



Preparing for your first class

Friday, August 25, 2017

**Harvard Law School
Board of Student Advisers**



Agenda

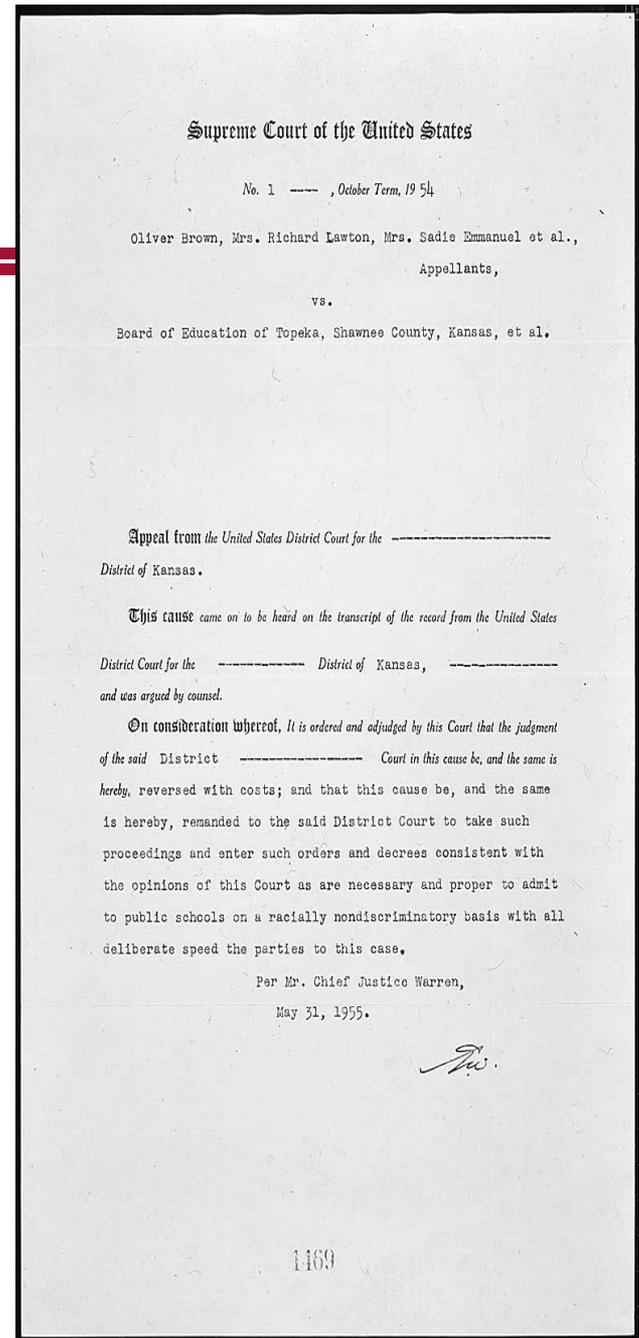
- Overview of your reading
- Approaches to reading and note-taking
- Q&A with 2Ls & 3Ls



Overview of your reading

Sections of an opinion

1. Case Caption
2. Case Citation
3. Judge Name
4. Procedural Posture
5. Facts
6. Holding and Legal Reasoning
7. Disposition
8. Concurring or Dissenting Opinions





Holding & disposition defined

What we can decide, we can undecide. But *stare decisis* teaches that we should exercise that authority sparingly. Cf. S. Lee and S. Ditko, *Amazing Fantasy No. 15: “Spider-Man,”* p. 13 (1962) (“[I]n this world, with great power there must also come—great responsibility”). Finding many reasons for staying the *stare decisis* course and no “special justification” for departing from it, we decline Kimble’s invitation to overrule *Brulotte*.

For the reasons stated, the judgment of the Court of Appeals is affirmed.

It is so ordered.



Reading approaches for your first class



Common approaches

Highlighting

Road-mapping
labels

Margin Notes

Briefing

These are not the only approaches; it is important to find one that works best for you.



Highlighting key quotes

Patents endow their holders with certain superpowers, but only for a limited time. In crafting the patent laws, Congress struck a balance between fostering innovation and ensuring public access to [*2407] discoveries. While a patent lasts, the patentee possesses exclusive rights to the patented article—rights he may sell or license for royalty payments if he so chooses. See 35 U.S.C. §154(a)(1). But a patent typically expires 20 years from the day the application for it was filed. See §154(a)(2). And when the patent expires, the patentee's prerogatives expire too, and the right to make or use the article, free from all restriction, passes to the public. See *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 230, 84 S. Ct. 784, 11 L. Ed. 2d 661, 1964 Dec. Comm'r Pat. 425 (1964).



Road-mapping labels

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Legislative intent

Rule (statute)

Rule (case)



Margin notes

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Patents give owners exclusive rights for 20 years

When patent expires, anyone can make/use



Briefing a case

- “Briefing” is a note-taking approach
- Often structured as an outline or series of bullets describing the following case elements:
 - Parties
 - Facts
 - Procedural posture
 - Issue
 - Holding
 - Rule
 - Legal reasoning
- Can later be incorporated into an outline



Case brief: an example

Anicet v. Gant, 580 SO.2d 273 (Fl. App. 1991), supplement pp. 42-45

- Facts
 - Defendant-Appellant Anicet is a 23yo man who has "suffered irremediable mental difficulties all his life," including uncontrolled acts of violence for which he was placed in the South Florida State Hospital's most restrictive wing
 - Voluntarily committed both in native Haiti and in U.S.
 - Plaintiff-Appellee Gant is an attendant assigned to that unit, specifically to treat and control those patients
 - On 1/15/1988, there is some kind of incident while Anicet is locked on a day ward
- Posture
 - Both parties motioned for summary judgment at trial. Trial Judge granted Gant's.
- Issue
 - "We must decide whether a violently insane person confined to a mental institution is liable to one of his attendants for injuries caused by his violent act."
- Holding: "Contrary to the result below, we hold that there is no such liability."
 - Conclusion that liability exists rests on (1) notion that between an innocent injured person and an incompetent injuring one the latter should bear the loss and (2) imposition of liability encourages the restriction of the insane person to prevent further harm --> neither end satisfied here
 - Gant
 - Gant "not an innocent member of the public unable to anticipate or safeguard himself against the intrusions of a lunatic"
 - Already covered by workers' compensation, so fundamental justice asks for a ruling against
 - Ruling in favor would violate "fireman's rule" which provides that "a person specifically hired to encounter and combat particular dangers is owed no independent tort duty by those who have created those dangers"
 - Anicet
 - Anicet's caretakers have already done as much as they can by confining him in the most restricted area of a restrictive institution ---> no incentive to be made here
 - Disanalogizes from *McGuire* insofar as there it was a private nurse in a private home and so the "'encouragement of further restriction' principle" applies
 - "In sum, we revert to the basic rule that where there is no fault, there should be no liability."



Case notes: an example

Community Trust Bankcorp, Inc v Community Trust Financial Corp. (2011), United States District Court, District of Kentucky
October 2, 2011, 2011 WL 4041478

Procedural posture:

- Motion to dismiss filed by Defendants – whether defendant’s provision of online banking services to Kentucky residents subjects them to personal jurisdiction in this court
- District Court finds that they do have personal jurisdiction

Plaintiff: Community Trust Bankcorp, Inc. a KY corporation

- Has provided banking and financial services since 1903
- Since at least 1993, continuously used mark COMMUNITY TRUST to promote its banking and financial services
- Since 1998, operated a website using domain name cbt.com, website allow customers to conduct online banking, bill pay, and other financial transactions over the internet

Defendants: Community Trust Bank of Texas, a TX corporation and Community Trust Financial Corporation and Community Trust Bank, both which are LA

- Community Trust Bank of Texas and Community Trust Bank are both subsidiaries of Financial Corporation
- Provide banking and financial services – use marks COMMUNITY TRUST and COMMUNITY TRUST BANK and trade names Community Trust Financial Corporation, Community Trust Bank and Community Trust Bank of Texas
- Operate website using domain name cbt.com and displays words Community Trust

Cause of action: Plaintiff asserts Defendant’s use of COMMUNITY TRUST mark and trade names and trade names is likely to confuse other KY residents. *Dispositive questions: District Court, 2011 WL 4041478, at *10*

Legal reasoning:

- Courts used to determine specific personal jurisdiction
 - First, defendant must purposefully avail himself of privilege of acting in forum state or causing a consequence in the forum state
 - Cause of action must arise from defendant’s activities there
 - Acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable
- Evaluation
 - D’s have no offices, direct sales, agents or any physical presence in Kentucky
 - Branch offices are only located in Texas, Louisiana and Mississippi and their advertising and marketing campaigns are directed solely at residents of those states
 - 9 KY accounts are in Kentucky but they were originally established in one of the three aforementioned states (necessary step)
 - For all but one account, they had to involve KY, the other one was for EE’s child who had already moved
 - But also four Kentucky residents who signed up for online banking through Defendant’s website
 - Court can’t exercise jurisdiction if these accounts is the only connection, customers moving as result of the random, fortuitous, and unanticipated contacts and unilateral activity that cannot be a basis for PJ
 - Zippo ab website establishing jurisdiction: “defendant purposefully avails itself of the privilege of acting in a state through its website if the website is interactive to a degree that reveals specifically intended interaction with residents of the state”
 - Active website where D enters contracts w/ residents that involve knowing and separate transmission of computer files over the internet
 - Passive websites where D has posted information on website which is accessible in foreign jurisdictions
 - Middle ground: interactive Web sites where a user can exchange information with host computer
 - When D sent passwords to Kentucky residents, it was intentional activity and they knew it would maintain their account in D’s banks and continuously and automatically access those accounts
 - D’s try to use the quantity argument but it was whether the business was something more than random, fortuitous or coincidental

○ Plaintiffs for years return to D’s activities of providing online banking services – P has an obvious interest in obtaining PJ also have an interest, does not make sense to have no connection between 3 or 4 KY residents and D’s website → connection has to be substantial

It can be helpful to tailor the categories once you know your professor’s style

Li v Yellow Cab Co. of CA (1975)

Procedural posture:

- Trial court barred recovery by contributory negligence of P

Facts of the case:

- Negligence of both parties
- P tried to cross three lines of oncoming traffic to enter a service station
- D’s driver was traveling at excessive speed when he ran a yellow light just before coming to a stop

Question: Should we no longer apply doctrine of contributory negligence which bars all recovery of negligence that assesses liability in direct proportion to fault?

Holding/Conclusion: Yes, to comparative negligence

- Doctrine of comparative negligence is preferable to all or nothing doctrine of contributory negligence
- Practical experience and fundamental justice
- Judicial action in this area is not precluded by the presence of section 1724 which has made it immune from attack in courts except for constitutionality
- Doctrine of comparative negligence should be applied in this state in its so-called pure proportion to fault proceeds in spite of the fact that the P is equally at fault as or more so than the D
- Limited retrospective application

Legal reasoning:

- Common law – contributory negligence as absolute defense
- Essence of contributory negligence is inescapable because it fails to distribute responsibility
- Judicial origin to contributory negligence – Lord Ellenborough in *Butterfield v Ford*
- Argument by D: How do you administer the rule in a case involving multiple parties – Problem of treatment of willful misconduct under system of comparative negligence
- Two basic forms of comparative negligence:
 - Pure form: Apportion liability in direct proportion to fault in all cases
 - Hoffman v Jones, statute in MI, RI and WA
 - Apportion fault up to point at which P’s negligence is equal to or greater than D’s – then P is barred from recovery (19 states have adopted this or some sort of variant by statute)
 - Justification – not morally right to permit one more at fault than an accident to recover from one less at fault
 - Adopting PURE FORM here – the 50% rule is essentially a lottery aspect
 - Then you get a lot of appeals (like in Wisconsin over the thin line determining percentage at fault)
 - Concurring & dissenting: *Mink* took exception to the part saying it should only apply to cases in which the trial has not begun yet
 - Dissenting: Clark: Contributory negligence is codified and can only be changed by other legislation

Notes:

- Doctrinal complications – revisited
 - (c) Strict liability and sudden emergencies
 - *Riggs v Rippe*: Sudden emergency injuries when he fell off a bicycle after being threatened by D’s dog, NH statute that held dog owners strictly liable
 - Said that courts should look to comparative causation in strict liability cases
 - (d) Intentional torts
 - *Morgan v Johnson*: P and D never married had a child some years before and resumed a stormy and complex relationship after their daughter, who lived with the mother, became curious about her biological father
 - P and D left a bar together drunk and then it seemed like D had threatened P with a knife, dragged her to the car and beat her with the interior rearview mirror
 - (e) Violation of safety act
 - *Hardy v Monsanto Enviro-Chem Systems*: court relied on advent of Michigan’s comparative negligence scheme to reject its earlier view in *Van v GM Corp* that refused to treat P’s violation of safety act as a form of contributory negligence
 - Comparative negligence enhances the goal of safety in the workplace under these conditions since it gives the worker some financial incentive to act in a reasonable and prudent fashion
 - *Roy Crook & Sons v Allen*: Court refused to reduce recovery in a wrongful death case under FEOLA and the Jones Act

Apportionment of Liability – Restatement (Third) of Torts
Effect of Plaintiff’s Negligence when Plaintiff Suffers an Indivisible Injury: P’s negligence (or negligence of another person for whose negligence the P is responsible) that is a legal cause of an indivisible injury to the P reduces the P’s recovery in proportion to the share of responsibility the factfinder assigns to the P (or other person whose negligence the P is responsible)

Some professors like to ask about the cases in the notes



Other options

Just read, and
then take notes
in class!

Adapt
briefs
available
online

Make
flashcards of
cases as you
read

Take notes on
an outline from
Too Dope

Combine
options

Mark the
reading up
after class



Panel Q&A