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 conveying 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. Even when law is based on a statute, cases interpreting the terms and intent of the statute are invaluable tools for legal writers.

Some methods for using cases, discussed in detail below, include:

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.

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

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.

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.

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.

I. CHOOSING CASES

When sifting through piles of research, determining which cases are relevant and material to your argument may seem like a daunting task. Often, you will want to use cases for a particular point of law or in reference to a specific fact. Be mindful of what the particular issue or point you are addressing and do not shy away from discussing weaknesses in your argument.

Briefing cases is a useful method for selecting cases to use in your analysis as it allows you to dissect a case so that you can reassemble it in your analysis. Case briefs help you remember the cases, sort them, and discover how you may use the facts or holding in your writing. Use the following factors to take notes—case briefs—as you read through the cases and consider how you can analyze them for a particular situation:

- The general treatment of a particular doctrine.
- The procedural posture of the case.
- The facts of the case—are they similar to your case? Are they so dissimilar that you may easily distinguish the case from the one at hand?
- 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.

II. USING CASES

Cases are important sources of law, analytical patterns, and arguments. Note that 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. 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 provide sufficient context for your case.

As you develop your research strategies, you will see that you can choose among numerous approaches to using cases, the following are some:

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. Look to *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.

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. *See Knierim v. Izzo*, 174 N.E.2d 157, 164 (Ill. 1961).

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 court held that the state could not enforce its ethical rule against an attorney who did not expect to be reimbursed as required by the rule when federal court permitted the departure. *See County of Suffolk v. Long Island Lighting Co.*, 710 F. Supp. 1407, 1414-15 (E.D.N.Y. 1989). 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.

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 famous artists nor must the trier of fact personally find the art aesthetically pleasant. *See Carter v. Helmsley-Spear, Inc.*, 861 F. Supp. 303, 323 (S.D.N.Y. 1994). 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. Like in *Solar*, this work received national attention and commentary by the art critics. Moreover, Williams and his work, particularly "Zenith," are well known, as demonstrated by the several reviews submitted to the court

- Grossly incompetent medical care or choice of an "easier but less efficacious treatment" can constitute deliberate indifference. *See 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. 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. 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.) 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.

- 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.

- 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.

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.

Interpreting a Statute's Intention

- 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). 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). 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.

Interpreting a Statute's Application

- 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*, 159 S.E. 666 (1931); *Corley v. Lewless*, 182 S.E.2d 766 (1971); *Muse v. Ozment*, 264 S.E.2d 328 (1980). 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*, 182 S.E. 167 (1935); *Herrin v. Lamar*, 126 S.E.2d 454 (1962) (parenthetical omitted); *Wittke v. Horne's Enterprises, Inc.*, 162 S.E.2d 898 (1968).

Cases Demonstrating Interpretive Patterns

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.

Cases Transferring an Interpretive Pattern from a Statute to a Common Law Doctrine

- 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*, 90 S.E.2d 587 (1955) (parenthetical omitted); *Temple v. Chastain*, 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*, 200 S.E. 342 (1938). And such agency must be proved as in other cases, except when the law presumes agency. *Durden v. Maddox*, 37 S.E.2d 219 (1946). Currently, then, the family car doctrine requires four elements to be proved. *Quattlebaum v. Wallace*, 275 S.E.2d 104 (1980); (further cites omitted).

Cases Demonstrating Interpretive Patterns Among States

- There are precedents from other jurisdictions that support as 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*, 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*, 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*, 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.

If you are without the perfect case that matches 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. 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.

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.

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Cases Interpreting Standards of Review

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