

## Study Skills Workshop I

### HOW TO GET THE MOST OUT OF CLASS

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#### How to Maximize your Class Preparation and Case Briefing

##### I. Tips for class preparation

###### Obtain a context for the upcoming assignment.

Pay close attention to any information given in the syllabus about the context or the prioritization of course topics.

###### Actively read your assignment and brief every case.

**1. Survey.** Skim the reading if possible by focusing on section headings and topic sentences. Mark the opinion sections if possible (you may also do this during your first full read through—see below). Many opinions follow the pattern of:

- 1) Introduction (often including an issue statement)
- 2) Facts (factual background prior to filing suit)
- 3) Procedural history (including both (1) parties' claims and evidence developed during discovery and trial and (2) decisions in the lower courts)
- 4) Statement of relevant rules and precedent
- 5) Analysis or application of rules to the relevant facts (providing the rationale for the holding)
- 6) Holding/Conclusion (decision as to what happens next)

Note the holding/conclusion because knowing where the court is going will help you trace the logic of how it got there. Also, pay attention to the date of the opinion because that date will help you anticipate the type of language the court will use (McKinney 110).

###### **2. Question.**

For every case, remember to ask: what is the *exact legal question* the court is being asked to resolve and how did the court resolve it (McKinney). Refer back to the case's context to help you frame your question. Framing such a question relates to Ruth Ann McKinney's suggestion that legal readers must read with a "clear purpose" (McKinney 97).

###### **3. Read.** *Plan on reading each case at least two times in preparing for class.*

Read actively by underlining or highlighting key words and phrases, using an asterisk or sign to indicate an important definition or rule of law, key analytical points, or the court's

reasoning. For example, you can use an “F” for facts, an “I” for issue, a “C” for conclusion/holding, and so on. The purpose of these marks is to help you quickly identify important points when you return later to review the material for class discussion or exam preparation. *Don’t worry about marking everything when you read a case through the first time*; you will essentially be re-reading it as you read it through a second time when you prepare your brief.

Don’t forget about reading the Notes and Questions sections that appear in your casebooks. Casebook authors usually use these sections to focus on the important issues from the cases or other main reading. The questions can also serve as good material to test your understanding of the legal concepts at issue. Even if your professor rarely discusses these sections, if they are assigned, you should at least read through them, think about the questions (Shapo & Shapo), and jot down important points from the questions when they sharpen your understanding of the main rules.

Concentrating on the Questions section is especially important in Christian Foundations of Law. Class discussion may sometimes center on students’ reactions to the reading, so answering the questions in the book can help you understand the reading before you worry about your reaction to it.

Moreover, if your professor spends a long time discussing a note case, you may find it helpful to read the full opinion. In general, however, do not worry about reading the full text of cited cases.

Other general tips on case reading (from McKinney):

- Use reading cues to your advantage (e.g., pay attention to paragraph breaks, transitional words, and key phrases (like “thus,” “we hold,” “it has long been recognized,” “we agree with [plaintiff’s argument]”).
- Read carefully but don’t obsess until you feel you’ve understood the case perfectly (i.e., “relax on perfection” and “relax on closure”).
- “Read with a purpose—case reading is about learning legal principles and how lawyers reason, not about how you look or feel in class.”
- “Work with an established time limit and stick to it.”

*If you need to accelerate your reading speed:*

1. *“shape” your behavior gradually by cutting down your reading time by a few minutes each day;*
  2. *ask yourself whether your study environment is conducive to reading;*
  3. *reward focused, intensive, efficient reading and punish lazy unfocused, unproductive reading*
- Remember that reading itself is a relatively passive activity, so your case reading (not briefing) should take no more than 65% - 70% of your total study time.
  - If you’re having difficulty falling asleep, be sure you are stopping reading and studying at least an hour before bedtime so that your mind has time to unwind.

SEE APPENDIX A for sample case reading.

**4. wRite.** After your first read-through, go back and review the case/reading again to complete your brief for the case or to jot down key points from the reading. *Remember to take notes on non-case reading; taking notes helps you learn the material so remember to use active learning techniques even when you're reading non-case material.* (You may be able to jot down key points from non-case reading during the first read-through. Also, you may be able to brief as you're completing your second read-through, or you may need to complete your second read-through before you compose your brief.) Don't simply copy statements from the opinion into your brief (except for important rule statements or phrases); learn to summarize because that encourages you to think critically.

RETURN TO APPENDIX A. How might you brief the *Morrison's* case?

In completing the sections of your brief:

- **Focus on the facts that are legally relevant**, that is, those that are “pivotal” to the court in deciding the case (i.e., those that had they been different, the outcome would likely have been different) and those that explain what brought the parties to this dispute. In sum, your “Facts” section should include all of the facts that the court ultimately relied upon in its reasoning and it should not include much more. Therefore, your “Facts” and “Analysis/Application” sections should focus on the same facts.
- **Don't agonize over the nuances of the procedural history.** Although some professors will question you about this history, it is only relevant in terms of exam preparation when it explains aspects of a court's reasoning (for example, why the court did not address a particular point). For courses other than Civil Procedure, you will not be tested on the procedural rules that framed the issue on appeal. The case before you—not the decision below—represents the black letter law.
- **Phrase your issue in a way that links the forthcoming rule to the relevant facts** of the particular case. Consider the “Whether + SVO + When + Facts” formula as guide (Stropus & Taylor). For multiple issue cases, track the discrete issue, if possible, in your rule and analysis sections. SEE APPENDIX B.
- **Focus on the case rule(s) (“the rule(s) of the case”) that pertain to the relevant concept and that seem readily analogizeable to other situations.** A rule of law has been defined as “an abstract or general statement of what the law permits or requires of classes of persons in classes of circumstances” (Steven J. Burton, *An Introduction to Law and Legal Reasoning* 13 (1985)). Here, it is helpful to think about the fact that you will be *applying* the rule from this case to new situations.
- **Phrase (or “brief”) the rules in a format that helps you apply them to new factual situations.** SEE APPENDICES C AND D.
- **Remember to complete the “concept” and “connections” section in your brief.** Completing these sections will accelerate your outlining process. Some students struggle completing the connections section. It may be helpful to think about the two sections this way: the “concept” section tells you under what heading this case will fall in your upcoming outline; the “connections” section tells you how this case will relate to the other cases under that same heading.

**5. Remember.** During your reading session, use memory techniques to buttress your remembrance of the material. Specific techniques include: (1) repetition/recitation (best for auditory learners and for remembering information that is not very detailed); (2) **mnemonics** (best for auditory and tactile learners and for remembering detailed information); (3) graphic organizers (best for visual learners and for remembering highly detailed information)

*Think: How can I break this information down into nuggets that I can remember? Are there any memorable facts/statements (in addition to what's included on my formal brief) that I can jot down to jog my memory later?*

**6. Review.** Review the cases in a particular assignment at the end of your study session to refresh your memory and to make connections between cases. Use larger blocks of time of time (such as on weekends) to do larger-scale reviews where you anticipate outlining sections of the course.

**3. Review briefs and notes from reading (and previous class notes, if possible) right before class.**

### **How to Maximize your Class Time**

#### **HOW TO FORMAT YOUR NOTES**

One format that has proven effective is the “Cornell” format. Under this format, you first draw a margin about 1/3 of the way into the left-hand side of the page. You then write down the narrative of class discussion on the right of the margin and place on the left side key words, topic headings, case names, hypothetical questions, and the like. “Law margin” pads, like those in the bookstore, adopt this Cornell format.

If you are taking notes on your computer, be sure to “annotate” your notes in a similar way by bolding or underlining key words and the like.

If you have time during class (such as when another student is going down a rabbit trail!), consider adding graphics or pictures to your notes. These additional visual clues will help you remember the information in your notes.

*Organize your notes by keeping your notes along with class handouts, your briefs, your outlines, and other course materials in a single binder for each class.*

#### **WHAT TO WRITE DOWN**

Deciding what to record in your notes is the main notetaking issue in law school. Most students think at a rate of 400 words per minute whereas most professors only speak at a rate of 100 words per minute (Walton & Emanuel). Even if your professor talks quickly; you may find that he or she repeats central themes in different words during the course of the class. You therefore should have the time to process what the professor is saying and write down the key points.

The two extremes of writing down everything or taking very few notes should be avoided because in neither case are you actively engaged in understanding and recording the important points from the class.

**Use the FIRAC (facts-issue-rule-analysis-conclusion) method to help you discern the relevant from the irrelevant information.**

To help you determine what to record in class, think about the fact that you will be writing your essay exam answers using the IRAC method. Begin thinking that way in class! Seek to organize your notes in that way. In this vein, your notetaking should focus on:

FACTS-ISSUES

**1) Your professor’s hypotheticals and examples.** In many exam situations, you will be called first to determine what legal issues are present in the question. Having a clear understanding of what facts usually trigger what issues helps you make that determination. Paying attention to class hypos and examples, in turn, helps you recognize these fact triggers. They serve like mini-exam questions, and they help you think about what factors would need to occur for the conclusion to be different. In your notes, be sure to highlight the actual hypothetical and then include the answer, if given, right beneath. *If an answer is not provided, try to solve the hypo on your own or in a study group.*

RULES

**2) Any rules and definitions that the professor provides.**

Although you should avoid generally trying to take notes word for word, here is one instance where you should try to record exactly what the professor has said. You will be called upon to state precisely the rule on an exam; therefore, you want to develop a precise understanding of that rule as soon as possible. If the professor defines the rule for you, learn that definition and use that as a framework from which to expand your understanding of how that rule should be applied. Moreover, if a professor restates the rule several times, make sure that you record all restatements and that you harmonize them; usually the last restatement is the most precise.

**3) Relevant legal terms (or “terms of art”) to be sure that you understand their meaning.**

ANALYSIS-APPLICATION

**4) Any of the rules’ rationales that the professor stresses.**

Similarly, don’t just gloss over class discussion involving the *rationale* (the “why”) behind the rules. These rationales for the how the rule has developed help you understand the limits of the application of the rules. Specifically, many exam questions test “gray areas” and understanding the policies and rationales behind the rules will help you explain which rules ought to apply. Also, writing down the rationale helps you learn

and remember the rules. You want to have as many memory triggers to help you remember the rules, and knowing the rationale behind the rules can serve as such a trigger.

*Think: How does this discussion help me understand which facts are relevant to the rule (and therefore which facts will trigger the issue), what are the components of the rule, and how I can analyze the rule to reach a conclusion? Are there any specific rationales that the professor stressed?*

### **5) Professor's questions when they indicate the appropriate progression in analyzing a rule.**

By noting these questions, you can give yourself the questions you, in turn, will need to ask yourself on an exam when you confront the same issue.  
SEE APPENDIX E—Point #3.

*Think: Did the professor provide you with a framework for understanding the components of the rule?*

### **6) Comments from case discussion that help you understand the distinctions among cases or concepts.**

You need not take verbatim notes on much of the discussion of the case readings; if you drafted a solid brief, you need only take minimal notes as you edit your brief. Make sure, however, that you write down any comments that help you understand the lines between when a rule or case does or does not apply. Again, those are the types of decisions that you will be called to make on an exam (and in real practice).

Sometimes the professor will not provide you with a clear principle to understand why one case went one way and a second one went another. When this happens, make a note of the fact that no conclusion was reached. Try to keep that in mind as you progress through the semester; a distinction may be provided later. (For instance, professors may tie in new concepts with ones already discussed, and in that discussion, provide some conclusions about the earlier concepts.) In any event, when you outline that section, you will need to come up with some principle that will help you distinguish among cases.

## **OTHER GENERAL PRINCIPLES**

**“Treat every question as if it is asked of you”** (Tonsing). Try to answer professors' questions yourself (and write down your answer if you can) when another student is called on during class.

**Write down student comments when the professor follows that comment by a statement such as “good point.”** You should also write down student comments when students raise relevant hypotheticals or when they raise sound arguments that you could use within the professor's analytical framework. Write down the student name if you want to follow up with the student. **MOST OF YOU WERE NOT WRITING THEM DOWN; THE HITLER EXAMPLE IN DEAN BRAUCH'S CLASS.**

**Keep alert for points that your professor emphasizes by repetition, extended comment, or verbal clues.** Verbal clues are phrases that indicate important introductions, transitions, or conclusions. For example:

“the court used the following test”

“the following three factors”

“on the other hand”

“in addition”

“consequently”

“therefore”

**Listen carefully to the information given at the beginning and end of class.**

**Pay close attention to information the professor writes on the board or places on an overhead.**

In taking notes on this material, however, don't tune out what the professor is *saying* about the material. That spoken information may be more important than the written material itself.

**Pay close attention to material discussed in the last two weeks of class.**

Professors often have to play “catch up” at the end of the semester. In going over material quickly, they will often hone class discussion in on the key concepts. Also, the professor may be drafting the exam during this time and may provide information as to the material to be covered on the exam.

**Note when your professor emphasizes information by physical cues.**

Once you get a sense of your professors' styles, you should be able to tell when they want to emphasize a point even if they do not repeat it. For instance, changes in the professors' delivery style (e.g., the professors raise their voice, slow down their speech) often indicate emphasis. Also, the professors may emphasize points after they look at their notes, so pay close attention to comments the professor makes after looking at those notes.

**Don't allow your personal prejudices to interfere with your notetaking.**

Don't let the fact that you disagreed with the professor's last point cause you to mull over your disagreement and stop taking notes.

**Don't stop taking notes if you feel lost.**

You may find it difficult at times to follow class discussion. When this happens, don't panic; simply mark that section of the notes with an asterisk and proceed to get as much down possible. You may, of course, ask the professor about your point of confusion either during or after class. Even if you don't question the professor, remember that you are taking your notes for later review; you don't need to understand everything *as you are discussing it in class*. SEE APPENDIX E—Point #2.

**For non case-driven courses (like Christian Foundations of Law), try to organize your notes in a way that categorizes theories and authors and that compares and contrasts them.** Although non-traditional law courses are often not case-driven, principles of organized notetaking still apply. You are going to be faced with a

considerable amount of information; therefore, you must seek to organize that information even while you are processing it in class.

*Think: How can I categorize or conceptualize this rather obscure information into groupings that emphasize the basic tenets and themes?*

**Ask questions during or after class, and write down the questions you have during class (even if you never ask the professor about them).** Asking questions during and after class helps you to think critically about the material. Although you should not be excessive (or “irrelevant”) in your question-asking, you should recognize that if you do not resolve your confusion, it will resurface as you seek to prepare for the exam. Thus, do let intimidation keep you from asking a question. If you are concerned about asking a question in class, resolve to ask the professor afterwards. (You then can stop worrying about whether you should raise your hand!) Also, even if you do not ask your question, you should recognize that you usually know a topic the best after you’ve prepared well and are discussing that case in class. At that point, because you know the material so well, you might come up with nagging questions that you soon forget. These questions may be keys to help you think critically later in the semester when you begin to prepare for the exam by anticipating exam questions.

**If you edit your brief in class on your computer, note your edits by using a different font or type style (such as color).**

**Don’t avoid writing something down just because you think you already know it.**

#### **WHAT TO DO IF YOU’RE CALLED ON**

When you’re called on in class, collect your pre-class notes and briefs in front of you and **listen intently to the questions that are being asked of you.** Don’t simply focus on repeating what you wrote in your pre-class preparatory notes. Professors want you to answer the questions they’re asking, so they’ll often point out when you’re being “nonresponsive.” Ignore to the extent possible what your classmates are doing or thinking; try to imagine that you are having a one-on-one discussion with that professor and, again, focus on the questions he or she is asking you. If you are prepared for class but still make a silly statement, don’t feel defeated. Similarly, don’t put unreasonable pressure on yourself to memorize your pre-class notes or briefs so that you can answer questions in class without referring to them.

Remember that the Socratic dialogue is there for you to learn, and as long as you learn the information and convey that on the exam, you will do well academically in law school. Class performance may be a portion of your grade, *but it does not equal academic success.*

Regarding class participation generally, you should seek to participate in class discussions when you feel that your participation will enhance your understanding of the concept at issue. (And verbalizing your thoughts helps you both to develop your public speaking ability and to “verbalize” your thoughts on paper during an exam.) *Don’t feel guilty, however, about not volunteering in class.* Forcing yourself to participate may actually impede your ability to concentrate on what is being covered in class.

## **What to Do After Class (Pre-Outline)**

According to Professor Barbara Glesser-Fines at the University of Missouri-Kansas City School of Law, “After class review is perhaps the most important, and often overlooked aspect of study.” By quickly (and frequently) reviewing the material you’ve covered in class, you significantly reduce the time at the end of the semester you’ll need to learn the information.

**Step 1—Review and edit your notes as soon as possible after class.** Don’t just “fill in the blanks”; reflect on the notes by, for instance, thinking about additional hypotheticals on the topic discussed. Many students find that taking some time at the end of that day to review their notes (while they are still fresh in their minds) is very beneficial. This review allows them to process the class discussion in a more relaxed setting (Ramy). *Moreover, research has found that without this review students recall less than 20% of a class’s content the next day (Walton).* If you wait more than two days to complete this review, you may forget the details of class discussion and aspects of your notes may appear confusing (Ramy).

In this review, make sure that you:

- **Fill in missing points or misunderstood terms or concepts in your case briefs** (if you did not do this during class).
- **Read your notes to make sure you can understand them.** Underline or otherwise emphasize important points or mark with large question marks what you did not understand.
- **Reflect on the “take home message” from class and reflect on how that information would fit into a big-picture outline (or pre-outline you developed from the syllabus or table of contents).**

Some students put off outlining because they see it as a daunting task. It will be much more manageable and you will be able to remember more, if you begin to structure your outline right after class. Therefore, soon after class (preferably that day), you should attempt to summarize on another sheet of paper or on your computer the key points from the day. You can then insert this information into your pre-outline you developed from the syllabus or table of contents. In this insertion, begin to emphasize the rules from the cases and move the case names underneath the rules as illustrations.

This rough structure will undoubtedly need to be tweaked as the semester progresses, but starting with a basic framework will start you on the outlining process and will help you remember the information from class. In addition, this start will quicken your understanding of the new course material as it comes.

- **If you have time, read cases or materials referred to (but not necessarily assigned) by your professor during class.** Although you will likely not be responsible for this material, reading it can give you important insight into the

professor's analytical framework. Do this, however, only if you have time; remember to lose the unhelpful perfectionism.

The amount of time you spend in this post-class review will vary, but this review need not (and should not) be time-consuming; you will complete a more extensive review at a later point. Budget about 25% of the amount of your class time for this review (thus 15 minutes for an hour class).

**Step 2—Schedule larger blocks of time to review sections of the course.** Most students find that weekends work well for this kind of review; however, you may find that doing an immediate review (mid-week) after you finish a course section may be more beneficial and will help you stagger your review times. If you are constantly working on your outlines on a rolling basis, you likely still will need to schedule a time on the weekends when you can polish your drafts. Moreover, if you schedule a lot of review time during the week, you may have to do more class preparation on the weekends well in advance of class. Be careful about this strategy; you may find yourself having to “re-prepare” right before class because you’ve forgotten what you studied over the weekend.

Remember that reviewing need not only mean outlining. Organizing (not rewriting) your notes, developing concept charts or flashcards, and adding information to your “big picture” section of your brief are good review techniques.

### **Use study groups wisely.**

Although you can use study groups to pursue a variety of activities, group problem solving is perhaps the most useful activity. Remember to appoint a scribe for the group to be sure you have at least one person who writes down all the group's thoughts. *See your study group as more of a “review” group than a “study” group.*

Select tips and examples in this handout come from a variety of sources, including:

1. Ruta K. Stropus and Charlotte D. Taylor, *Bridging the Gap Between College and Law School: Strategies for Success* (Durham, NC: Carolina Academic Press, 2001).
2. Kim Walton and Lazar Emanuel, *Strategies and Tactics for the First Year Law Student* (Larchmont, NY: Emanuel Publishing, 1997).
3. Dennis J. Tonsing. *1000 Days to the Bar—But the Practice of Law Begins Now* (Buffalo, NY: William S. Hein & Co., Inc., 2003).
4. Barbara Glesner Fines. *Law School—Materials for Success*, available at <http://www.law.umkc.edu/faculty/profiles/glesnerfines/success-front.html> © 2000.
5. Herbert T. Ramy. *Why Study Groups are Not for Studying*, available at [www.law.com](http://www.law.com). © 2000.
6. Paul Bateman. *Ten Instructions for Briefing Cases*, available at <http://www.swlaw.edu/programs/briefingcases.htm> © 1999.
7. Ruth Ann McKinney. *Reading Like a Lawyer: Time Saving Strategies for Reading Law Like an Expert* (Durham, NC: Carolina Academic Press, 2005).

# APPENDICES FOR STUDY SKILLS WORKSHOP I

## STUDY SKILLS WORKSHOP I APPENDIX A

### SAMPLE CASE READING

#### SALES (UCC I) CASE

##### Context: Sales—Implied Warranty of Merchantability

Supreme Court of Alabama.

Ex parte MORRISON'S CAFETERIA OF  
MONTGOMERY, INC.  
(Re MORRISON'S CAFETERIA OF  
MONTGOMERY, INC. v.  
Inez HADDOX, Etc.)

431 So.2d 975  
March 11, 1983.

SHORES, Justice.

This case presents a question of first impression in this state. Morrison's Cafeteria of Montgomery, Inc., petitioned this Court for a writ of certiorari to the Court of Civil Appeals following that court's affirmance of the trial court's judgment entered on a jury verdict totalling \$6,000.78 against Morrison's for injuries sustained when Rodney Haddox, a minor, choked on a fishbone while dining at the restaurant.

The facts as found by the Court of Civil Appeals and by which we are bound are as follows:

"Mrs. Haddox testified that around 2:00 or 3:00 p.m. one afternoon in May 1980, she and her three-year-old son Rodney went to Morrison's Cafeteria. Rodney wanted some fish. Mrs. Haddox took one tray and she and Rodney proceeded down the food line. . . . She received a portion of the fish and put it on her tray, together with another food and drink. She saw no signs advertising the fish dish. No one told her that it was a fillet or that it was boneless. She subjectively believed it to be a fillet because of its shape and her prior experience with eating fish dishes at Morrison's. When she and Rodney were seated, Mrs. Haddox cut off a portion of the fish and put it on a plate for Rodney. . . . Rodney apparently became choked on the first

bit of fish. When Rodney was taken to the hospital, it was discovered that a fishbone approximately one centimeter in length was lodged in his tonsil. The bone was removed after Rodney stayed in the hospital overnight. He suffered no permanent physical injury as a result of the incident.

\* \* \*

"Mrs. Haddox brought suit on behalf of Rodney and herself against Morrison's . . . to recover medical expenses and to compensate Rodney for his pain and suffering.

\* \* \*

"The trial court submitted the case to the jury on the theories of implied warranty of fitness for human consumption. . . .

"The jury returned a verdict in favor of Mrs. Haddox and against Morrison's in the amount of \$1,000.78. Rodney was awarded a verdict against Morrison's for \$5,000.00. . . ."

Morrison's appealed to the Court of Civil Appeals.

. . . Morrison's urged the Court of Civil Appeals to adopt the so-called "foreign-natural" rule and determine as a matter of law that a bone in a piece of fish does not breach the implied warranty of fitness.

A divided Court of Civil Appeals, in affirming the trial court's decision, rejected the "foreign-natural" rule in favor of the "reasonable expectation" test. Judge Holmes, dissenting in part, agreed with the majority's adoption of the reasonable expectation test, but did not agree that the test under the present facts mandated an affirmance of the trial court.

This Court granted Morrison's petition for certiorari on October 19, 1982. We reverse.

The issue concerns the interpretation to be given [Ala.Code 1975, § 7-2-314](#), which provides in

part:

"(1) Unless excluded or modified (section 7-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

"(2) Goods to be merchantable must be at least such as:

"....

"(c) Are fit for the ordinary purposes for which such goods are used...."

\* \* \*

The Court of Civil Appeals rejected the adoption of the so-called "foreign- natural" rule urged by Morrison's. This rule first appeared in [Mix v. Ingersoll Candy Co., 6 Cal.2d 674, 59 P.2d 144 \(1936\)](#), where the court, holding that a fragment of chicken bone did not render a chicken pie unfit for human consumption as a matter of law, stated:

\* \* \*

*"Bones which are natural to the type of meat served cannot legitimately be called a foreign substance, and a consumer who eats meat dishes ought to anticipate and be on his guard against the presence of such bones. At least he cannot hold the restaurant keeper whose representation implied by law is that the meat dish is reasonably fit for human consumption, liable for any injury occurring as a result of the presence of a chicken bone in such chicken pie."* (Emphasis added.)

[59 P.2d at 148.](#)

The undesirability of the foreign substance test lies in the artificial application at the initial stage of processing the food without consideration of the expectations of the consumer in the final product served. Surely it is within the expectation of the consumer to find a bone in a T-bone steak; but just as certainly it is reasonable for a consumer not to expect to find a bone in a package of hamburger meat. It is entirely possible that a natural substance found in processed food may be more indigestible and cause more injury than many "foreign" substances.

The "reasonable expectation" test as adopted by the Florida courts in [Zabner v. Howard Johnson's, Inc., 201 So.2d 824](#)

[\(Fla. Dist. Ct. App. 1967\)](#), appears to us a more logical approach. Under that test, the pivotal issue is what is reasonably expected by the consumer in the food as served, not what might be natural to the ingredients of that food prior to preparation. [Id. at 826.](#) "Naturalness of the substance to any ingredients in the food served is important only in determining whether the consumer may reasonably expect to find such substance in the particular type of dish or style of food served." *Id.*

Adoption in this jurisdiction of the reasonable expectation test is compatible with the Alabama Extended Manufacturer's Liability Doctrine and the implied warranty of merchantability ([§ 7-2-314](#)). The terms "defect," "unreasonably dangerous," and "merchantable" all focus upon the expectations of the ordinary consumer, possessed of the ordinary knowledge common to the community. [Casrell v. Altec Industries, Inc., 335 So.2d 128, 133 \(Ala. 1976\)](#), quoting [Welch v. Outboard Marine Corp., 481 F.2d 252 \(5th Cir. 1973\)](#).

The Court of Civil Appeals held that what a consumer is reasonably justified in expecting is a question for the jury. [Morrison's Cafeteria of Montgomery, Inc. v. Haddox, 431 So.2d 969 \(Ala. Civ. App. 1982\)](#), citing [Hochberg v. O'Donnell's Restaurant, Inc., 272 A.2d 846 \(D.C. App. 1971\)](#). We agree that in most instances this would be true. In other instances, however, we agree with the California Supreme Court in [Mix v. Ingersoll Candy Co., supra](#), wherein that court held:

"Although it may frequently be a question for a jury as the trier of facts to determine whether or not the particular defect alleged rendered the food not reasonably fit for human consumption, yet certain cases present facts from which the court itself may say as a matter of law that the alleged defect does not fall within the terms of the statute."

[6 Cal.2d at 681-82, 59 P.2d at 148. . . .](#)

We agree with Judge Holmes in the instant case that, on the facts presented, the Court should find as a matter of law that a one-centimeter bone found in a fish fillet "makes that fish neither unfit for human consumption nor unreasonably dangerous." [Morrison's Cafeteria of Montgomery, Inc. v. Haddox, 431 So.2d 969 \(Ala. Civ. App. 1982\)](#), Holmes, J., dissenting.

Courts cannot and must not ignore the common

experience of life and allow rules to develop that would make sellers of food or other consumer goods insurers of the products they sell. As has been pointed out, "consumers do have rather high expectations as to the safety of the products which are offered for sale to them ... [and] they have a rather low threshold for the frustration of these expectations." Rheingold, *What Are the Consumer's "Reasonable Expectations"?*, 22 Bus.Law. 589 (1967).

On the facts presented here, we find as a matter of law that the presence of a one-centimeter bone did not render the piece of fish unreasonably dangerous. As Judge Holmes stated:

"I base this conclusion on several factors that are present in this case. First of all, it is common knowledge that fish have many bones. Furthermore, government regulations regarding fillets recognize this and allow for the presence of some bones in fillets. A one

centimeter bone does not violate any of the government regulations regarding fillets. . . . Finally, it was undisputed that, in light of the process used to mass produce fillets, it was commercially impractical to remove all bones.

"I stress that my opinion is based solely upon the facts of this case. For instance, if there had been a representation that the fish was boneless or if the bone had been larger or if there had been many bones, my conclusion might well be different. Under these facts, however, I would hold as a matter of law that the implied warranty of merchantability was not breached . . ."

\* \* \*

For these reasons, the judgment of the Court of Civil Appeals is due to be reversed and the cause remanded.

REVERSED AND REMANDED.

## SAMPLE CONTRACTS CASE

### Context: Interpretation and Enforcement of the Contract

Court of Appeals of New York.

Frederick R. HAINES, on behalf of himself and  
all other property owners in the  
Town of Hunter, similarly situated, Respondent,  
and  
Town of Hunter et al., Intervenors-Respondents,  
v.  
CITY OF NEW YORK et al., Appellants.

June 7, 1977.

GABRIELLI, Judge.

In the early 1920's, respondent City of New York and intervenors Town of Hunter and Village of Tannersville embarked upon negotiations for the construction of a sewage system to serve the village and a portion of the town. These negotiations were prompted by the city's need and desire to prevent the discharge of untreated sewage by residents of the area into Gooseberry Creek, a stream which fed a reservoir of the city's water supply system in the Schoharie watershed.

In 1923, the Legislature enacted enabling legislation authorizing the city to enter into contracts with municipalities in the watershed area "for the purpose of providing, maintaining (and) operating systems and plants for the collection and disposal of sewage" (L.1923, ch. 630, s 1). The statute further provided that any such contracts would be subject to the approval of the New York City Board of Estimate and Apportionment.

The negotiations culminated in an agreement in 1924 between the city and intervenors. By this agreement, the city assumed the obligation of constructing a sewage system consisting of a sewage disposal plant and sewer mains and laterals, and agreed that "all costs of construction and subsequent operation, maintenance and repair of said sewerage system with the house connections thereof and said disposal works shall be at the expense" of the city. The agreement also required the city to extend the sewer lines when "necessitated by future growth and building constructions of the respective communities". The village and town were obligated to and did obtain the necessary easements for the construction of the system and sewage lines.

The Board of Estimate, on December 9, 1926, approved the agreement and authorized the issuance of \$500,000 of "corporate stock" of the City of New York for construction of the system by appropriate resolution. It is interesting to here note that a modification of the original agreement occurred in 1925 \*771 wherein the village agreed to reimburse the city for a specified amount representing the expense of changing the location of certain sewer lines. The plant was completed and commenced operation in 1928. The city has continued to maintain \*\*\*157 the plant through the ensuing years and in 1958 expended \$193,000 to rehabilitate and expand the treatment plant and facilities.

Presently, the average flow of the plant has increased from an initial figure of 118,000 gallons per day to over 600,000 gallons daily and the trial court found that the plant "was operating substantially in excess of design capacity". The city asserts, and it is not disputed by any of the parties in this action, that the system cannot bear any significant additional "loadings" because this would result in inadequate treatment of all the sewage and consequently harm the city's water supply. The instant controversy arose when plaintiff, who is the owner of a tract of unimproved land which he seeks to develop into 50 residential lots, \*\*822 applied to the city for permission to connect houses, which he intends to construct on the lots, to existing sewer lines. The city refused permission on the ground that it had no obligation to further expand the plant, which is presently operating at full capacity, to accommodate this new construction.

Plaintiff then commenced this action for declaratory and injunctive relief, in which intervenors town and village joined as plaintiffs, maintaining that the 1924 agreement is perpetual in duration and obligates the city to expend additional capital funds to enlarge the existing plant or build a new one to accommodate the present and future needs of the municipalities. Both the trial court and the Appellate Division, by a divided court, held in favor of plaintiff and intervenors concluding, that, while the contract did not call for perpetual performance, the city was bound to construct additional facilities to meet increased demand until such time as the village or town is legally obligated to maintain a sewage disposal system. Two members of the court dissented in part stating that the agreement should not be construed as requiring the city to

construct new or additional facilities.

We conclude that the city is presently obligated to maintain the existing plant but is not required to expand that plant or construct any new facilities to accommodate plaintiff's substantial, or any other, increased demands on the sewage system. The initial problem encountered in ascertaining the \*772 nature and extent of the city's obligation pursuant to the 1924 agreement, is its duration. We reject, as did the courts below, the plaintiff's contention that the city is perpetually bound under the agreement. The contract did not expressly provide for perpetual performance and both the trial court and the Appellate Division found that the parties did not so intend. Under these circumstances, the law will not imply that a contract calling for continuing performance is perpetual in duration ([Mittler v. Freideberg](#), 32 Misc.2d 78, 85, 222 N.Y.S.2d 480, 488; [Warner-Lambert Pharm. Co. v. John J. Reynolds, Inc.](#), 178 F.Supp. 655, affd. 2 Cir., 280 F.2d 197; [Holt v. St. Louis Union Trust Co.](#), 4 Cir., 52 F.2d 1068, 1069; [Town of Readsboro v. Hoosac Tunnel & Wilmington R. Co.](#), 2 Cir., 6 F.2d 733 (L. Hand, J.); [Borough of West Caldwell v. Borough of Caldwell](#), 26 N.J. 9, 28-29, 138 A.2d 402, 1 Williston, Contracts (3d ed.), s 38, p. 113).

On the other hand, the city's contention that the contract is terminable at will because it provides for no express duration should also be rejected. In the absence of an express term fixing the duration of a contract, the courts may inquire into the intent of the parties and supply the missing term if a duration may be fairly and reasonably fixed by the surrounding circumstances and the parties' intent ([Warner-Lambert Pharm. Co. v. John J. Reynolds, Inc.](#), *supra*, p. 661; [Benham v. World Airways](#), 9 Cir., 432 F.2d 359, 361; [Town of Readsboro v. Hoosac Tunnel & Wilmington R. Co.](#), *supra*, p. 735). It is generally agreed that where a duration may be fairly and reasonably supplied by implication, a contract is not terminable at will (1 Williston, *op. cit.*, p. 112; 10 N.Y.Jur., Contracts, s 412, p. 426; 17 Am.Jur. 2d, Contracts, s 487, p. 957; 17A C.J.S. Contracts s 398, p. \*\*\*158 480; see, also, Restatement, Contracts 2d (Tent. Draft No. 7), s 230).

While we have not previously had occasion to apply it, the weight of authority supports the related rule that where the parties have not clearly expressed the duration of a contract, the

courts will imply that they intended performance to continue for a reasonable time (Colony Liq. Dists. v. Daniel Distillery-Lem Motlow Prop., 22 A.D.2d 247, 249-250, 254 N.Y.S.2d 547, 549, 550 (Aulisi, J); Metal Assoc. v. East Side Metal Spinning & Stamping Corp., 2 Cir., 165 F.2d 163, 165; Borough of West Caldwell v. Borough of Caldwell, *supra*, 138 A.2d p. 412; Simpson, Contracts, s 48, p. 74; 1 Williston, op. cit., pp. 116-117; 10 N.Y.Jur., Contracts, s 413, p. 427). For compelling policy reasons, this rule has not been, and should not be, applied to contracts of employment or \*773 exclusive agency, distributorship, or requirements contracts which \*\*823 have been analogized to employment contracts (see, e. g., Clark Paper & Mfg. Co. v. Stenacher, 236 N.Y. 312, 140 N.E. 316; Watson v. Gugino, 204 N.Y. 535, 541, 98 N.E. 18, 20; Churchill Evangelical Assn. v. Columbia Broadcasting System, 236 App.Div. 624, 260 N.Y.S. 451; Outerbridge v. Campbell, 87 App.Div. 597, 84 N.Y.S. 537; see, also, Simpson, op. cit., p. 74). The considerations relevant to such contracts do not obtain here. Thus, we hold that it is reasonable to infer from the circumstances of the 1924 agreement that the parties intended the city to maintain the sewage disposal facility until such time as the city no longer needed or desired the water, the purity of which the plant was designed to insure. The city argues that it is no longer obligated to maintain the plant because State law now prohibits persons from discharging raw sewage into streams such as Gooseberry Creek. However, the parties did not contemplate the passage of environmental control laws which would prohibit individuals or municipalities from discharging raw, untreated sewage into certain streams. Thus, the city agreed to assume the obligation of assuring that its water supply remained unpolluted and it may not now avoid that obligation for reasons not contemplated by the parties when the agreement was executed, and not within the purview of their intent, expressed or implied.

Having determined the duration of the city's

obligation, the scope of its duty remains to be defined. By the agreement, the city obligated itself to build a specifically described disposal facility and to extend the lines of that facility to meet future increased demand. At the present time, the extension of those lines would result in the overloading of the system. Plaintiff claims that the city is required to build a new plant or expand the existing facility to overcome the problem. We disagree. The city should not be required to extend the lines to plaintiffs' property if to do so would overload the system and result in its inability to properly treat sewage. In providing for the extension of sewer lines, the contract does not obligate the city to provide sewage disposal services for properties in areas of the municipalities not presently served or even to new properties in areas which are presently served where to do so could reasonably be expected to significantly increase the demand on present plant facilities.

Thus, those paragraphs of the judgment which provide that the city is obligated to construct any additional facilities \*774 required to meet increased demand and that plaintiff is entitled to full use of the sewer lines should be stricken.

Accordingly, the order of the Appellate Division should be modified and the case remitted to Supreme Court, Greene County, for the entry of judgment in accordance with the opinion herein and, as so modified, affirmed, with costs to appellants against plaintiffs-respondents only.

BREITEL, C. J., and JASEN, JONES, WACHTLER, FUCHSBERG and COOKE, JJ., concur.

Order modified, etc.

41 N.Y.2d 769, 364 N.E.2d 820, 396 N.Y.S.2d 155

END OF DOCUMENT

## APPENDIX B

### ISSUE DEVELOPMENT

Substantive Relevant Facts:

Dodson v. Shrader, 824 S.W.2d 545 (Tenn. 1992)

In April of 1987, Dodson, who was 16 at the time, purchased a truck from the Shraders. He paid \$4,900 in cash. The Shraders did not inquire into D's age; they believed him to be 18 or 19. In December 1987, the truck developed mechanical problems. D did not want, or did not have the money, to repair the truck. He continued to drive it, and it "blew up" and became inoperable. He contacted the Ss to rescind the purchase of the truck and requested a full refund. They declined. After D filed suit, the truck, while parked in his front yard, was struck by a hit and run driver. At the time of the circuit court trial, S testified that the truck was only worth \$500 because of the damage.

WHAT IS THE LEGAL ISSUE?

**NOTE THAT THERE IS AN EMPHASIS ON AGE. THE ISSUE IS WHETHER HE IS ENTITLED TO A FULL OR PARTIAL REFUND?**

NOW, CONSIDER IF YOU ALSO KNEW THE FOLLOWING:

1. This case comes under the following section in your casebook's table of contents:  
Mutual Assent—Defenses to Contractual Obligation—Deficiencies in Contractual Capacity—Infancy
2. You just read a case that adopted the general rule: "An infant (or minor) does not have the capacity to bind himself absolutely to a contract. Such contracts are voidable but not void."

NOW, HOW MIGHT YOU PHRASE THE ISSUE?

*Consider the "Whether + SVO + When + Facts" formula from Ruta K. Stropus and Charlotte D. Taylor, Bridging the Gap Between College and Law School: Strategies for Success (Durham, NC: Carolina Academic Press, 2001) 31.*

**WHETHER A PARTY IS LIABLE FOR BATTERY WHEN . . . ?**

STUDY SKILLS WORKSHOP I  
APPENDIX C

## STATING RULES IN IF/THEN FORM

Consider stating rules, especially complicated ones, using the if/then or if/then/unless form. These forms can help you learn the rules in a format that you can easily apply to a new fact pattern. “The if-clause contains words or phrases describing a class of situations lawmakers wish to address. . . . The then-clause identifies the legal consequence that follows when the factual conditions are met.” (Schmedemann & Kunz 12). To show this format graphically:

IF                    the required factual conditions exist,  
THEN                the specified legal consequences follow.

Thus, you could re-phrase the rule of the case from *Morrison’s* as:

IF                    a consumer does not “reasonably expect” an object to be in food served,  
THEN                the presence of that object renders the food “unmerchantable.”

If a person not admitted or licensed to practice law in this state renders legal advice or counsel to another, the unlicensed practitioner generally shall be guilty of a misdemeanor, upon the charging of a fee, and punished therefor. However, where the legal advice is incidental to another legitimate professional service and addressed only settled legal points, the unlicensed practitioner shall not be guilty of a misdemeanor.

*How might you structure (or “brief”) the above rule using the if/then form?*

Example from Deborah A. Schmedemann & Christina L. Kunz, *Synthesis: Legal Reading, Reasoning, and Writing* (New York: Aspen Law & Business, 1999) 11-20.

## STUDY SKILLS WORKSHOP I APPENDIX D

### UNDERSTANDING RULES AS DEDUCTIVE SYLLOGISMS

A common form of deductive argument is a *syllogism*, which has two premises that jointly imply a conclusion.

Examples of deductive reasoning:

All men are mortal.  
Socrates is a man.  
Socrates is mortal.

All binding contracts contain an offer and acceptance.  
Agreement X is a binding contract.  
Agreement X contains an offer and acceptance.

As you brief your cases and think about the rules, consider seeing the rule of the case as the major (first) premise and the application of the rule to the facts as the minor (second) premise.

Consider the example from *Reading Like a Lawyer*:

“It is widely recognized in tort law that the intentional tort of assault protects our interest in being free from the ‘fear of unwanted touching.’ If someone alarms/scares us in a way that satisfies all of the requirements of a particular jurisdiction for a successful claim of assault, we are entitled to damages. In applying and developing this rule, courts have determined that the person bring a claim actually has to have been reasonably afraid *at the time the defendant acted* – it’s not enough to find out about a scary situation later or to be threatened with a scary situation in the future and then to claim assault.

“Knowing that rule, write out in the space below a *deductively reasoned logic syllogism* that would allow a claim for a plaintiff who had a toy water gun pointed at him, but mistook the water gun for a real gun. (Hint: when you write out a logic syllogism, state your rule (the Major Premise) clearly and make sure that you state your facts (your Minor Premise) in language that parallels that of the rule.)

Example taken from Ruth Ann McKinney *Reading Like a Lawyer: Time-Saving Strategies for Reading Law Like an Expert* (Durham, NC: Carolina Academic Press, 2005) 46-47.

## STUDY SKILLS WORKSHOP I

### APPENDIX E

#### Lecture Notes - Examples of Notetaking

Copyright 1996 by Law School ABCs; Presented at 1996 Law School Admissions Council Conference on Academic Support.

Your lecture notes should:

1. Show transition from one topic to another:

a. Identify transitions to different cases, cases that are mentioned as notes or footnotes, or articles contained in the casebook and to policies/history outside the casebook:

case name: Garrett v Dailey

note case: p.46, n. 1

articles: Gilmore article, p. 44

policy: 1964 case-notion of free enterprise.  
Crt did not want to imply a promise.

b. Signal when hypotheticals begin:

Suppose...

Assume...

What if...

2. Show areas where you are missing notes ("note holes"):

Examples:

a. Hypo: Uncle says - If you promise to refrain from drinking and smoking until 21, I'll give you ????

b. Late 10 minutes to class.

c. Called on.

d. Q. What promise was enforced?

A. ????

Q. Was there any consideration for the promise?

A. No.

3. Show how the professor went through the analysis:

Example:

Ricketts v. Scothorn

Q. What promise enforce?

A. Promise to give \$2,000.

Q. Any consideration for promise?

A. No.

Q. Is an act alone enough for consideration? What was the act?

A. Quit her job.

Q. What was missing? Bargained for and given in exchange for the promise?

A. Yes.

Q. Why?

A. Act not required by grandfather.

Q. But the court enforced the promise. Why? What kind of estoppel?

A. Equitable.

Professor's analysis:

1. Identify the promise.
2. Ask if there is any consideration for the promise by looking if the action was "bargained for and given in exchange" for the promise.
3. If no consideration, then look to the issue of estoppel.

4. Show the facts which are "key" to the professor:

Example:

As it appears in lecture notes:

Pitts, p. 175:

F: P = sales rep for D. Not on K w/def. period. Co b term at will. 67 yrs old. D term P but gave 1% commission of all sale in territory. After 5 yrs- stop pay.

Translation of lecture notes:

Pitts v. McGraw-Edison Co., p. 175:

Facts: Plaintiff was a sales representative for defendant. Plaintiff did not have a contract with defendant for a definite period. He could be terminated at will. He was 67 years old. Defendant terminated plaintiff but gave him a 1% commission of all sales made in his territory. After 5 years, defendant stopped paying plaintiff.

5. Show analytical "tips" given by the Professor:

Example:

Key: Did the plaintiff rely and what acts were there?

6. Show where you did not understand the lecture:

Example:

Difference between promissory and equitable estoppel?