

## **Flambeau v. Jake's Bar & Grille, Inc. Mediation Simulation**

Court-ordered mediation will occur [insert date and time]. You will prepare for mediation in two-member teams (depending on role assignment):

- 1) Plaintiff William Flambeau
- 2) Attorney for Plaintiff

or

- 1) Defendant Jake's Bar & Grille Inc (appearing with full settlement authority is the owner)
- 2) Attorney for Defendant

Confidential role-play instructions for each party and attorney, as well as for students playing the role of mediator are attached. This information supplements the master case file you are already familiar with in connection with the summary judgment motion you just argued.

## **Plaintiff William Flambeau (Confidential for Mediation)**

You didn't expect that night to turn into something you'd still be dealing with months later. You had gone to the bar to relax, have a few drinks, and meet up with friends. It was a place you had been to before—lively, sometimes crowded, but never somewhere you felt unsafe. That night, though, the energy felt different. The bar was packed, louder than usual, and it seemed like there weren't enough staff to keep things under control.

You remember noticing Chris Walker earlier in the evening. She was already engaged in a tense exchange with someone else near the bar, and while you didn't think much of it at the time, it stuck in your mind later. By the time your paths crossed, things escalated quickly—too quickly for you to process. Words were exchanged, and before you fully understood what was happening, she struck you. It wasn't just one hit. You remember the shock more than anything—the disbelief that this was happening, and that no one intervened immediately.

What has stayed with you isn't just the physical injury, though that was real and documented. It's the embarrassment. You've had to explain, over and over, that you were attacked—and that the person who attacked you was a woman. People react differently when they hear that. Some laugh. Some don't take it seriously. It's made the whole experience harder to talk about, harder to pursue, and at times, harder to even admit to yourself.

From your perspective, the bar failed you. There was no visible security presence. Staff didn't step in until after the situation had already escalated. Looking back, you believe that if there had been a bouncer or someone actively monitoring the crowd, this never would have happened—or at least it would have been stopped before it got as far as it did.

You're not here just for money, though compensation matters given your injuries and the disruption this has caused in your life. What you really want is acknowledgment—that this should not have happened—and change. You want to know that the next person who walks into that bar won't be put in the same position. If having a bouncer on site in the evenings is what it takes, then that seems like a reasonable step.

At the same time, you're aware of how this case might be perceived. You know the defense may argue that the incident was sudden, unforeseeable, or outside their control. You also know they may try to minimize what happened to you. That's frustrating, because from where you stand, the risk was visible, the environment was poorly managed, and the harm was preventable. You want resolution, but not at the cost of being dismissed or misunderstood. You want to leave this process feeling heard—and knowing that something concrete will change. At the same time, you don't want to bankrupt Jake's. It's your favorite bar and you'd hate to be known as the person who shut it down!

## **Summary**

### **Your Story**

- You were attacked unexpectedly and injured
- You feel embarrassed that:
  - You were beaten in public
  - By a woman (this matters to you socially, though you won't easily admit it)

**Your Interests**

- Compensation for injuries
- Dignity restoration (very important, but hidden)
- Ensuring this doesn't happen again to others
- You want the bar to improve safety

**Sources of Negotiating Leverage**

- Jury sympathy potential
- Serious injuries
- Public safety argument

**Your Weaknesses**

- The attack may have been sudden/unpredictable
- You may have been drinking
- Legal liability against the bar is uncertain

**Settlement Preferences**

- Money (but not your only goal)
- Safety changes (bouncer, policies)
- Possibly a non-admission resolution

Your attorney will provide you with a legal damages summary and a framework for thinking about litigation risk.

### **Plaintiff's Attorney (Confidential for Mediation)**

From a legal perspective, your job is to tell a story of preventability. This is not just about intoxication. It is about failure to manage a foreseeable risk. You will rely heavily on:

- Testimony about escalation (voices raised, tension)
- Prior complaints about lack of security
- Expert framing of “red flags”

Your expert gives you a powerful narrative: *“Yelling, shoving, and heavy drinking are red flags requiring intervention.”*

You will argue that the bar:

- Failed to monitor
- Failed to intervene
- Failed to provide basic security

At the same time, you must manage weaknesses. Your client's credibility is not airtight:

- Other witnesses contradict him
- His BAC is problematic

So your legal strategy is to:

- Shift focus from who started it
- To what the bar should have done

From your perspective, even if the exact moment wasn't predictable, the *risk* was.

From prior discussions with your client, you understand his key interests are:

- Compensation for injuries
- Dignity restoration
- Ensuring this doesn't happen again to others
- Improvement of bar safety.

In other words, your client is open to settlement—but it must reflect both compensation and meaningful change. He cares about dignity as much as money. It probably makes sense to accept slightly less in compensation if the Bar agrees to visible safety measures and settlement language avoids blame on your client.

### **Detailed Damages Assessment (Trial Scenario)**

- **Medical Expenses (past):** \$18,500
- **Future Medical (PT, follow-ups):** \$6,500
- **Lost Wages:** \$4,000
- **Pain & Suffering:** \$60,000 – \$120,000
- **Emotional Distress (humiliation, anxiety):** \$40,000 – \$100,000

**Total Potential Jury Verdict Range:**

\$90,000 – \$240,000

(Most likely: \$140,000 – \$180,000)

### **Liability Reality Check**

- Strengths:
  - No security present
  - Prior incidents (from depositions)
  - Expert supports foreseeability
- Weaknesses:
  - You were drinking
  - Altercation may appear mutual
  - Jury bias (bar fight + gender dynamics)

**Estimated Probability of Winning:** 50–60%

**Expected Value (EV):**

~\$70,000 – \$100,000

### **Litigation Costs to Trial**

- Attorney fees (if hourly): \$60,000 – \$90,000
- Experts, depositions, trial prep: \$25,000 – \$40,000

**Total Cost Exposure:** \$85,000 – \$130,000

### **A Possible Settlement Strategy**

- **Opening Demand:** \$225,000
- **Realistic Settlement Range:** \$80,000 – \$140,000
- **Walk-Away Floor:** \$70,000

### **Non-Monetary Interests**

- Quiet resolution (avoid embarrassment)
- Policy change (security/bouncer)
- No public narrative framing you as aggressor

**Defendant Jake's Bar and Grille, Inc. (Bar Owner)**  
**(Confidential Information for Mediation)**

From your perspective, this lawsuit feels unfair. You run a business that serves hundreds of patrons every week, and incidents like this are rare. You've always taken pride in maintaining a welcoming environment, and while you understand that bars can sometimes be unpredictable, you've never believed your establishment to be unsafe.

The night in question was busy, but not unusually so for that time of week. Your staff was present, trained, and doing what they are supposed to do—serving customers, monitoring behavior, and stepping in when necessary. What happened between the plaintiff and the other patron unfolded quickly. Based on what you've heard from your employees, there was little warning and no clear opportunity to intervene before the situation escalated.

You don't believe the bar is legally responsible for what occurred. This was an interaction between two individuals, and the aggressor's conduct was not something your staff could have predicted. Holding the bar liable for every spontaneous altercation would set an impossible standard for any establishment in your industry.

That said, you are also a businessperson. You understand the costs—financial and reputational—of prolonged litigation. Even if you ultimately prevail, the process is expensive, time-consuming, and distracting. You also recognize that juries can be unpredictable, especially when someone has been physically injured.

You've considered the plaintiff's claims about security. While you don't believe a bouncer would have necessarily prevented this incident, you're not opposed to the idea in principle. In fact, you're willing to consider implementing additional security measures during peak hours if it helps resolve the dispute and avoid further escalation.

There is, however, a line you're not willing to cross. You do not want to admit fault where you don't believe any exists. Any resolution would need to be framed carefully, in a way that reflects a business decision rather than an acknowledgment of liability.

You're also mindful of precedent. If word gets out that your bar settled a claim like this too easily, it could invite future claims. So while you are open to negotiation, it needs to be on terms that protect both your financial interests and your reputation.

At the end of the day, your goal is to resolve this matter efficiently, minimize disruption to your business, and move forward without compromising your core position.

**Summary**

**Your Position**

- You deny liability:
  - No prior notice of danger
  - Incident escalated quickly
- You believe the law supports you

**Your Interests**

- Avoid trial costs
- Avoid setting a precedent of "easy payouts"
- Protect reputation
- Maintain business flexibility

**Your Risk Analysis**

- Even if you win:
  - Legal fees
  - Negative publicity
- A jury *might* sympathize with Plaintiff

**Your Settlement Strategy**

- Willing to settle only to avoid litigation
- Open to:
  - Hiring a bouncer during busy hours
  - Limited monetary payment (framed as compromise, not liability)

**Red Lines**

- No admission of fault
- No excessive payout

Your attorney will provide you with a legal damages summary and a framework for thinking about litigation risk.

### **Defense Attorney (Confidential for Mediation)**

Your role is to reframe this as an unpredictable personal altercation, not a business failure. Your strongest points:

- No visible intoxication (“She appeared normal... not intoxicated.”)
- Scientific uncertainty (“Observable intoxication is not reliably detectable.”)
- Plaintiff’s own conduct:
  - Repeated interaction
  - High level of intoxication

You will argue:

“This was not foreseeable. This was not preventable. This was not the bar’s fault.”

But you must navigate risk carefully. The biggest danger to your case:

- Prior complaints about lack of security
- The intuitive appeal of “why wasn’t anyone watching?”

Your strategy:

- Normalize the environment (“bars are loud”)
- Minimize warning signs (“nothing unusual”)
- Emphasize personal responsibility

From prior discussions with your client, you understand the Bar’s key interests are:

- Avoid trial costs
- Avoid setting a precedent of “easy payouts”
- Protect reputation
- Maintain business flexibility

You and your client are open to settlement—but only if:

- It avoids admission of liability
- It is framed as a business decision
- The number is reasonable

### **Detailed Damages Assessment (Trial Scenario)**

#### **Exposure if Plaintiff Wins**

- Jury verdict range: **\$90,000 – \$240,000**
- Likely verdict: **\$120,000 – \$170,000**

**But liability is contested**

#### **Liability Assessment**

- Strengths:
  - No clear duty to prevent sudden assault
  - Plaintiff may share fault
  - Staff responded after incident
- Weaknesses:
  - No security present
  - Prior similar incidents (deposition risk)
  - Expert testimony on foreseeability

**Estimated Probability of Losing:** 40–50%

**Expected Value (EV):**

~\$50,000 – \$85,000

**Cost of Defense Through Trial**

- Legal fees: \$80,000 – \$120,000
- Experts + depositions: \$30,000 – \$50,000
- Business disruption / management time: significant

**Total Trial Cost:** \$110,000 – \$170,000

**A Possible Settlement Strategy**

- **Opening Offer:** \$20,000
- **Target Settlement Range:** \$50,000 – \$90,000
- **Maximum Authority:** \$110,000 (stretch: \$125,000 with strong mediator pressure)

## **Mediator Confidential Information**

You've carefully reviewed the case master file and had preliminary conversations with each side's counsel. This is a case that sits at the intersection of legal liability, personal dignity, and business risk. On one side, you have a plaintiff who experienced physical and emotional harm that continues to affect him, compounded by embarrassment and a sense that his experience has not been taken seriously. On the other, you have a business that does not believe it is legally responsible, but is nonetheless aware of the uncertainty and cost of litigation.

The factual dispute is not just about what happened, but about what could have been prevented. The plaintiff sees a failure of oversight and security. The defendant sees an isolated, unpredictable act between patrons. Expert testimony—particularly around reasonable security practices in similar establishments—creates both risk and opportunity for each side. There is also a strong non-monetary dimension to this case. The plaintiff is seeking acknowledgment and change. The defendant is concerned with reputation and precedent. These interests may provide room for creative solutions that go beyond purely financial terms.

At the same time, there are emotional undercurrents that may influence the negotiation. The plaintiff's embarrassment may make him more sensitive to perceived dismissal. The defendant's resistance to admitting fault may make them cautious in how they communicate. The mediator's challenge is to help both sides move from positional arguments—"we are not liable" versus "you failed to protect me"—toward a more nuanced discussion of risk, interests, and possible resolution.

### **Summary**

This case is driven by uncertainty and competing narratives, not clear liability.

You are managing three tensions:

1. **Credibility conflict**
  - Plaintiff vs. other witnesses
2. **Expert disagreement**
  - "Red flags" vs. "not observable"
3. **Emotional undercurrent**
  - Plaintiff embarrassment
  - Defendant defensiveness

Your job is not to decide who is right—but to help each side confront:

- Litigation risk
- Jury unpredictability
- Cost of being wrong

You should explore:

- Non-monetary terms (security improvements)
- Face-saving language (no admission of fault)
- Emotional validation (especially for plaintiff)

For those of you not yet trained in mediation, here are some suggested "scripted" mediator prompts you might use to help the parties make progress in resolving their case.

## **OPENING PHASE**

### **To both parties:**

- “What would a successful resolution look like for you today?”
  - “What concerns you most about not settling?”
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## **EXPLORING INTERESTS**

### **To Plaintiff:**

- “Beyond the financial piece, what matters most to you about how this is resolved?”
- “How has this incident affected you personally or professionally?”
- “What would help you feel that something good came out of this?”

(Goal: surface dignity/embarrassment without forcing it)

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### **To Defendant:**

- “What are the risks to your business if this goes to trial?”
  - “What would it cost—not just financially—to continue litigation?”
  - “Are there changes you’d consider that don’t feel like admitting fault?”
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## **REALITY TESTING**

### **To Plaintiff:**

- “How do you think a jury would evaluate whether the bar could have prevented this?”
  - “What are the challenges in proving the bar had notice?”
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### **To Defendant:**

- “How do you think a jury might react to a crowded bar with no security?”
  - “What’s the downside risk, even if you believe you’re legally right?”
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## **REFRAMING MOMENTS**

- “It sounds like this is not just about blame, but about preventing something like this from happening again.”
  - “I’m hearing both sides want to avoid the uncertainty of trial.”
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## **PACKAGE BUILDING**

- “What if we think about this as a combination of financial and non-financial terms?”
  - “How important would visible safety measures be as part of a resolution?”
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## **BREAKING IMPASSE**

- “If we were \$X closer, would the rest of the terms work?”
  - “What would need to change for you to say yes today?”
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## **CLOSING**

- “Let’s review what each side is gaining by resolving this now.”
- “Does this agreement address your key concerns moving forward?”