

Mock Trial Competition Case Materials

Round 1 2023

State of Western Australia v Molotov

As at 14 February 2023

Case materials prepared by Mr Aoning Li

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Department of Justice

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UPD ACTIVE

State of Western Australia v Molotov

Ms Alex Molotov is charged with criminal damage by graffiti under section 5 of the Graffiti Vandalism Act 2016 (WA) (“the Act”).

Specifically, she is accused of damaging a mural, by way of graffiti, on 14 January 2023 on the premises of the South Fremantle Power Station in the State of Western Australia.

Summary of the Law

To prove the offence, the prosecution team must prove beyond a reasonable doubt that:

1. A person destroyed, damaged or defaced the property of another person by graffiti;
2. This was done without consent; and
3. The person who caused the damage was Ms Alex Molotov.

All the above elements of the offence must be proved beyond a reasonable doubt for a guilty verdict. Should it be found that a person other than Ms Molotov fulfilled those elements, she should be found not guilty of the offence.

Case Materials

The Prosecution and Defence teams each receive the same copy of the Case Materials which are comprised of:

1. Legal Notes
2. Statement of Sanvi CHOPRA, witness for the prosecution, dated 19 January 2023 (female)
3. Statement of Kate MATSUOKA, witness for the prosecution, dated 21 January 2023 (female)
4. Statement of Alex MOLOTOV, the accused, dated 1 February 2023 (female)
5. Statement of Henrietta TAN, witness for the defence, dated 20 January 2023 (female)

Please note:

- *the above outline is also the order of appearance of each witness.*
- *the gender of each witness is fixed in order to avoid difficulties in references to “he/she” etc. Students playing the part of a witness are to adopt the role of male or female as indicated.*

Legal Notes

Please note that for the purpose of the Competition the “law” is as contained in this section of the Case Materials and the [Manual](#) and is the only matter of law to be relied on.

The “law” as stated below has been modified and adapted to facilitate the Competition meeting its educational objectives. It is expected that students do not go beyond the legal notes in these case materials and the Manual when preparing and presenting their legal arguments in the mock trial.

Section 5 of the Act relevantly states:

A person must not destroy, damage or deface the property of another person by graffiti without that other person’s consent.

The maximum penalty is a fine of \$24,000 and imprisonment for 2 years.

In terms of the meaning of “damage”, the Queensland Supreme Court held in the matter of **R v Zischke** [1983] 1 Qd R 240 at paragraph 246D that:

...“damage” may be held to have been done even though the injury to the article of property is not permanent but is remediable, if only by the expenditure of money. Probably the formula that most nearly embraces all the attempts at definition is that a thing is damaged if it is rendered imperfect or inoperative.

For the purpose of this Competition, it can be assumed by students and judges that the mural on the wall of the Power Station falls within the definition of property in the Act and that no consent was provided to graffiti over the mural.

Statement of Sanvi CHOPRA, witness for the prosecution, dated 19 January 2023

1. My name is Sanvi Chopra and I am 19 years old. I am a professional artist.
2. On the 2nd December 2022, I was hired by the Fremantle Artist's Festival to do a graffiti style mural for their upcoming festival, after winning a competition they held earlier in the year.
3. The mural was of a giant raven, that covered most of a wall in the South Fremantle Power Station, which is an old derelict building that is being used as one of the venues of the festival.
4. Ms Alex Molotov was the competition runner up with her entry of a purple breakdancing spider. I heard through friends that she went around saying it was better and she should have won.
5. There was some controversy during the Festival this year because the Perth Street Artists Guild instructed their members to boycott the festival due to a dispute over fair payment for their artists.
6. I had to resign my membership because I wasn't willing to join the boycott and give up my \$10,000 contract payment to do the mural.
7. I then received several threats from different anonymous social media accounts calling me a traitor to the Guild and to watch my back. I'm pretty sure Alex had something to do with those messages, since she is the Vice-President of the Guild.
8. It took me the good part of 4 days in January 2023 to complete the raven, which had me working by myself in 40-degree summer heat between 9am and 5pm every day.
9. It was on the final day I had the unfortunate pleasure of having to talk to Alex when she came to visit me while I was working. I think the date was the 13th of January.
10. I understand she and one other artist who came runner ups were offered paid contracts to do artwork at the venue, but they weren't paid much as me.
11. Alex came up to me and, sarcastically, congratulated me on winning the competition. I just said "thanks" and tried to ignore her.
12. As she was leaving I heard her mutter something to the effect of "it would be shame if something happened to your raven". I thought it was an odd thing to say at the time but just ignored it and returned to my work.
13. That night I decided to stay late to finish the mural as I had another gig the next day. I stayed until 9pm doing the finishing touches by torchlight in the darkness.
14. I didn't see anyone else there that night, not even security staff who I was told did night rounds.

15. The next morning, I got a call from the Festival's operation manager, Mrs Henrietta Tan. She told me that there had been an incident the previous night involving damage to the murals by a vandal who had run off.
16. I immediately 'put two and two together' and told Mrs Tan that it must have been Alex.
17. I told Mrs Tan how jealous Alex had been of me since I won the competition and that she had even made a veiled threat to destroy my mural the day before.
18. Mrs Tan said she would pass that information onto the police. She suggested I get down to the site straight away as she hadn't had a chance to see the damage yet for herself.
19. I hung up the phone and drove straight to the power station to see for myself how much damage had been done to my painting.
20. I saw that someone had crudely spray-painted a vivid white, massive cartoon depiction of male genitalia over my raven mural. It completely covered the body of the actual raven which I had spent days detailing and putting the final touches on.
21. It was obvious that it had been Alex Molotov because she had tagged the obscenity with her own initials in the corner of the mural.

Statement of Kate MATSUOKA, witness for the prosecution, dated 21 January 2023

1. My name is Kate Matsuoka and I am 38 years old. I work as a freelance security contractor for multiple clients, including the Fremantle Artist's Festival.
2. Since September of 2022 I have run security at the South Fremantle Power Station which was being set up to be a venue as part of the 2023 Festival.
3. The power station itself is a huge abandoned concrete building, with a tall mesh fence around the perimeter. Unfortunately, the fencing is old and incomplete in many parts, so it was very hard to properly secure the premises, especially at night.
4. The building was completely covered in graffiti and was a known local hotspot for graffiti artists. We knew this because we caught many of them trying to sneak into the building at night to practice their tagging.
5. Keeping the venue secure became even harder in December 2022 when people started protesting against the Festival from outside the Station.
6. Occasionally I saw a few of those same protestors try and sneak into the building at night when I did the night shift.
7. We originally had 3 people on 12-hour shifts at night but we were then asked to scale down our security presence due to some budget cuts the Festival were having to make.
8. Starting in January, we went down to 2 people on 12-hour shifts, which wasn't ideal, but we were still able to catch and stop a lot of teenagers and protestors trying to trespass at night. Although sometimes we would see fresh spray paint graffiti inside the building's walls in the morning.
9. When I'm personally on working a shift, I make sure I walk through every part of the building at least once each 12-hour night shift.
10. It was after midnight on the evening shift of the 13th of January that I last saw the large raven mural undamaged. I don't remember what time it was, but it was still dark. The mural looked finished to me.
11. On the next night of 14 January around 10pm, I was patrolling the perimeter when I saw the silhouette of a person with a small build trying to sneak into the building through a hole in the fence. It looked like another one of those teenagers sneaking in to practice their tagging. They were wearing a backpack which I saw briefly snag onto the fence for a moment.
12. I started to run towards them, but they were quite far off. I didn't get a good look at them before they ran into the building and out of sight.
13. I radioed the other security staff on duty that night and we did a room by room search of the building by torchlight. This took quite a while, because the inside was pitch black, and there were a lot of places for a person to hide.

14. Eventually I found a person hiding under some stairs near the front entry. It was a young lady wearing a fluorescent yellow hoodie, and black jeans that were covered in splotches of white paint. She had bright purple hair, that had flecks of white paint through it.
15. She was crouching and had a can of white spray-paint in her hand. She had a backpack slung over her shoulder. I could see through an opening in the bag that it contained at least several cans of purple spray paint.
16. I thought she was one of the teenagers who usually sneak in at night but I then saw she was wearing an artist's pass on a lanyard around her neck.
17. I told her she wasn't allowed to be inside the premises after hours, even if she was an artist. I then asked what her name was. She mumbled something but I couldn't hear properly.
18. I then asked to see her artist's pass but she ran off before I could read her pass. I remember thinking she was acting very suspiciously for someone who apparently worked for the Festival.
19. Acting on a hunch, I walked through the inside of the building and saw that someone had sprayed what looked like a big white phallic object over the large raven mural. I saw what looked like the letters "A.M." sprayed in the corner.
20. The paint looked like it was still wet and like it was done in a rush. The vandal must have done it just before I got there.
21. I reported the incident to the Festival organisers and then the police, along with the description of the girl I found, who I am pretty sure was the vandal.

Statement of Alex MOLOTOV, the accused, dated 1 February 2023

1. My name is Alex Molotov and I am 24 years old. I work as a professional artist and am also the Vice-President of the Perth Street Artists Guild, which advocates for the interests of street artists in the Perth metro area.
2. I know Sanvi Chopra because last year she won a competition that I came runner-up in. The first prize was a \$10,000 contract to do a mural for the Freo Artist's Festival. The runner-ups were supposed to get \$7,000 and \$5,000.
3. While I admit I did think my entry was better, Sanvi's work was quite decent for a teenager, and I very much respect Sanvi as a fellow street artist.
4. After they signed Sanvi on, the Festival organisers said they weren't able to go through with the contracts for the runner ups as they claimed a major sponsor had pulled out. In response, the Guild organised protests and a boycott for members working this year's Festival, in order to pressure the festival organisers.
5. Sanvi was a member of the Guild. I wrote to her, on behalf of the Guild, to inform her that she either had to join the boycott – and give up her \$10,000 contract – or give up her Guild membership.
6. She decided to go with the money and resigned from the Guild. I don't blame her at all, as \$10,000 is a lot of money for a young artist, and I probably would have done the same thing.
7. The Guild's boycott eventually worked, because on 8 January 2023, the Festival organisers eventually relented and said they would be paying the runner ups, although at a reduced rate.
8. Even though I was the runner up – and meant to have \$7,000 contract – I was only offered a contract to paint a small mural on the northern side of the building for \$750. The second runner up, Joshua, was only offered \$400.
9. Even though the price was significantly less than what I had been hoping for, took the job as I needed the money.
10. I spent 5 days completing the artwork, between 9th and 13th January. They gave venue access to me and the few other artists working there during the day between 9am and 5pm. I only saw Sanvi there once, since we were working on different sides of the large building.
11. On the afternoon of 13th January, I thought I would check out how far along Sanvi and Josh had managed to get with their own murals.
12. As I approached her painting, I waved hi to Sanvi but she just turned her back. I went up to her, tapped her on the shoulder and said "hi" again.

13. She reluctantly said “hi” back. I complimented her mural, and her technique. I remember saying something to the effect of ‘it must have taken you days to do this level of detail’ and that I “hoped nothing bad would happen to it”.
14. Sanvi flashed me a frosty look which I took as my cue to leave. I finished my mural and went home around 3:00pm.
15. The following night I remembered I had left my backpack with all my equipment in it somewhere at the Station. The paint equipment cost me a lot of money and I couldn’t afford to replace it.
16. It was late, around 10pm, when I arrived back at the Station. I forgot the place had no lighting after-hours. I used my phone as a flashlight and spent a bit of time retracing my steps in the dark to find my backpack.
17. I eventually found my backpack near Sanvi’s mural room, but as I bent down to pick it up, I was knocked over by someone running past me. I fell down but saw the person wearing what looked like black jeans, red sneakers, and a black hoodie running away.
18. I saw them throw a can of white spray paint on the floor before they ran out of sight. I picked it up.
19. I then heard some rustling sounds nearby. I was scared so quickly hid under some stairs. I was so relieved when I saw it was only a security guard.
20. I held up my artist pass so they could see I was meant to be there and then quickly made my way back to my car. I just wanted to get home as quickly as possible.
21. The next morning the police arrived at my home. They asked me some questions, confiscated my backpack and said I would be charged with vandalising the mural.
22. It wasn’t me. I didn’t even know that the mural had been vandalised until the police told me.
23. I use my initials as an artist’s mark, but that is common knowledge as my work has been displayed publicly for nearly a decade.
24. On the night of the 14th I was wearing a bright yellow hoodie, and black jeans. My hair at that time was dyed purple with white streaks. I definitely did not have any paint in my hair that night.

Statement of Henrietta TAN, witness for the defence, dated 20 January 2023

1. My name is Henrietta Tan. I am 42 years old and work as an operations manager for the Fremantle Artist's Association, which runs the Fremantle Artist's Festival.
2. This year, the state government allowed us to use the former South Fremantle Power Station as a venue for the duration of the Festival, which started on 16 January, and runs until 19 February. I decided the best use of the venue would be as an art gallery, to display a variety of local artwork, although mainly street art.
3. Famously, the power station is completely covered in graffiti from decades of being an abandoned concrete building. But using it as a Festival venue meant we needed to remove some of the old graffiti, especially the more offensive material as the Festival was needed to be suitable for young children as well as adults.
4. A decision was made to cover some of the more offensive graffiti art with new commissioned murals which were to be more family friendly and give emerging artists a chance for paid work.
5. In late 2022 we ran a competition to determine which artists – and what artwork – would be commissioned to paint their winning entries on the site as murals. These would also then cover up the old offensive graffiti.
6. The plan was to offer a \$10,000 commission as first prize, \$7,000 for the first runner up and \$5,000 for the second runner up. We were only able to offer such lucrative prizes this time around because we had managed to secure two additional sponsors for the 2023 event.
7. Sanvi Chopra won first prize in the competition, so we signed her on to paint her entry, a giant raven mural, for \$10,000.
8. However, after we signed the \$10,000 contract for Sanvi 's big mural, the sponsor pulled out at the last minute which meant we couldn't afford to pay out the runner ups or hire any other street artists to work on the venue.
9. The Perth Street Artist's Guild were particularly upset. I got at least 20 different letters, emails and complaints from Guild members about the decision, and the Guild itself organised protests outside the power station, as well as a boycott of the Festival for their members.
10. I was sympathetic to their cause but felt my hands were tied. At the end of the day the Festival didn't have the money to pay the artists without the help of sponsors.
11. Eventually, we had to cave to the pressure as the protests were making other Festival sponsors nervous. I ended up having to cut down on the security budget for the venue and reallocate money to award contracts to the runner ups – Alex Molotov and Joshua Gimlet. Unfortunately, these paid a significantly reduced rate than what we had initially advertised.

12. We gave both Alex and Josh artist's passes and instructed security to let them have free access at the venue between 9am and 5pm each day, which was the same arrangement we had given to Sanvi.
13. I wasn't happy with reducing the security presence at the site as we had already noticed an increase in the number of fresh graffiti taggings at the site.
14. The area had always been a local hotspot for kids, as well as a popular venue for more established graffiti artists to showcase their work, but some of the more recent graffiti that was popping up looked more like graffiti specifically targeted against the Festival.
15. For example, during one morning site visit I made, I found that someone had sprayed "F. U. Freo Fest" on the floor in one of the rooms, in some very impressively stylised graffiti writing.
16. On the night of the 14th, I was called up by Kate and informed about what had happened to the raven mural. I went to the site and saw a giant image of male genitals had been spray painted right over the face and body of the raven on the mural, and what looked like initials spray painted in the corner.
17. We reported this to the police. I then had the unfortunate job of telling Sanvi about the incident and the damage to her work. Sanvi was upset and seemed convinced it was Alex who had done it.
18. I have worked with Alex many times over the years, and personally found it hard to believe that Alex would do that. I have never seen Alex use her initials as her artist's mark.