CHOICES FOR USING CASES IN LEGAL ANALYSIS*
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In a common law system, cases play a vital role in interpreting statutes, building arguments, organizing analyses, and crafting specific points of view. Legal research often begins with statutes or regulations, the primary law passed by the legislature or regulatory agency in the relevant jurisdiction. Cases in turn interpret those statutes and regulations. Cases may be the sole source of the law when the doctrine is strictly a common law doctrine; when the statute has not defined its terms, then a series of cases may interpret and define those doctrines or terms.

In all of these situations, cases are important sources of law, analytical patterns, and arguments. As you read and gather materials in the library, you will notice not only what the cases say but also how the courts use the cases. As you develop your research strategies, you will see that you can choose among numerous approaches to using cases, including the following.

SOME TRADITIONAL METHODS FOR USING CASES.

**Method #1: Cases as pure common law analysis.** Use this approach when there is no statutory law. The doctrine being researched exists only in case law and has been developed through *stare decisis*, the method that requires that like cases be treated in like manner. Pure common law analysis is now rare; there are very few common law doctrines left because most law has been codified. Nevertheless, the idea of comparing current cases to past cases still works in interpreting statutes.

**Method #2: Cases interpreting statutes.** Once a statute has codified common law, cases focus on those statutes. You may have to investigate cases interpreting statutes after the statute has either codified or rejected previous common law. If the statute has codified common law, then cases existing before the codification are good law and useful in interpreting the statute. If the statute has partially or wholly rejected common law, then previous cases may be useful in determining why the statute states the law as it does, but you may focus more on the cases following the statute.

**Method #3: Cases demonstrating interpretive patterns.** Cases may be useful not as literal interpretations of a doctrine, but rather as indicators of how courts interpret the law. If, for example, you want to build an argument about using plain meaning in interpreting statutes,

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you may look at how the court has interpreted a number of statutes, not just the statute in question.

SOME MODERN METHODS FOR USING CASES.

Method #4: Cases showing trends. Use this approach when you want to characterize how several cases are using the law. Sometimes cases fall into certain categories that demonstrate trends in interpretive methods and outcomes. Such sources as American Law Reports Annotated and law review articles may outline these trends, which introduce arguments outside the realm of case comparison or the synthesis of many cases into a rule. Instead, the courts may actually be split in their interpretations, some of them using sociological methods, others recognizing the role of medicine in the law, others factoring in history, and so on. These trends may themselves offer non-traditional approaches to argumentation.

Method #5: Cases showing innovative interpretive methods. You may want to assist a court in interpreting statutes beyond the traditional means. As societal conditions change, so do interpretive methods. Case precedent may not be relevant when the issue is current labor conditions or economic circumstances. Judges are often flexible and welcome more appropriate methods for reaching valid decisions. Thus you may want to read cases for emerging doctrines and methods that move beyond case precedent, case comparison, or stare decisis synthesis of preceding cases.

Method #6: Cases interpreting standards of review. Any appellate court must follow certain rules for reviewing the cases below. Those rules are called standards of review, and they restrict how much a reviewing court may do. This area of law is still developing, and you may find a series of cases about the standard of review, not necessarily about a particular doctrine.

This handout will focus on the first three of these methods, which are helpful starting points in becoming accustomed to common law interpretations. Before using cases, however, you will want to read and interpret them in a systematic way by briefing the cases for the purposes of your writing project.

CASE BRIEFING AS PREPARATION FOR INTERPRETING AND USING CASES.

As you look at these basic ways for reading, interpreting, and selecting cases to use in your analysis, you will want to takes notes, dissecting the case so that you can reassemble it in your analysis. Read for several things at once:

- The general treatment of a particular doctrine.
- The procedural posture of the case.
- The facts of the case.
- The issue, as presented by the court; the issue as interpreted by the reader.
- The holding, which includes the answer to the issue and the reasons.
- The statement of the prevailing rule in that doctrine.
- The analytical approach or pattern used by the court.
• The commentary provided by the court, usually called *dicta*.
• The standard of review, where relevant.

Use these factors to take notes—case briefs—as you read the cases and consider how you can analyze them for a particular situation. The case briefs help you to remember the cases, sort them, and discover how the courts treat a particular doctrine. For examples of case briefing, see your first year LRW Course Materials or ask at the Writing Center.

In traditional legal writing, when you use cases in a legal document, you will often be reassembling your notes to illustrate how a rule will be applied in your particular case, to demonstrate where your client’s situation fits within precedent, or to prove that the law should be changed. You will reassemble the cases in any number of ways, some of which follow.

**Method #1 for Using Cases: Cases as pure common law analysis.**

You may use this in either a common law situation or in showing how cases have contributed to the rule stated in but not defined by a statute. You will know which to select by looking at *the analytical approach or pattern used by the court*. Sometimes the court chooses a traditional pattern of comparing this situation to previous situations. Sometimes the statute’s elements are not defined in the statutes, but in the cases. In synthesizing the rule, you want to draw from your case brief *the statement of the prevailing rule in that doctrine*. You may also want to draw *the holding, which includes the answer to the issue and the reasons*. In a *stare decisis* system, those holdings will provide the rule by which the current situation will be analyzed. Assembling all of those rules gives you the synthesized rule for this situation.

**Example A. Synthesizing a rule.**

In order to state a cause of action, a plaintiff must prove that the defendant either intended his actions to inflict severe emotional distress or knew that there was a high probability of his actions causing severe emotional distress. *Public Finance Corp.*, 360 N.E.2d at 767. It is not enough that the defendant acted with a tortious or criminal intent; the defendant must intend the severe emotional distress or know that it will result from his actions. *Knierim v. Izzo*, 174 N.E.2d 157, 164 (Ill. 1961). In order for Ms. Hudson to sustain a claim for this tort, she must allege that Mr. Crowe intended or knew that his act of arson would cause her severe emotional distress.

If you are working within the precedential pattern, or *stare decisis*, you will need to compare the current situation to previous situations, this time drawing from both the holding and the facts of the case. In doing so, you may either compare or distinguish your case, depending on your point of view. This analogical reasoning is used in traditional settings, though it can be a bit shaky. There is always an argument that something is similar or different because there are so many nuances to the facts, so many reasons that the case may or may not be similar. To be safe, compare the case to several cases because one comparison does not really “prove” the case.
Example B. Comparison of this situation to previous cases.

Because this federal jurisdiction allows attorney guarantees for living expenses under the circumstances present in this case, the state of Ohio should be prevented from punishing attorneys who provide such loans to clients bringing FELA claims in federal court. See County of Suffolk v. Long Island Lighting Co., 710 F. Supp. 1407, 1414 (E.D.N.Y. 1989). In Suffolk, the issue was whether DR 5-103(B) could be enforced to prevent the advancement of litigation costs in class actions brought in federal court where the attorney did not expect to be reimbursed as required by the rule. Id. at 1414-15. The court approved preemption of the rule due to federal policy in favor of class action litigation. Id. Most importantly, the court held that the state could not attempt to enforce its ethical rule against a lawyer who violated the rule in federal court because the federal court had permitted the departure. Id. at 1414. “Such an attempt by the state,” the court held, “would be barred by the supremacy clause of the United States Constitution.” Id.

This Court recently affirmed the principle that state rules governing attorney conduct are preempted when they punish conduct permitted before federal courts. In re Desilets, 291 F.3d 925, 931 (6th Cir. 2002). The Court held that a lawyer licensed to practice law in Texas, and thereby properly admitted to the bar of the Western District of Michigan, could practice before the bankruptcy court in that district without being admitted to the Michigan state courts as required by state rules. Id. at 930-31. Under the federal rules of the district, the attorney licensed in another state was eligible to be admitted to practice before the federal courts. Id. Critical to the holding was the fact that, as in this case, the local federal rules permitted the conduct for which the attorney was being punished. Id. at 929-30. Here, as in Suffolk and In re Desilets, this Court should not allow Ohio to punish attorneys providing loans for needed living expenses in FELA claims brought in federal court because federal law permits the practice.

Combined, the rule synthesis and comparisons provide a pattern of analogical reasoning to reach a conclusion, as in the following examples.

Example C. Rule synthesis and comparison of this situation to previous cases.

Under the right of integrity, the term “work of recognized stature” is not defined by the statute. Instead, the courts have focused on (1) whether “the visual art in question has ‘stature,’ that is, is viewed as meritorious; and (2) whether “this stature is ‘recognized’ by art experts, other members of the artistic community, or by some cross-section of society.” Solar v. Neymour, 150 F. Supp. 2d 887, 889 (N.D.N.Y. 2002); accord Nartine v. City of Gary, 192 F.3d 608, 612 (7th Cir. 2001). A plaintiff need not demonstrate that his artwork is equal in stature to that created by artists such as Picasso,

In Mr. Williams’ case, stir created in the artistic community by his work of art, “Zenith,” confirms the piece’s stature, as did the written notice of the changes made to the work. As in Solar, this work received national attention and commentary by the art critics. And as in Nartine, the work was seen as meritorious, partly because of the cost of the work, and partly because of the artist’s reputation. The stature was also recognized by the artistic community as in Solar, where critics exchanged views in the newspapers and as in Nartine, where the artistic community had awarded the artist. Williams and his work, particularly “Zenith,” are well known, as demonstrated by the several reviews submitted to the court.

Example D. Rule synthesis and comparison of this situation to previous cases.

The commonplace item that Fox saw, a keychain with an etched initial, lacks features of immediately apparent contraband such as drugs or weapons. See D.C. Code Ann. § 33-564 (2000) (allowing warrantless seizures of controlled substances); United States v. Backstrom, 252 A.2d 909, 910 (D.C. 1969) (noting that drugs and weapons are immediately apparent contraband). Commonplace items, even with suspicious identification, receive less deference. See Bynum, 386 A.2d at 687-88 (noting that tape recorder etched with name and address that searching officer recognized from robbery report was not immediately apparent contraband, in full probable cause analysis after holding seizure illegal because officer lacked legal access); Gant v. United States, 518 A.2d 103, 109 (D.C. 1981) (holding that clothing that matched suspect’s profile “was not obvious” evidence). Similarly, the keychain lacks immediately incriminating features. It is not a drug or weapon but is more common, like clothing or stereo equipment. Even if Fox had clearly seen a money clip etched with the victim’s full initials and remembered a similar stolen item, he would not have probable cause, according to Bynum. The keychain was not immediately apparent contraband, and Fox’s seizure was illegal.

Example E. Rule synthesis and comparison of this situation to previous cases.

A weak connection to a crime will not support a finding of probable cause and stands in sharp contrast to circumstances in cases where the court found probable cause. See Davis v. United States, 745 A.2d 284 (D.C. 2000). In Davis, pursuant to the plain-view doctrine, the court upheld the seizure of a woman’s identification card and purse from a car because the car and the occupants perfectly matched the description of a car and two male assailants who minutes earlier robbed a woman of her purse. Id. at 288, 290-91. There the connection between the purse and the robbery providing probable cause was strong, whereas Fox’s suspicions are relatively weak. In fact, Fox had even less information than the officer in Bynum, where the court did not find probable cause. Bynum, 386 A.2d at 688. In Bynum, while employing a search warrant in an apartment
to find stolen goods from a recent house burglary, an officer saw a tape recorder with a
name and address etched on its side. Id. at 686. Knowing that the address matched the
site of another recent burglary, the officer seized the item. Id. The court rejected a
finding of probable cause that would eliminate the need for a warrant, finding that the
officer possessed “mere suspicion” that the tape recorder was contraband. Id. at 688.
Similarly, Fox himself merely admitted to suspicion and his inchoate hunch does not
amount to probable cause.

Example F. Rule synthesis and comparison of this situation to previous cases.

Items associated with very recent crimes help create probable cause, whereas
items involved in more distant crimes, such as those alleged to have been committed by
Mr. Friedrich, do not. Compare Vance v. United States, 399 A.2d 52, 58 (D.C. 1979)
(upholding seizure of a raincoat when robbery occurred hours earlier, suspect fled in
raincoat, and officer found raincoat beside gun and moneybag) with Bynum, 386 A.2d at
687-88 (noting officer lacked probable cause to seize item involved in crime that
occurred two months earlier). Here, the crime occurred nearly four months prior to Fox’s
seizure, far longer than the same day in Vance and two months in Bynum and thus
beyond the applicable range to find probable cause. As such, Mr. Friedrich’s crime is
irrelevant for probable cause determination.

Example G. Rule synthesis and comparison of this situation to previous cases.

Grossly incompetent medical care or choice of an “easier but less efficacious
treatment” can constitute deliberate indifference. McElligott v. Foley, 182 F.3d 1248,
1259 (11th Cir. 1999). In McElligott and Carswell, the plaintiff prisoners’ repeated
requests for medical care and attention were not adequately addressed by prison officials.
McElligott, 182 F.3d at 1251-55; Carswell v. Bay County, 854 F.2d 454, 455 (11th Cir.
1988). The plaintiff in McElligott, who suffered from abdominal pain, vomiting, nausea,
and diarrhea, was given nothing other than Tylenol, Pepto-Bismol, and an anti-gas
medication. 182 F.3d at 1252. The plaintiff in Carswell, who suffered from a rash,
constipation, and significant weight loss, was given nothing more than pain relievers,
laxatives, and a cream for the rash. 854 F.2d at 455, 457. Nothing significant was done
to alleviate the prisoners’ pain and suffering, allowing their conditions to deteriorate until
they finally required hospitalization. 182 F.3d at 1254; 854 F.2d at 455, 457. Only then
was the plaintiff in McElligott diagnosed with terminal cancer and the plaintiff in
Carswell as diabetic. 182 F.3d at 1254; 854 F.2d at 455. The court held that the prisons
had provided grossly inadequate treatment of the prisoners’ worsening conditions,
thereby reflecting deliberate indifference to the prisoners’ pain and suffering. 182 F.3d at
1258; 854 F.2d at 457.

Wellville demonstrated deliberate indifference to Dr. Ossining’s serious medical
needs by failing to provide a gluten-free diet, the only possible treatment for celiac
disease. Like the plaintiffs in McElligott and Carswell whose “less efficacious
treatments” of laxatives, anti-gas medications, and pain relievers did little to alleviate their pain and suffering, Dr. Ossining’s “less efficacious treatment” of iron supplements minimized his anemia but did nothing to alleviate his fatigue, depression, or itchy rash. (Ossining Aff. ¶ 12.) Like the plaintiffs in McElligott and Carswell who suffered needlessly until they were hospitalized for terminal cancer and diabetes, respectively, Dr. Ossining should not have to be hospitalized for bowel cancer or diabetes before a court finds evidence of deliberate indifference. Because the prison refused to provide Dr. Ossining an endoscopy to confirm a diagnosis of celiac disease and denied his request for the only possible treatment, a gluten-free diet, there is sufficient evidence to satisfy the subjective “deliberate indifference” element of an Eighth Amendment claim.

Method # 2 for Using Cases: Cases interpreting statutes.

If you are working with a statute, it is not enough to quote the statute and jump into the analysis. Rather, your reading of the cases will allow you to pluck from the cases important language interpreting and updating the statute. Combine relevant statements, used as part of the reasoning in a previous case, to further define the rule.

Example H. Cases interpreting a statute.

Although VARA is contained within the copyright title of the U.S. Code, rights under VARA are not analogous to those historically protected by copyright. Pollara v. Seymour, 150 F. Supp 2d 393, 399 n.10 (N.D.N.Y. 2001) (Pollara I). Rather, VARA protects moral rights that are independent of rights under the general meaning of the copyright statutes. Quality King Distributors, Inc. v. L’Anza Research International, Inc., 523 U.S. 135, 149 (1998). This concept is true because Congress intended to make moral rights distinct from the economic rights that copyrights traditionally protect. Pavia v. 1120 Avenue of the Americas Associates, 901 F. Supp. 620, 629 (S.D.N.Y. 1995) (citing H.R. Rep. No. 101-514, 14 (1990)). VARA consequently has the purpose of protecting the moral rights of “integrity” and “attribution,” even after an artist has given up the legal title to a work. Cort v. St. Paul Fire and Marine Insurance Companies, Inc., 311 F.3d 979, 984-85 (9th Cir. 2002); Carter v. Helmsley-Spear, Inc., 71 F.3d 77, 81 (2d Cir. 1995). To determine whether or not Williams is likely to be successful in bringing a claim under VARA, we must determine whether or not Zenith is a work that is protected by the statute, whether the alterations Bates made violate Williams’s rights to integrity and attribution in his work, and whether these alterations damage his reputation as an artist.

Example I. Cases interpreting a statute.

Georgia case law has long interpreted this statute to mean that the liability of a parent for a tort committed by his or her child is governed by the same principles that govern the liability of a master for a tort committed by his or her servant. See e.g., Stanford v. Smith, 173 Ga. 165, 159 S.E. 666 (1931) (parenthetical omitted); Corley v.
Lewless, 227 Ga. 745, 182 S.E.2d 766 (1971) (parenthetical omitted); Muse v. Ozment, 152 Ga. App. 896, 264 S.E.2d 328 (1980) (parenthetical omitted). In accordance with that interpretation of the statute, parents generally have been held not liable for torts of their minor children when the parents were in no way connected with those torts, did not ratify them, and derived no benefit from them. See e.g., Hubert v. Harpe, 181 Ga. 168, 182 S.E. 167 (1935) (parenthetical omitted); Herrin v. Lamar, 106 Ga. App. 91, 126 S.E.2d 454 (1962) (parenthetical omitted); Wittke v. Horne’s Enterprises, Inc., 118 Ga. App. 211, 162 S.E.2d 898 (1968).

Method # 3 for Using Cases: Cases demonstrating interpretive patterns.

If you are without the perfect case that matches (is “on all fours” with) yours exactly, you will often need to move beyond comparisons of the facts of the cases to a deeper look at the interpretive patterns used in the cases. You will compare those interpretive patterns as you read and brief the cases, and you may discover certain approaches to interpreting the common law doctrine or the statute. These approaches can help you to establish your own interpretive pattern as you present the arguments in a memo, brief, opinion letter, or substantive e-mail. Those patterns are themselves arguments for coming to specific conclusions: the decision-maker should follow the interpretive patterns of those who decided before or should pay attention to certain interpretive trends.

Example J. Cases transferring an interpretive pattern from a statute to a common law doctrine.

[Continued from Sample I]

Under Georgia case law, the same principles apply to automobile use and the family car doctrine. That is, with regard to automobile-related torts, the liability of a parent for an action of his or her child is similar to the liability of a master or a principal for an action of his or her servant or agent, respectively. See Johnson v. Brant, 93 Ga. App. 44, 90 S.E.2d 587 (1955) (parenthetical omitted); Temple v. Chastain, 989 Ga. App. 719, 109 S.E.2d 897 (1959) (parenthetical omitted). Thus for a parent to be vicariously liable for a child’s tort under the family car doctrine, the child must be acting as the servant or agent of the parent at the time the tort is committed. Grahl v. McMath, 59 Ga. App. 247, 200 S.E. 342 (1938). And such agency must be proved as in other cases, except when the law presumes agency. Durden v. Maddox, 73 Ga. App. 491, 37 S.E.2d 219 (1946). Currently, then, the family car doctrine requires four elements to be proved: …. Quattlebaum v. Wallace, 156 Ga. App. 519, 275 S.E.2d 104 (1980); (further cites omitted).
Example K. Cases demonstrating interpretive patterns among states.

There are precedents from other jurisdictions that support a case for both recovery and non-recovery for the death of the Petrowski fetus under West Virginia’s wrongful death statute. The court will be following the lead of a minority of jurisdictions if it extends the holding in Baldwin and recognizes the Petrowskis’ nonviable stillborn fetus as a “person” for purposes of recovery under the statute. The court in Baldwin cited an earlier case that stated that the West Virginia statute is “remedial, and should be construed liberally for the purposes of carry out the legislative intent.” Richards v. Riverside Iron Works, 56 W. Va. 510, 49 S.E. 437 (1904). The use of precedent and the reasoning that the court used in Baldwin to extend then-existing law is quite similar to the reasoning used by the New Jersey Supreme Court when it held that nonviable infants should be recognized as “persons” under New Jersey’s wrongful death statute. Presley v. Newport Hospital, 117 R.I. 17, 365 A.2d 748 (1976). Another court, in sustaining damages for injuries incurred by a nonviable fetus subsequently born alive, stated that lack of precedent should not bar recovery when a wrong has been committed. Daley v. Meier, 33 Ill. App. 2d 218, 178 N.E.2d 691 (1961). Taken together, the interpretive approach stated in Richards and the current trend in other states suggest that West Virginia should allow recovery under the wrongful death statute for the death of the Petrowski fetus.
WRITING HINTS

If you are synthesizing cases, comparing cases, or interpreting patterns, you can use three writing tools to clarify your analysis: (1) parallel structure, (2) clear transitions, and (3) effective subjects and verbs. See Mary B. Ray & Jill J. Ramsfield, Legal Writing: Getting It Right and Getting It Written, (3d ed. 2000).

1. **Parallel Structure.** Place items compared in parallel structure. The framework of the parallel structure highlights the similarity or the differences in the substance.

   **Example.** In both Sampson and Smith, the landlords had been asked to replace the burnt-out light bulbs in the stairwell and the broken windows, respectively, but had refused to do so. Similarly, Mr. Tyler had been asked to place high wattage light bulbs in the stairwell, but had refused to do so.

2. **Clear Transitions.** Transitions let the reader know that a comparison or contrast is coming.

   **Example.** In 1919, when the doctrine of best interest of the child became the controlling consideration in child custody disputes, the results of those disputes changed. Until then, custody was usually awarded to the father. After 1919, however, custody usually was awarded to mothers.

3. **Effective Subjects and Verbs.** Try to place the key items in the main part of the sentence, the subject and verb. For example, the following passage emphasizes the point that both fetuses were viable.

   **Example.** In Kwatersiki, the unborn infant, in its eighth month of gestation, was found viable before the car accident causing its death. Similarly, the Jones infant, in its seventh month of gestation, was viable before the accident causing its death.

This handout covers three traditional methods of using cases. If you are interested in other ways of using cases, see the handout “Modern Case Choices” (soon to be released).