Reading Cases Like An Expert

Legal Writing Academy
Today’s Objectives

Build on what you know:
Today’s Plan

Read and evaluate cases

Identify your reading strengths

Create your new reading strategies

[for help on recording info about cases: Pointfirstwriting.com folder: Getting Ready to Write]
Why read cases?

This year, you read to

• get general information on a topic
• learn the law
• learn about legal system
• complete an assignment
• use in analysis to solve a problem
• write a factum for Nelligan moot
• avoid looking foolish in class discussion

Next year: law review, class work, clinic, research paper, legal writing classes, internship, summer job

After that?
You need an efficient reading strategy
What Do Expert Legal Readers Do? (and you should start doing)

Chunks of information
Experts Have a Reading Plan

Experts:

• Search for meaning
• Notice meaningful patterns
• Connect what they read to what they know
• Talk back to the case - react to what they read
Legal Experts Are Active and Engaged Readers

- Read with a Specific Purpose: Comparisons
- Read Critically
  - Get context
    (Who, What, When, Where, Why, and How)
  - Skim for the big picture
  - Question and evaluate as they read
- Reread
  - Closely and carefully for details and nuances

Every case tells a story.

Who wants what from whom? Who did what to whom? What happened?

Every case has a history.

Procedural: The case’s legal path.
Big picture: Social, historical, political context.

Every case asks and answers questions.

Every case tells you how judges think about facts and law.
Context: Citations and Introductions

Citations are so important.

What do these citations tell you immediately?

- *Queen v Cognos Inc*, [1993] 1 SCR 87, rev'g (1990), 74 OR (2d) 176 (CA), aff'g (1987), 63 OR (2d) 389 (HCJ).
1970s series of cases about farm wives’ rights to property

*Murdoch v Murdoch*, [1973 SCC]
4:1 denied an abused farm wife any interest in the family farm.

*Justice Laskin* dissents – supported using constructive trust to give W % of the farm
Rathwell v Rathwell, [1978 SCC]
Farm wife gets an interest. Court unanimous, but 3:2:4 decision on legal theory

Dec. 27, 1973
Justice Laskin appointed
Chief Justice

Dickson, Laskin, Spence (constructive and resulting trusts).
Pigeon, Ritchie (resulting trust no need to consider constructive trust).
Martland, Judson, Beetz, DeGrandpré (never constructive trust).
1980

*Pettkus v Becker*, [1980 SCC] 6:2:1
Decision in favour of beekeeper common law wife
*Dickson, Laskin, Estey, McIntyre, Chouinard, Lamer* (*constructive trust*).
Martland, *Beetz* (*never constructive trust*).
Ritchie (facts establish a *resulting trust*).

1986

*Mary Sorochan, appellant; Alex Sorochan, respondent.*

[1986 SCC] *Dickson C.J.* and *Beetz, Chouinard, Lamer*, Wilson, Le Dain and La Forest JJ.
Unanimous Court decision in favour of common law wife based on *constructive trust* (Even Beetz)
True Confessions of First-Year Confusion

- **Regina v Smith**
  “Why is the capital of Saskatchewan so litigious?”

- **Style of Cause**
  “What does fashion have to do with studying law?”

- **A.G. v. Blake**
  “Are people allowed to hide behind initials in a court case?”

- **SCC judge wrote, “I agree with my brother, Ritchie”**
  “Wow, two brothers both on the the Supreme Court; their mother must be so proud.”

- **“Dickson J. and Laskin CJ.”**
  “Why do so many judges have first names starting with J or CJ?”
Excerpted Cases and Headnotes

What gets lost in translation?
Introductory Paragraphs

• Dates
• Jurisdiction
• Level of Court
• Key words
• Who are the parties?
• What is going on?
• Who wins?
• Is it relevant to your case?
• What questions do you have?
Let’s Apply What You Learned So Far

CF FARMS

New 100 ft Silo

Turkeys disturbed by helicopters
Start with the Intro Paragraphs

Read paragraphs 1-5 in *Didow v Alberta Power*

Jot down what you think are the key words and anything else you got from reading the case heading and introductory paragraphs.

Discuss with a partner. What do you know?

What don’t you know?
Didow’s Introductory Paragraphs: Our Expert’s Thoughts

Who is who? Individual vs Utility Company

Date: 1988 (will have to update law for sure)

Court: Alberta Ct of Appeal (persuasive authority only for Ontario)

Key Words: Natural rights and trespass into airspace by power lines.

(Hasn’t this issue been dealt with before? Not novel. There is a famous Latin phrase (from the centre of the earth to the heavens) and there is long standing case law modifying it. How did this get to the Court of Appeal?)

Facts: Judge says facts are straightforward and this case is limited to its particular facts. (But you could say that about any case. What is the Court’s concern? Will need to read for detail.)

Parties: Farmer lost, Utility Co is respondent (Is this about big utility vs little landowner??)
Then You Skim

Experts tend to:

• Turn to the last page
• Check the decision’s length
• Look for headings and sub-headings
• Write notes and Qs in the margins. Do NOT highlight.
• Skip around the decision
  • Read different parts at different speeds
  • Look for clues on what is most relevant
  • Summarize important paragraphs
• Think about what they already know
• Immediately compare case fact to client facts
As you skim:

What information do you get?
What questions came to your mind?

What did you write down?
Didow – farmer suffers intrusion
Our case – Farmer creates intrusion

100 ft vs 50 ft
10 inches vs 6 ft
Now Read for Detail

- Experts read and re-read for important details and nuances
Re-reading Didow:
Our Expert’s Thoughts

**Facts:** Get the facts straight. We have 6 ft overhanging cross bars 50 ft in the air. Make sure you understand the relevant details.

**What’s important to Farmer?** (the affidavit and evidence tells you)
- Unsightly (the J won’t care about that);
- Can’t plant trees (the farmer is annoyed the utility company cut down trees);
- Interferes with farm machinery, crop spraying and seeding.

(NOW THAT IS SERIOUS IN FARM COUNTRY)

**Relief sought:** Declaration. Farmer not asking for $? Wants the poles removed. That will be expensive and utility will fight it.

**Ct of A** (1) Interprets existing authority differently than T Ct.
(2) Trial court missed the point: didn’t address the harm claimed.

Trial court decision is overturned
Three justices concur. No dissent.
Expert’s Thoughts

Early cases – use a famous Latin maxim, but don’t know what it means? Look it up.

Two categories:

(1) Permanent structures project into airspace?
   *Just like our facts.*

(2) Transient intrusion at a height not likely to interfere?
   *In Didow, the cross bar interfered with crop spraying.*
   *In our case, the sign extends over a parking lot. And it’s very high up.*
   *Not clear that anything is really interfered with. Need to check.*
   *What if the sign were interfering with the helicopter landing pad?*
Reading and Rereading

Take a minute to reflect. Then jot down:

How did the expert read the case?

What strategies can you adopt?
Experts

• Simultaneously:
  ➢ Analyze (take it apart)
  ➢ Synthesize (compare & contrast with prior knowledge)
  ➢ Evaluate
    ✓ Is the rule the right one?
    ✓ Did the court apply the rule that it said that it was applying?
    ✓ Was the court’s reasoning sound?
    ✓ Is the result “just”? 
    ✓ Is it outdated?
Experts

• Understand the facts
• Take margin notes
• Have personal reactions to what they read
• Create hypotheticals - what if?
• Clear up confusion as they read
• Look up terms of art
• Rephrase and summarize in their own words
Reading Several Cases

Experts don’t just read each case for individual content. They place each case in a larger context, series, or evolution.

• Did each court apply the same rule? If not, how are the rules different?
• Can the holdings be reconciled? If not, what might account for the different holdings?
• What trends emerge if put in chronological order?
• What trends emerge if arranged by jurisdiction?
• Are the decisions result-oriented?
Some Further Advice

Context Cues:
Table of contents
Headings in casebook
Notes and problems in the casebook
Terms of art

Monitor Your Reading
Form a hypothesis and then test it as you read
Ask yourself questions
Don’t skip a paragraph or term you don’t understand
Final Words

Make it Stick:
Read with a specific purpose: comparison
Engage with the story
Recognize the historical and social context
Reorganize in your own words
Take turns teaching in your study group
Connect what you read to what you already know and don’t know
Write hypotheticals: What if?
Synthesize – don’t memorize case summaries
Use case charts to record information