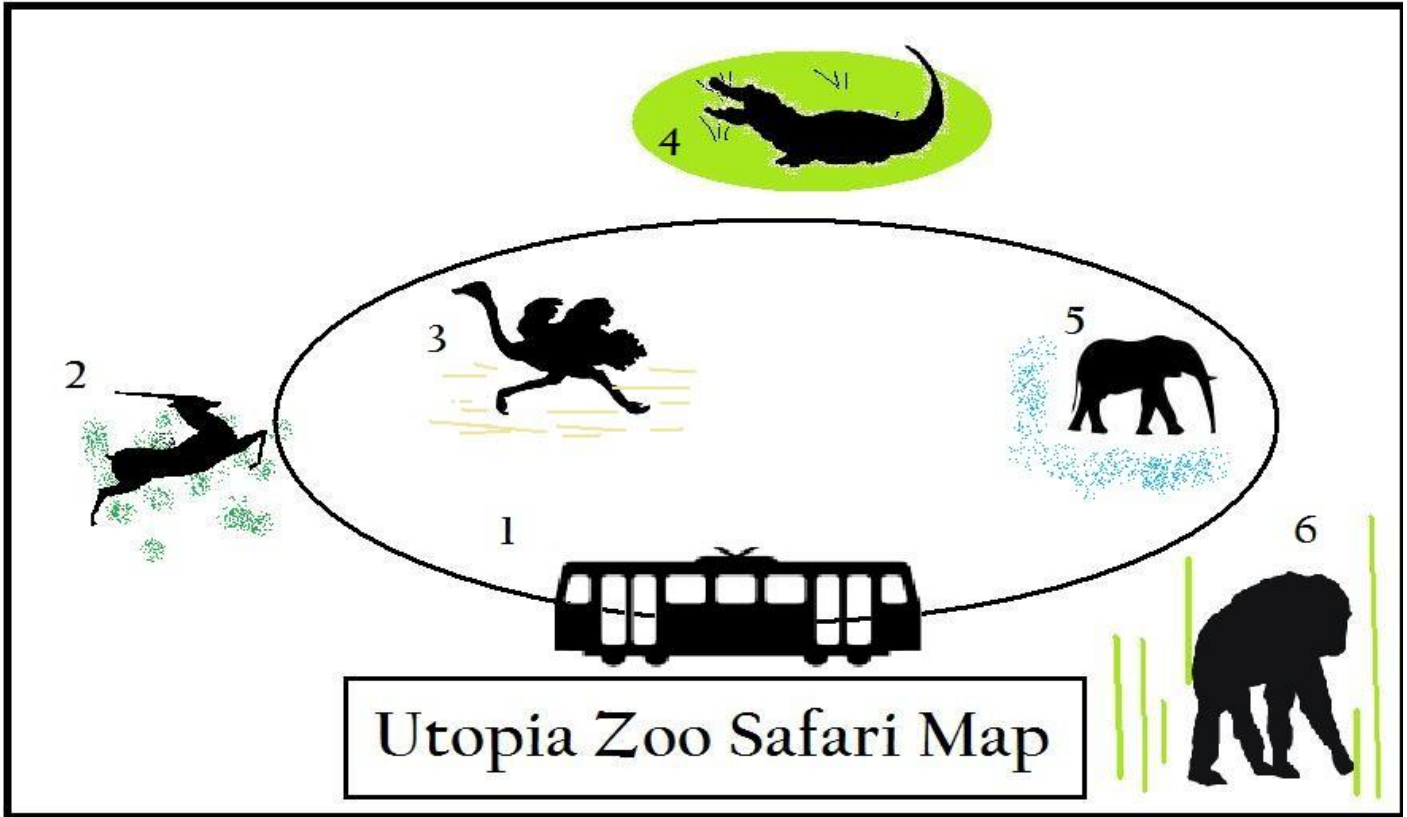
- 1) Automatic Track: Prevents tour guide from controlling the tram
- 2) Small tram railing: Potential for the track to become locked
- 3) Tram length too long: The tour guide has 25% blind spot
- 4) Thin & short tram walls: Insufficient protection from safari animals

### Recommendations:

- 1) Change to a gas propelled tram
- 2) Redesign head car of tram for increased visibility
- 3) Landscape route so tram will be elevated

Estimated costs: \$500,000

**EXHIBIT 3**



1. Main Station
2. Antelopes
3. Ostriches
4. Alligators
5. Elephants
6. Gorillas

## **EXHIBIT 4**

Dear Guest,

Welcome to Utopia Zoo! Our company motto is Caution, Care, and Credibility.

Through our actions, we hope to demonstrate caution for our visitors, care for the animals, and credibility as knowledgeable animal caretakers.

In order help you get the most out of your visit, Utopia Zoo has placed a number of signs and learning stations throughout the park. Our animals are fascinating! By visiting our exhibits, you can learn more about our animal friends.

Remember that our zoo animals are not pets. During your visit, please use caution and heed all warnings and instructions provided at the entrance to each exhibit. Doing so will help to keep you safe. If an emergency should occur, please approach any of the blue safety boxes located throughout the park, or find one of our highly trained employees to handle the situation.

We hope that you enjoy your day at Utopia Zoo!

Sincerely,

Jordan Hammond

Jordan Hammond and the Utopia Zoo Staff

## EXHIBIT 5

# MORGAN GOODALL

(530) 133-5655 ♦ mgoodall@ucd.edu

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### EDUCATION

**Princeton University**, Princeton, New Jersey  
Bachelor of Science, Biology, 1978  
Graduated magna cum laude

**Cornell University**, Ithaca, New York  
Ph.D., Zoology, 1982

### EXPERIENCE

**University of Florida**  
Assistant Professor of Zoology  
1982-1987

**National University of Singapore**  
Visiting Professor, Research on Orangutans  
1988

**Miami University**  
Associate Professor, Developmental Ecology and Primate Physiology  
1989-1996

**University of California, Davis**  
Professor, Department of Evolution and Ecology, 1997-present  
Department Chair, 2015-present

### HONORS

**Charles Darwin Award**, Original Research in Evolutionary Genetics, 2001

**Diane Fossey Award**, Contributions to Mountain Gorilla Rescue Efforts, 2012

### PUBLICATIONS

*From King Kong to Congo: Perceptions of Violent Gorillas in Film*, 2015

*Primates: A Comprehensive Guide*, 2013

*Monkey See, Monkey Do: Cultural Learning in Chimpanzee Groups*, 1999

*A Practical Guide for Handling Apes in Zoos*, 1997

*Gentle Giants: Dispelling Myths About Gorillas*, 1994

*Disappearance of the Forest Man: Deforestation and Orangutans*, 1990



EXHIBIT 6

# WARNING!!!

FOR YOUR SAFETY,  
PLEASE FOLLOW THESE RULES!!!

STAY INSIDE THE TRAM CAR AT ALL TIMES

DO NOT EXTEND ARMS OR HANDS OUTSIDE  
THE TRAM

DO NOT PROVOKE THE ANIMALS

DO NOT ATTEMPT TO FEED THE ANIMALS

## THE APPLICABLE LAW

### UTOPIA CIVIL CODE

#### 42 U. Gen. Stat. § 7101. Negligence; elements of tort.

**(a) GENERAL RULE:** To prove negligence, the party making the claim must prove four elements: duty, breach of duty, causation, and damages.

**(1) DUTY:** Negligence refers to a person's failure to follow a duty of care owed as a result of a relationship that exists between the parties. Every person is under a duty to use ordinary care to protect himself/herself and others from injury. "Ordinary care" means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect himself/herself and others from injury. It includes both the failure to do what a reasonably prudent person would have done under the same or similar circumstances, or the doing of something which a reasonably prudent person would *not* have done under the same or similar circumstances. To prove negligence, the plaintiff must first demonstrate that the defendant owed a duty of care to the plaintiff.

**(2) BREACH OF DUTY:** A person's failure to use ordinary care is a breach of duty. On this issue the burden of proof is on the plaintiff. The plaintiff must prove, by the greater weight of the evidence, that the defendant did not uphold his/her duty to exercise reasonable and prudent care in the given circumstances. Reasonable care is an objective standard, having regard for the particular circumstances of the case, including the age and knowledge of the participants and the conditions at the scene of the injury.

**(3) CAUSATION:** Causation has two components: direct cause (or cause in fact) and proximate cause. To prove direct cause, the plaintiff must establish either that the plaintiff would not have been harmed "but-for" the defendant's conduct or that the defendant's conduct was a substantial factor in bringing about the harm. Proximate cause is a cause which in a natural and continuous sequence produces a person's injury, and is a cause which a reasonable and prudent person could have foreseen would probably produce such injury or some similar injurious result. There may be more than one proximate cause of an injury. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the injury.

**(4) DAMAGES:** Actual damages are the fair compensation to be awarded to a person for any past, present, and/or future injury proximately caused by the negligence of another. In determining the amount, if any, to be awarded to the plaintiff, evidence is considered as to each of the following types of damages: past, present, and future pain and suffering; past,

present, and future medical expenses; and past, present, and future diminution of earning capacity. The total of all damages are to be awarded in one lump sum.

***\*\*For purposes of the mock trial exercise, student competitors need only prove the fact of injury and the elements of duty, breach, and causation. The amount of damages need not be proven or argued by participants and will not be determined by our mock trial juries. The element of damages is included here for educational purposes only.***

#### **42 U. Gen. Stat. § 7102. Contributory negligence.**

**(a) GENERAL RULE:** Contributory negligence refers to the Plaintiff's failure to use ordinary care which joins with the negligence of the defendant to proximately cause injury to the plaintiff. The test of what constitutes negligence is as defined in § 7101 above.

**(b) BURDEN:** The burden to prove contributory negligence lies upon the defendant. The defendant must prove, by a greater weight ("preponderance") of the evidence, that the plaintiff was negligent and that such negligence was a proximate cause of the plaintiff's own injury or damages.

#### **42 U. Gen. Stat. § 7103. Comparative negligence.**

**(a) GENERAL RULE:** In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant or defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff. Thus, even if plaintiff is also negligent, plaintiff can recover some percentage from liable defendants as long as the plaintiff is 50% *or less* at fault than the defendant.

#### **SAMPLE JURY INSTRUCTION:**

[*Defendant*] claims that [*Plaintiff*]'s harm was caused in whole or in part by [*Plaintiff*]'s own negligence. To succeed on this claim, [*Defendant*] must prove both of the following:

1. That [*Plaintiff*] was negligent; and
2. That [*Plaintiff*]'s negligence was a substantial factor in causing [*Plaintiff*]'s harm.

If [*Defendant*] proves the above, [*Plaintiff*]'s damages are reduced by your determination of the percentage of [*Plaintiff*]'s responsibility. The court will calculate the actual reduction. If the negligence of [*Plaintiff*] exceeds that of defendant, [*Plaintiff*] will recover nothing.

#### **Sample application of Comparative Negligence:**

A jury finds both defendant and plaintiff were negligent and the negligence of both contributed to plaintiff's harm. The jury then determines what percentage of negligence should be applied to the plaintiff and to the defendant. If they find plaintiff's negligence to be 40% and defendant's to be 60%, then the court will reduce any award of damages to the plaintiff by 40%. If a jury finds the defendant to be 100% negligent in causing harm to plaintiff, there is no reduction to plaintiff's damages. If a jury finds the plaintiff's contributing negligence to be greater than 50%, the plaintiff gets nothing.

## **AVAILABLE CASE LAW**

### **Cannon v. Cochran (1974)**

A plaintiff in a civil case must establish all the elements of his or her claim by a preponderance of the evidence (*i.e.*, establish that all elements are *more likely than not* true). Likewise, an affirmative defense must be proven by the defendant by a preponderance of evidence.

### **Entzminger v. Yellow Cab Co. (1995)**

The Court concluded that the "all-or-nothing" rule of contributory negligence should be abandoned in favor of a rule that assesses liability in proportion to fault. "Contributory negligence" is defined as "conduct on the part of the plaintiff which falls below the standard to which he should conform for his own protection, and which is a legally contributing cause, cooperating with the negligence of the defendant in bringing about the plaintiff's harm." A claimant's negligence contributing causally to his own injury may be considered now not as a bar to his recovery, but merely as a factor to be considered in measuring the amount thereof. The defendant has the burden of proving contributory negligence.

### **Kleinschmidt v. Reaves (1996)**

In any action to recover damages for death or injury to persons or for injury to property in which comparative negligence is asserted as a defense, the comparative negligence of the plaintiff or the plaintiff's decedent does not bar a recovery if that negligence was not greater than the negligence of the parties to the action against whom recovery is sought.

### **Schmidly v. Wendling's Adventure World (1996)**

Plaintiff, mother of an injured minor, brought suit against the defendant after her child sustained injuries for not following instructions at local playground slide. Utopia Supreme Court upheld the trial judge's verdict for the plaintiff, finding that the cautionary signs at the entrance to the park alone did not constitute the fulfilling of the defendant's duty of care.

### **Inman v. Sison Swimming Club (2000)**

Plaintiff sued defendant swimming pool for breach of duty after the plaintiff ignored the whistle-blowing of the on-duty lifeguard and slipped off a broken diving board. Plaintiff conceded the diving board was roped-off but argued the life guard should have done more to ensure he did not approach the board in the first place. Court determined that vocal warnings and physical barriers satisfied the defendant's duty of care.

### **Glazier v. Hudson Tea Shop (2002)**

After the defendant served the plaintiff tea, another customer robbed the plaintiff and caused the plaintiff to spill tea on himself, causing moderate burns. Unable to identify and pursue charges against the assailant, the plaintiff brought a case of negligence against the defendant on two counts: failing to protect against the robbery and causing the burns from the tea. The

Court of Appeals rejected the plaintiff's arguments because he did not prove causation for negligence, as there was not the requisite clear link between the incident and the damages sufficient for the defendant to be liable for negligence.

**Rudolph v. Melrose (2012)**

Plaintiff, a singer, brought suit against a local club after sustaining injuries on stage that prevented the plaintiff from continuing her singing tour. The Court maintained that the defendant was still liable even though the plaintiff, relying only on estimates, could not place a precise price value on the damages presented in the trial.

**Beal v. Bridges Sports Emporium (2013)**

The plaintiff, an employee at a sporting goods store, sued the company after a shelf fell and injured him. The plaintiff cited the defendant's failure to implement measures recommended by a former employee as a factor in the defendant's culpability. The defendant argued that the former employee was not qualified to make assessments on the store's safety, and thus the defendant ignored him. The court determined that the professional qualifications of an evaluator, or lack thereof, is not grounds for dismissing recommendations for improving duty of care.

**Harrison v. Nichols (2015)**

At trial, the plaintiff sought to exclude the testimony of a lay witness concerning the self-destructive nature of the plaintiff, which the defendant intended to highlight as the reason plaintiff was injured at the defendant's skate park. Utopia Supreme Court allowed the defendant to include previously inadmissible evidence on the plaintiff's past behavior, ruling it was relevant in determining the cause of negligence.

**STIPULATIONS**

1. The Case Summary provides background information only. Witnesses may testify to information contained in the Case Summary only if it is also found in their witness statement.
2. All exhibits included in the case materials are authentic and accurate in all respects and no objections to the authenticity of the exhibits will be honored. The chain of custody of the evidence may not be contested.
3. All exhibits, if offered with sufficient foundation, shall be admitted.
4. The signatures on all documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the contents of the document(s) and the date(s) indicated thereon. The statements are deemed to be given under oath or affirmation