PEPPERDINE UNIVERSITY SCHOOL OF LAW
LAUNCH WEEK 2015

GROUP 1 - PROF. POPOVICH'S CLASSES ON CASE BRIEFING

INTRODUCTION & 1ST CLASS MEETING MATERIAL

I. Introduction

Hello new Pepperdine law students!!! By now, you have probably been welcomed to Pepperdine about a zillion times. So let me add my welcome: welcome!! While we really don't start the real classroom excitement until next week, our two "case-briefing" classes will, I hope, give you some taste of what is to come. I am also hopeful that this taste will be a pleasant one.

The purpose of our two classes together is to not only give you some idea about case briefing, but also to expose you to a typical law school class – an environment in which you will see how case briefing will assist you in preparing for class. Our two class sessions will each consist of a bit of introduction, some discussion of what it means to "brief a case," some discussion of necessary background information, and then the main event: covering the assigned cases much the same way as is done in class. You will come to find that each of your professors has her or his own particular style and philosophy when it comes to teaching methods and utilization of cases, and you, in the classroom. For example, when I teach the first-year contracts class (I'm booked full with other classes and, sadly for me, I am not teaching contracts this year), it consists of a mixture of case discussion, lecture, class discussion, and problem solving. Therefore, while I hope that our two class sessions together this week will be helpful, it may not necessarily be representative of any one of the many varying teaching styles of your professors.

One aspect of our two class sessions this week that will be different from all of your actual first-year classes is the subject matter – it is **not** directly related to any of your first-year class subjects. This is done on purpose, as the goal of these "case briefing" classes is to give you some idea of how to brief a case and what we do with them in class. It is not designed to cover any particular first-year course subject. To this end, the cases that we will be covering come from my upper-division community property course (while it has the word "property" in the title, the class is totally different than your first year property course). The cases that we will be using are pretty good and I think that you will enjoy reading them. Perhaps the word "enjoy" is a bit strong, but at least I think that they will be interesting reading. Okay, I'm hoping for palatable.

Because the material covered in our simulated class is derived from an upper-division class, and the cases that we will be discussing are typically covered well into the semester of such class, please do not be alarmed if the subject seems a bit confusing, or that there are a lot of parts necessary to make our discussion of these cases meaningful. This is **not** designed to scare you off, cause you to suffer, or make you wonder why you chose to go to law school. You are **not** expected to understand all of the material that we will cover in our two "case briefing" class sessions. The extent of the subject matter that you need to learn in order to cover our cases is

well beyond that which you will need to learn for the vast majority of the cases covered in your first-year courses. Also, don't be alarmed, but the case for our second class sessions involves a bit of "math" (fractions no less).

There are no grades for our two class sessions, and participation, or lack thereof, will have absolutely no impact on your first-year experience or what I, or others, may think of you or your abilities. Not trying to impress but as the chair of our Admissions Committee, I've seen almost everyone's admission file and I already think that all of you are great!! So relax and enjoy the pressure-free learning experience.

I hope that you will enjoy our two class sessions together and I look forward to seeing all of you Monday, August 18th and again on Thursday, August 21st.

Have fun and don't stress,

Professor Bob Popovich

II. What We Will be Doing in Our Two Class Sessions

Each of our two "case briefing" classes will require some preparation on your part. As it is for each of your real classes, it is expected that you will read all of the assigned material as well as making an attempt to "brief" the cases. With respect to the latter, you will not be turning in your case briefs. Rather, just as in your real classes, you will be using them in conjunction with our coverage of the material in class. Again, while some work will be required, please do not let our two class sessions be the source of anxiety or stress.

A. Our First Class Session – Tuesday, August 18th

In our first class session, we will be learning something about briefing a case. In addition to discussing some case briefing logistics, we will briefly cover the enclosed subject-matter background material necessary to give you some idea of the applicable legal concepts that is at issue in the cases. We will then get to the two assigned cases for this first class session (Fidelity & Casualty Company v. Mahoney, and Wilson v. Wilson). We shall utilize/discuss these cases in a manner that is typical in a law school class. Going over the cases will comprise the majority of our class session time and it is where your case briefs will be most useful.

All of the materials necessary for our first class session are contained in this handout set of materials.

B. Our Second Class Session – Thursday, August 20th

Our second class session will be rather similar to our first. We'll begin this session with more discussion about case briefing (with additional pertinent reading material assigned). We will be covering one case in our second class session (it is a bit more "involved" than those in our first class). Deciphering this case will also require some background information of

applicable law and we will spend some time discussing statutes and related "background" materials.

All of the materials necessary for our second class session (case briefing items, background material for applicable legal concepts, and the actual case) will be made available to you, online, at some point during the day of our first case briefing class session.

III. Now for the Substantive Material for Our First Class Session

Cases; they come in all shapes and sizes. Some cases are "easy reading," not too long and make perfect sense with a casual first read. Others can be very complex, almost book size in length, and written in what seems like unbreakable code. The complexity of cases can vary dramatically from class to class and among courses. Notwithstanding the cases themselves, professors will have varying styles as to how cases are utilized in class. They have varying methods of extracting the necessary legal concepts from cases. Variations among professors and classes also exist as to expectations in what your role in class will be vis-à-vis case briefing. With that in mind, let's briefly explore some of the reasons why cases are used in class and how to brief a case.

A. Purpose of Using Cases in Class and Why We Brief Them

Using cases in class is a classic law school tradition. While you will discover that there are many other sources of law and materials used in teaching the law, cases continue to be the backbone of many law school courses, including most of those in your first year.

Some cases, at their core, may be issues relating primarily to facts – the law in the area is settled but it is an issue (a disagreement) of whether, or how, the facts presented fit within the law. Other cases have issues of law at their core – the facts in the case are not in contention but the disagreement is about the underlying law and what it means – one party thinks that the law means this and the other party thinks the law means something different. Of course, you have cases that are a mix of the two. The character of the case can sometimes explain the purpose for which the casebook author, or professor, includes the case for class discussion. A case may be used because it has a good fact pattern; one that is helpful in illustrating a legal concept or statute. A particular case may be used to help clarify existing law. A case may, for all intents and purposes, create or establish law.

These are but a few reasons why cases will be utilized in most of your law school classes. The nature of the case and how one's professor utilizes cases in class will probably impact the way in which you read a case. For an excellent article on the subject (including why cases are used in law school), please read the following article: Orin S. Kerr, ***HOW TO READ A LEGAL OPINION: A Guide for New Law Students,*** Green Bag, Autumn, 2007. This article is included in these materials in the Appendix, immediately following our two cases.

B. How Do I Brief a Case?

It's simple; you read a case, figure out what is going on, write something up so you can

refer to it in class, get called on, start to read your "brief" only to be interrupted by the professor who begins asking questions that may seem unrelated or detached from anything you have written down, then she or he poses hypotheticals that sometimes use the facts in the case or are sometimes "tweaked" and you scramble through your brief to find answers – and if unlucky, your professor, while you feverously search through your brief and the actual case, will interrupt saying nicely, "You won't find the answer in the case or in your brief."

Okay, it may not be that bad, but for most first-year law students, briefing a case, let alone reading one, can feel rather weird at first. Of course, you all know that over time, reading cases and briefing cases will become much easier. That's not to say that you won't have some very challenging cases throughout your law school tenure, but the logistics of getting past certain barriers you face in the beginning, does evaporate. Be aware, however, that briefing cases can be very slow going in the beginning. Heck, it's very common, when starting out, to feel very pleased and accomplished if you can just figure out what is going on in a case.

So how does one actually brief a case? The answer is, surprise, not always that straightforward nor is it consistent from class to class or from professor to professor. Ask ten professors how to brief a case and you are likely to get close to ten different answers. While we will discuss some basics, the key is to be flexible. Over time, you will become more proficient with your case briefs and you will learn to adjust your methods as necessary for different classes and professors.

In any case brief, you are synthesizing the case in, roughly, some outline form. The general goal is to distill the case down to critical components – those that will help you see the law, understand the law, be able to apply the law to differing fact patterns (e.g., exams), etc. You will be concerned about determining or spotting issues raised in the case as well as the law (often referred to as the "rules") in play. You'll be paying particular attention to how the court's opinion analyzes the facts with respect to the given law – sometimes referred to as applying the facts to the particular law. This analysis component is particularly valuable in answering a professor's hypotheticals (in class or on exams) in which the facts vary from those of any particular case – you will be analyzing and applying these new facts to rules of law. While the focus of laypersons is often on the conclusion (who won?), the conclusion, while still an important part of a case brief, is, generally, not nearly as valuable as the law and analysis components.

There will be more specific information about the logistics of case briefing to come in our class session and in your second set of materials, you will be receiving two very good pieces (an article and a chart) that I think you will find useful with case briefing. However, remember that you need to be flexible and there is really no "one way" to brief a case, so utilize these later- provided resources as a guide (as opposed to absolute rules on how to brief cases).

So what do you do for our first class, our first two cases? Not to be mean but, rather, to give you a chance to experiment a bit (and not confine you to any set or strict rules on how to brief a case), I felt it best to just let you read cases (and accompanying background/set-up information) and be ready to go over the material as best we can. In our second class, you will have more tools (and experience) to, I hope, give you an even better understanding of how to

brief a case and how it can be utilized in the classroom.

The background information for the legal concepts addressed in our cases, as well as the cases themselves, are included below.

C. Substantive Law and Applicable Statutes – Background Information of Legal Concepts Related to Our Cases.

The two cases that follow (Fidelity & Casualty Company v. Mahoney, and Wilson v. Wilson), are covered in my upper-division community property course. These cases require an understanding of some basic concepts that are covered in a community property class. The case to be assigned for our second "case briefing" class session will be visiting additional community property concepts and also draws upon legal issues from my upper-division "wills and trust" course. Summarized, below, are the more salient concepts from my community property course that make their appearance in our first two cases. Additional background material (for both community property and wills/trusts) will accompany the information you will be receiving for our second class session.

In your first-year classes, you will see that "laws" come from a variety of sources, the two most common being case derived law (sometimes referred to as "common law") and those from "statutes." Statutes are "laws" that are, as you might say, "on the books" – that is, they are sections of either state or federal codes dealing with all sorts of things like criminal laws (e.g., California Penal Code) to federal tax laws (the Internal Revenue Code). Statutes are laws that go through the typical legislative process (either federal or state) and are "signed into law." What is often surprising to law students is that a good chunk of law is not found in statutes. Cases that deal with issues of law may be interpreting statutes or creating new rules all by themselves. On occasion, if the applicable legislative body does not like how a court has "come down on an issue," they will enact a statute (statutory law) to counter or modify the "law" that was created by the court. You will learn much more about this in all of your classes, but for now, the concepts below are statutory in nature (i.e., they are descriptions of various statutes, California state statutes in our case).

Community Property Course Concepts

From a marital property standpoint, California is among a handful of states that have what is known as a "community property" system. Other states' marital property systems are often referred to as "common law" systems (derived from old English law and not "common law" in the sense that they are case-derived law). Marital property systems determine the ownership of various types of property between a husband and a wife (or spousal equivalents such as same-sex spouses and domestic partners). The classification of property as to "which spouse owns what" becomes particularly important in two instances: when a couple seeks a dissolution of their marriage (a divorce) and when one spouse dies.

The community property system treats a husband and wife (or spousal equivilant) as sort of a financial partnership. The basic tenet of community property systems is that each spouse is contributing to the greater good or betterment of the marriage, but not all such efforts are

rewarded with financial remuneration. A spouse may, for example, expend efforts on behalf of their marriage partnership but such efforts are in an unpaid labor role. This core element of the community property system creates what is the most commonly known feature of the community property system: the earnings and accretions to wealth, during marriage, of each spouse are owned equally by both spouses.

This gives rise to a fundamental California community property law – that all property acquired by a husband or a wife during their marriage is "community property." There are exceptions to this general rule, but the law is that any property acquired (anywhere) by either spouse during the marriage is defined as community property. Property labeled as "community property" is owned, during marriage, one-half (1/2), or equally, by each spouse. The pertinent California statute is as follows:

California Family Code Section 760. "Community property" defined

> Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.

Note that California Family Code (CFC) §760 is a "definition." In reality, it has a more significant role of a "presumption." This is known as the "general community property presumption" and any property that meets the definitional requirements is "presumed" to be the couple's community property – owned 50% each. A legal presumption is a very important concept in most of your law school courses and it establishes who bears the burden of proof. In this situation, if something is presumed to be community property, then the party asserting that it is something else (usually all or a portion his or her separate property) has the burden to overcome or rebut the presumption – failure to do so means that the presumption of community property prevails.

The California marital property system also provides for "separate property" which, unlike community property, is owned 100% by the spouse's whose property it is. How does property obtain the label as "separate?" There are a few ways, but one common example is where a spouse has property before his or her marriage. When he or she gets married, property brought into the marriage is the separate property of that spouse. Absent some affirmative action on the part of that spouse, such property remains that spouse's separate property throughout the marriage. The pertinent California statute is as follows:

California Family Code Section 770. Separate property of married person

> (a) Separate property of a married person includes all of the following:
>
> (1) All property owned by the person before marriage.
>
> (2) All property acquired by the person after marriage by gift, bequest, devise, or descent.
>
> (3) The rents, issues, and profits of the property described in this section.
>
> . . .

There is a lot more law here, but that's pretty much all we need for our first two cases.

We shall have additional community property law, as well as some wills and trust law, to digest for our case to be assigned for our second class session. Now, on to the cases!

The Cases Begin on the Next Page

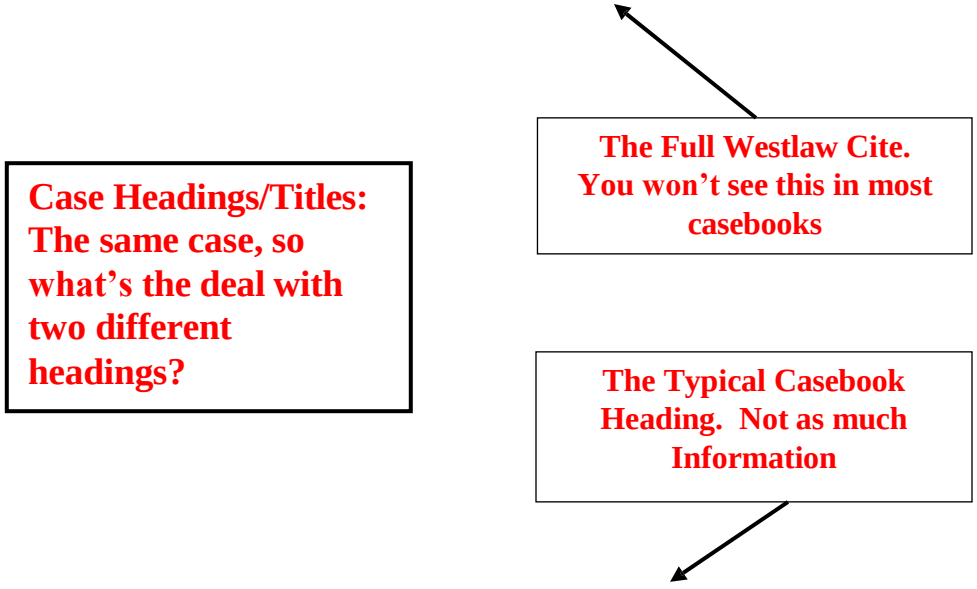
D. The Cases: Fidelity & Casualty Company v. Mahoney and Wilson v. Wilson

Prelude: Note that both of these cases are in an abridged or edited format in which portions (sometimes huge chunks) of the opinion that are not particularly relevant to the subject being covered are excised for your reading pleasure. Not to give anything away, but the following two cases are examples of how a case is utilized to explain or apply existing law.

71 Cal.App.2d 65, 161 P.2d 944

FIDELITY AND CASUALTY COMPANY OF NEW YORK (a Corporation), Plaintiff,
v.
J. B. MAHONEY, JR., a Minor, etc., Respondent; PATRICIA MAHONEY, Appellant.

Civ. No. 14838.
District Court of Appeal, Second District, Division 3, California.
Sept. 28, 1945.



FIDELITY & CASUALTY COMPANY v. MAHONEY
California District Court of Appeal, 1945.
71 Cal.App.2d 65, 161 P.2d 944

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Clarence M. Hanson, Judge. Modified and affirmed.

Action of interpleader to determine adverse claims to proceeds of insurance policy. Judgment that insured's son and not his widow was entitled to sum deposited in court, modified and affirmed.

WOOD (Parker), J.

On June 28, 1943, in Louisville, Kentucky, J. B. Mahoney, Sr., a resident of Los Angeles, purchased an airplane-travel accident insurance policy from the plaintiff insurance company and mailed it to the beneficiary named therein, J. B. Mahoney, Jr., of Los Angeles, his sixteen-year-old son by a former marriage. Soon after the policy was purchased, the insured boarded an airplane for the purpose of going to Los Angeles, and within an hour thereafter the airplane fell in Kentucky and as a result thereof he was killed.

Patricia Mahoney and the insured had been married about two months preceding the airplane accident, and at all times during their marriage they were domiciled in California. She made a demand on the insurance company for one-half the proceeds of the policy on the ground that the policy was purchased with community property.

The insurance company filed this action in interpleader, and upon stipulation an interlocutory decree was entered wherein it was ordered that upon deposit in court by the insurance company of $4,989.50 (being the amount of the policy less $10.50 for costs) it would be released from liability under the policy, and it was further ordered that J. B. Mahoney, Jr., and Patricia Mahoney litigate between themselves to determine who was entitled to receive the amount so deposited. The insurance company made the deposit.

Defendant Patricia Mahoney alleged, among other things, that she was the widow of J. B. Mahoney, deceased; that the premium on said policy was paid by J. B. Mahoney from community property funds owned by him and her; and that as his widow she was entitled to one-half of said $5,000.

Defendant J. B. Mahoney, Jr., alleged, among other things, that he was the beneficiary named in the policy; that the $5,000 was not community property; that Patricia Mahoney had no right, title or interest in said $5,000; and that the policy was purchased with the separate property of the deceased J. B. Mahoney.

The court found that the $5,000 was not community property; that Patricia Mahoney had no right, title or interest therein; and that the policy was purchased with the separate property of deceased J. B. Mahoney. The court concluded that J. B. Mahoney, Jr., was entitled to a judgment ordering that the funds deposited with the court be paid to his guardian. The judgment was that J. B. Mahoney, Jr., by his guardian, [is entitled to all of the insurance proceeds] Defendant Patricia

Mahoney appeals from the judgment, and contends that the findings of fact are not supported by the evidence.

In the statement on appeal it is recited: "There is no evidence as to the nature or extent of the decedent's estate, whether separate or community, except that it is shown the decedent earned a gross monthly salary in an undetermined amount during the period of his second marriage and that he had a bank account in his own name. There was no evidence on behalf of either of the defendants as to whether or not the premium paid for said policy of insurance came from the separate estate or the community estate of the decedent." The record does not show what amount was paid for the policy, but since it was stated in the written opinion of the trial judge and in the briefs that the amount was $1.00, it will be assumed herein that $1.00 was the amount of the premium.

Appellant's theory is that the insurance premium was paid by the insured from community funds, that such payment was a gift by the husband of community funds, and that such gift, being without her written consent, was a nullity under the provisions of section 172 of the Civil Code as to her one-half interest in the premium money, and therefore she is entitled to one-half the proceeds of the policy.

Section 172 of the Civil Code provides: "The husband has the management and control of the community personal property, with like absolute power of disposition, other than testamentary, as he has of his separate estate; provided, however, that he cannot make a gift of such community personal property ... without the written consent of the wife." If the insurance premium was paid from the husband's separate funds the wife was not entitled to any part of the proceeds of the policy, it being provided in section 157 of the Civil Code that "Neither husband nor wife has any interest in the property of the other. ..." In Mundt v. Connecticut Gen. Life Ins. Co., (1939), 35 Cal.App.2d 416 [95 P.2d 966], wherein the husband had paid the premiums on his life insurance policy from community funds without the wife's consent, the question was whether the wife, who was not the named beneficiary, was entitled to one-half the proceeds of the policy. In that case the court said at page 421: "... the only test applied to this problem has been whether the premiums (on a policy issued on the life of a husband after coverture) are paid entirely from community funds. If so, the policy becomes a community asset and the nonconsenting wife may recover an undivided one-half thereof. ..." (See, also, Bazzell v. Endriss (1940), 41 Cal.App.2d 463 [107 P.2d 49].) The court was required to find whether the money used in paying the premium was paid from community funds. As above shown, there was no oral or documentary evidence as to whether the money used in paying the premium was community property or separate property. As to appellant's contention that the findings were not supported by the evidence, she argues that, since there was no evidence to the contrary, the presumption, under section 164 of the Civil Code [now CA Family Code §760] that property acquired after marriage (other than by gift, devise, or descent) is community property, is determinative that the money used to pay the insurance premium was community property. There is a presumption that property acquired after marriage, other than by gift, devise, or descent, is community property. * * * Where the marriage relation has existed a short period of time the presumption that property acquired after marriage is community property is of less weight than in the case of a long-continued marriage relation. * * * There is no presumption, however, as to when property was acquired. (Scott v. Austin, 57 Cal.App. 553, 556) The marriage relation had existed about two

months. The husband had a bank account in his own name. It was not shown at the trial whether his bank account was large or small or whether the bank account had been in existence a long or short time, and it was not shown whether his monthly salary was large or small. It would seem that proof of such matters was available. Such proof would have been of material assistance to the trial court in determining whether the $1.00 used in paying the premium was acquired before or after the marriage, especially in view of the short time of marriage and in view of the small amount of the premium. The appellant had alleged in her answer that the premium was paid from community funds, but she did not allege that it was paid without her consent. Even if the premium had been paid from community funds, the gift of the $1.00 would not be invalid unless it was made without her consent. Although she was in the best position to know and to prove whether she had so consented, she offered no evidence as to whether she had consented to such payment. She was the one who was asserting an interest in the proceeds of a policy wherein she was not a named beneficiary. The $5,000 was not property which had been in actual possession of the husband or wife. In the transaction whereby the husband expended $1.00 and acquired the accident insurance policy he did not dispose of property in possession of the value of $5,000 or of any value in excess of $1.00. If the $1.00 was community property, and if the payment of it was an invalid gift because she had not consented thereto, her only interest therein during his lifetime would have been a one-half interest in the cash surrender value of the policy, namely, some amount less than fifty cents. * * * The appellant was not entitled to a portion of the $5,000 unless, as above stated, the premium was paid from community funds, and unless she had not consented to such payment. It was necessary therefore to determine the source of the $1.00 used in paying the premium. The burden was upon appellant to prove that the $1.00 premium was paid from community funds. Also the burden was upon her to prove that she did not consent to the payment of the premium. She failed to carry the burden in both respects.

* * *

The judgment is affirmed.

WILSON v. WILSON
California District Court of Appeal, 1946.
76 Cal.App.2d 119, 172 P.2d 568

PETERS, P. J.

Defendant appeals from an interlocutory decree of divorce granted to his wife after an extended and bitterly contested trial. So far as pertinent here, the decree awarded the wife an undivided one-half interest in the former residence of the parties.

* * *

The record is a lengthy one. It shows that defendant was an evasive witness. It shows that he failed to make a full and fair disclosure of his assets and income, and that he attempted to conceal information on these subjects. It shows that he was in tax difficulties with the federal government, and that in at least one case he was found to have fraudulently concealed assets. It also shows that although he was a businessman of much experience that he frequently resorted to the answer “I don’t remember” concerning facts that must have been known to him. Under the

circumstances disclosed by the record the awards of property, alimony and counsel fees were quite fair to defendant. The record would have sustained more liberal allowances in all of these categories.

The parties were married in New York on January 15, 1931. Shortly thereafter they established their domicile in San Francisco, and resided here until they separated on December 28, 1940. They have no children. This action was filed by the wife on January 19, 1942. The complaint charged the husband with extreme cruelty and desertion. Subsequently an amendment was added charging the husband with adultery, but this charge was dismissed by the trial court. The divorce was granted on the grounds of cruelty. The defendant denied the material allegations of the complaint and cross- complained for a divorce on the ground of extreme cruelty. Although the defendant testified in support of his cross-complaint in an obvious attempt to blacken his wife's reputation, he did not produce a single witness to corroborate his charges. The plaintiff, on the other hand, produced many witnesses to corroborate her charges of cruelty. Inasmuch as defendant does not challenge this portion of the decree, no useful purpose would be served by setting forth in this opinion a summary of the evidence on this issue, much of which is highly degrading to defendant. Suffice it to say that the evidence of plaintiff and of her many witnesses amply supports the findings that defendant was guilty of many acts of extreme cruelty against his wife, and amply supports the conclusion of the trial court that much of defendant's testimony was not entitled to belief.

The trial court found that the residence of the parties in San Francisco was community property and awarded the plaintiff a one-half interest therein.

* * *

The testimony in reference to the residence is not as clear as might be desired, but this condition of the record was caused by defendant's failure to be frank and fair with the trial court. Admittedly the house was purchased in 1938, some seven years after the marriage, and admittedly title was taken and still stands in defendant's name. Admittedly the house cost $20,000. Defendant testified that he paid for the house in cash and that the funds used for the purchase were the accumulations of dividends from property owned by him before marriage. Based on this evidence defendant urges as his principal contention on this appeal that it was error to find that the house was community property.

* * *

In addition the finding is supported by the strong presumption that all property acquired after marriage * * * is community property. This presumption is fundamental in the community property system and is an integral part of the community property law not only of this state but of other states and countries where the system is in operation. (Citations omitted). Coupled with this presumption is the elementary but fundamental rule that the burden rests upon the person asserting that the property is separate to establish that fact. (Citations omitted).

> The presumption is, of course, a rebuttable one. But whether the evidence adduced to overcome the presumption is sufficient for the purpose is a question for the trial court. As in other cases of presumptions, the rule is that the presumption may outweigh the evidence adduced against it and that notwithstanding controverting testimony the presumption alone will support a finding in accordance therewith. (Citations omitted).

Counsel for defendant, while giving lip service to these well settled rules, contends that they have no application here for at least two reasons-first, that the evidence controverts the presumption as a matter of law, and, secondly, that the presumption has no place in the present case at all. So far as the first contention is concerned, little need be said. Obviously, whether defendant's evidence rebutted the presumption was a question for the trial court. In view of what has already been said about defendant's testimony, obviously the trial court was justified in disregarding his testimony on this issue and finding in accordance with the presumption.

Defendant's second argument is that evidence that the house was bought in 1938 after marriage was not sufficient to raise the presumption-that in addition plaintiff was under a duty to show that the funds used in the purchase were acquired after marriage. In the absence of such evidence, says defendant, there is no evidentiary basis for the presumption. There is no such limitation on the rule-if there were, there would be but little room for the operation of the presumption. Obviously, if a litigant had to trace the funds used in each purchase to funds acquired after marriage there would be few cases indeed to which the presumption could apply. The true rule is that the burden is on the party asserting the separate character of the property, and that the presumption applies when the one claiming that the property is community offers evidence that that property was acquired after marriage.

The soundness of the presumption is well illustrated in the present case. The defendant was the one in possession of the true facts relating to his assets and income. He was evasive and tried to conceal the facts relating to these matters. Neither opposing counsel, his own counsel or the court was successful in getting him to make a full and fair disclosure. Under such circumstances it would result in a miscarriage of justice to not indulge in the presumption.

* * *

APPENDIX

ARTICLE: Orin S. Kerr, How to Read a Legal Opinion, 11 Green Bag 2d 51 (2007).

HOW TO READ A LEGAL OPINION: A Guide for New Law Students

By Orin S. Kerr Green Bag, Autumn, 2007

This essay is designed to help new law students prepare for the first few weeks of class. It explains what judicial opinions are, how they are structured, and what law students should look for when reading them.

I. WHAT'S IN A LEGAL OPINION?

When two people disagree and that disagreement leads to a lawsuit, the lawsuit will sometimes end with a ruling by a judge in favor of one side. The judge will explain the ruling in a written document referred to as an "opinion." The opinion explains what the case is about, discusses the relevant legal principles, and then applies the law to the facts to reach a ruling in favor of one side and against the other.

Modern judicial opinions reflect hundreds of years of history and practice. They usually follow a simple and predictable formula. This ***52** section takes you through the basic formula. It starts with the introductory materials at the top of an opinion and then moves on to the body of the opinion.

The Caption

The first part of the case is the title of the case, known as the "caption." Examples include *Brown v. Board of Education* and *Miranda v. Arizona*. The caption usually tells you the last names of the person who brought the lawsuit and the person who is being sued. These two sides are often referred to as the "parties" or as the "litigants" in the case. For example, if Ms. Smith sues Mr. Jones, the case caption may be *Smith v. Jones* (or, depending on the court, *Jones v. Smith*).

In criminal law, cases are brought by government prosecutors on behalf of the government itself. This means that the government is the named party. For example, if the federal government charges John Doe with a crime, the case caption will be *United States v. Doe*. If a state brings the charges instead, the caption will be *State v. Doe, People v. Doe*, or *Commonwealth v. Doe*, depending on the practices of that state.[1]

The Case Citation

Below the case name you will find some letters and numbers. These letters and numbers are the legal citation for the case. A citation tells you the name of the court that decided the case, the law book in which the opinion was published, and the year in which the court decided the case. For example, "U.S. Supreme Court, 485 U.S. 759 (1988)" refers to a U.S. Supreme Court case decided in 1988 that appears in Volume 485 of the *United States Reports* starting at page 759.

The Author of the Opinion

[1] English criminal cases normally will be *Rex v. Doe* or *Regina v. Doe*. Rex and Regina aren't the victims: the words are Latin for "King" and "Queen." During the reign of a King, English courts use "Rex"; during the reign of a Queen, they switch to "Regina.

The next information is the name of the judge who wrote the opinion. Most opinions assigned in law school were issued by courts with multiple judges. The name tells you which judge wrote that particular opinion. In older cases, the opinion often simply states a last name followed by the initial "J." No, judges don't all have the first initial "J." The letter stands for "Judge" or "Justice," depending on the court. On occasion, the opinion will use the Latin phrase "per curiam" instead of a judge's name. Per curiam means "by the court." It signals that the opinion reflects a common view among all the judges rather than the writings of a specific judge.

The Facts of the Case

Now let's move on to the opinion itself. The first part of the body of the opinion presents the facts of the case. In other words, what happened? The facts might be that Andy pulled out a gun and shot Bob. Or maybe Fred agreed to give Sally $100 and then changed his mind. Surprisingly, there are no particular rules for what facts a judge must include in the fact section of an opinion. Sometimes the fact sections are long, and sometimes they are short. Sometimes they are clear and accurate, and other times they are vague or incomplete.

Most discussions of the facts also cover the "procedural history" of the case. The procedural history explains how the legal dispute worked its way through the legal system to the court that is issuing the opinion. It will include various motions, hearings, and trials that occurred after the case was initially filed. Your civil procedure class is all about that kind of stuff; you should pay very close attention to the procedural history of cases when you read assignments for your civil procedure class. The procedural history of cases usually will be less important when you read a case for your other classes.

The Law of the Case

After the opinion presents the facts, it will then discuss the law. Many opinions present the law in two stages. The first stage discusses the general principles of law that are relevant to cases such as the one the court is deciding. This section might explore the history of a particular field of law or may include a discussion of past cases (known as "precedents") that are related to the case the court is deciding. This part of the opinion gives the reader background to help understand the context and significance of the court's decision. The second stage of the legal section applies the general legal principles to the particular facts of the dispute. As you might guess, this part is in many ways the heart of the opinion: It gets to the bottom line of why the court is ruling for one side and against the other.

Concurring and/or Dissenting Opinions

Most of the opinions you read as a law student are "majority" opinions. When a group of judges get together to decide a case, they vote on which side should win and also try to agree on a legal rationale to explain why that side has won. A majority opinion is an opinion joined by the majority of judges on that court. Although most decisions are unanimous, some cases are not. Some judges may disagree and will write a separate opinion offering a different approach. Those opinions are called "concurring opinions" or "dissenting opinions," and they appear after the majority opinion. A "concurring opinion" (sometimes just called a "concurrence") explains a vote in favor of the winning side but based on a different legal rationale. A "dissenting opinion" (sometimes just called a "dissent") explains a vote in favor of the losing side.

II. COMMON LEGAL TERMS FOUND IN OPINIONS

Now that you know what's in a legal opinion, it's time to learn some of the common words you'll find inside them. But first a history lesson, for reasons that should be clear in a minute.

In 1066, William the Conqueror came across the English Channel from what is now France and conquered the land that is today called England. The conquering Normans spoke French and the defeated

Saxons spoke Old English. The Normans took over the court system, and their language became the language of the law. For several centuries after the French-speaking Normans took over England, lawyers and judges in English courts spoke in French. When English courts eventually returned to using English, they continued to use many French words.

Why should you care about this ancient history? The American colonists considered themselves Englishmen, so they used the English legal system and adopted its language. This means that American legal opinions today are littered with weird French terms. Examples include plaintiff, defendant, tort, contract, crime, judge, attorney, counsel, court, verdict, party, appeal, evidence, and jury. These words are the everyday language of the American legal system. And they're all from the French, brought to you by William the Conqueror in 1066.

This means that when you read a legal opinion, you'll come across a lot of foreign-sounding words to describe the court system. You need to learn all of these words eventually; you should read cases with a legal dictionary nearby and should look up every word you don't know. But this section will give you a head start by introducing you to some of the most common words, many of which (but not all) are French in origin.

Types of Disputes and the Names of Participants

There are two basic kinds of legal disputes: civil and criminal. In a civil case, one person files a lawsuit against another asking the court to order the other side to pay him money or to do or stop doing something. An award of money is called "damages" and an order to do something or to refrain from doing something is called an "injunction." The person bringing the lawsuit is known as the "plaintiff" and the person sued is called the "defendant."

In criminal cases, there is no plaintiff and no lawsuit. The role of a plaintiff is occupied by a government prosecutor. Instead of filing a lawsuit (or equivalently, "suing" someone), the prosecutor files criminal "charges." Instead of asking for damages or an injunction, the prosecutor asks the court to punish the individual through either jail time or a fine. The government prosecutor is often referred to as "the state," "the prosecution," or simply "the government." The person charged is called the defendant, just like the person sued in a civil case.

In legal disputes, each party ordinarily is represented by a lawyer. Legal opinions use several different words for lawyers, including "attorney" and "counsel." There are some historical differences among these terms, but for the last century or so they have all meant the same thing. When a lawyer addresses a judge in court, she will always address the judge as "your honor," just like lawyers do in the movies. In legal opinions, however, judges will usually refer to themselves as "the Court."

Terms in Appellate Litigation

Most opinions that you read in law school are appellate opinions, which means that they decide the outcome of appeals. An "appeal" is a legal proceeding that considers whether another court's legal decision was right or wrong. After a court has ruled for one side, the losing side may seek review of that decision by filing an appeal before a higher court. The original court is usually known as the trial court, because that's where the trial occurs if there is one. The higher court is known as the appellate or appeals court, as it is the court that hears the appeal.

A single judge presides over trial court proceedings, but appellate cases are decided by panels of several judges. For example, in the federal court system, run by the United States government, a single trial judge known as a District Court judge oversees the trial stage. Cases can be appealed to the next higher court, the Court of Appeals, where cases are decided by panels of three judges known as Circuit Court judges. A side that loses before the Circuit Court can seek review of that decision at the United States

Supreme Court. Supreme Court cases are decided by all nine judges. Supreme Court judges are called Justices instead of judges; there is one "Chief Justice" and the other eight are just plain "Justices" (technically they are "Associate Justices," but everyone just calls them "Justices").

During the proceedings before the higher court, the party that lost at the original court and is therefore filing the appeal is usually known as the "appellant." The party that won in the lower court and must defend the lower court's decision is known as the "appellee" (accent on the last syllable). Some older opinions may refer to the appellant as the "plaintiff in error" and the appellee as the "defendant in error." Finally, some courts label an appeal as a "petition," and require the losing party to petition the higher court for relief. In these cases, the party that lost before the lower court and is filing the petition for review is called the "petitioner." The party that won before the lower court and is responding to the petition in the higher court is called the "respondent."

Confused yet? You probably are, but don't worry. You'll read so many cases in the next few weeks that you'll get used to all of this very soon.

III. WHAT YOU NEED TO LEARN FROM READING A CASE

Okay, so you've just read a case for class. You think you understand it, but you're not sure if you learned what your professor wanted you to learn. Here is what professors want students to know after reading a case assigned for class:

Know the Facts

Law professors love the facts. When they call on students in class, they typically begin by asking students to state the facts of a particular case. Facts are important because law is often highly fact-sensitive, which is a fancy way of saying that the proper legal outcome depends on the exact details of what happened. If you don't know the facts, you can't really understand the case and can't understand the law.

Most law students don't appreciate the importance of the facts when they read a case. Students think, "I'm in law school, not fact school; I want to know what the law is, not just what happened in this one case." But trust me: the facts are really important.[2]

Know the Specific Legal Arguments Made by the Parties

Lawsuits are disputes, and judges only issue opinions when two parties to a dispute disagree on a particular legal question. This means that legal opinions focus on resolving the parties' very specific disagreement. The lawyers, not the judges, take the lead role in framing the issues raised by a case.

In an appeal, for example, the lawyer for the appellant will articulate specific ways in which the

[2] If you don't believe me, you should take a look at a few law school exams. It turns out that the most common form of law school exam question presents a long description of a very particular set of facts. It then asks the student to "spot" and analyze the legal issues presented by those facts. These exam questions are known as "issue-spotters," as they test the student's ability to understand the facts and spot the legal issues they raise. As you might imagine, doing well on an issue-spotter requires developing a careful and nuanced understanding of the importance of the facts. The best way to prepare for that is to read the fact sections of your cases very carefully.

lower court was wrong. The appellate court will then look at those arguments and either agree or disagree. (Now you can understand why people pay big bucks for top lawyers; the best lawyers are highly skilled at identifying and articulating their arguments to the court.) Because the lawyers take the lead role in framing the issues, you need to understand exactly what arguments the two sides were making.

Know the Disposition

The "disposition" of a case is the action the court took. It is often announced at the very end of the opinion. For example, an appeals court might "affirm" a lower court decision, upholding it, or it might "reverse" the decision, ruling for the other side. Alternatively, an appeals court might "vacate" the lower court decision, wiping the lower-court decision off the books, and then "remand" the case, sending it back to the lower court for further proceedings. For now, you should keep in mind that when a higher court "affirms" it means that the lower court had it right (in result, if not in reasoning). Words like "reverse," "remand," and "vacate" means that the higher court thought the lower court had it wrong.

Understand the Reasoning of the Majority Opinion

To understand the reasoning of an opinion, you should first identify the source of the law the judge applied. Some opinions interpret the Constitution, the founding charter of the government. Other cases interpret "statutes," which is a fancy name for written laws passed by legislative bodies such as Congress. Still other cases interpret "the common law," which is a term that usually refers to the body of prior case decisions that derive ultimately from pre-1776 English law that the Colonists brought over from England.[3]

In your first year, the opinions that you read in your Torts, Contracts, and Property classes will mostly interpret the common law. Opinions in Criminal Law mostly interpret either the common law or statutes. Finally, opinions in your Civil Procedure casebook will mostly interpret statutory law or the Constitution. The source of law is very important because American law follows a clear hierarchy. Constitutional rules trump statutory (statute-based) rules, and statutory rules trump common law rules.

After you have identified the source of law, you should next identify the method of reasoning that the court used to justify its decision. When a case is governed by a statute, for example, the court usually will simply follow what the statute says. The court's role is narrow in such settings because the legislature has settled the law. Similarly, when past courts have already answered similar questions before, a court may conclude that it is required to reach a particular result because it is bound by the past precedents. This is an application of the judicial practice of "stare decisis," an abbreviation of a Latin phrase meaning "That which has been already decided should remain settled."

In other settings, courts may justify their decisions on public policy grounds. That is, they may pick the rule that they think is the best rule, and they may explain in the opinion why they think that rule is best. This is particularly likely in common law cases where judges are not bound by a statute or constitutional rule. Other courts will rely on morality, fairness, or notions of justice to justify their decisions. Many courts will mix and match, relying on several or even all of these justifications.

Understand the Significance of the Majority Opinion

Some opinions resolve the parties' legal dispute by announcing and applying a clear rule of law that is

[3] The phrase "common law" started being used about a thousand years ago to refer to laws that were common to all English citizens. Thus, the word "common" in the phrase "common law" means common in the sense of "shared by all," not common in the sense of "not very special." The "common law" was announced in judicial opinions. As a result, you will sometimes hear the phrase "common law" used to refer to areas of judge-made law as opposed to legislatively-made law.

new to that particular case. That rule is known as the "holding" of the case. Holdings are often contrasted with "dicta" found in an opinion. Dicta refers to legal statements in the opinion not needed to resolve the dispute of the parties; the word is a pluralized abbreviation of the Latin phrase "obiter dictum," which means "a remark by the way."

When a court announces a clear holding, you should take a minute to think about how the court's rule would apply in other situations. During class, professors like to pose "hypotheticals," new sets of facts that are different from those found in the cases you have read. They do this for two reasons. First, it's hard to understand the significance of a legal rule unless you think about how it might apply to lots of different situations. A rule might look good in one setting, but another set of facts might reveal a major problem or ambiguity. Second, judges often reason by "analogy," which means a new case may be governed by an older case when the facts of the new case are similar to those of the older one. This raises the question, which are the legally relevant facts for this particular rule? The best way to evaluate this is to consider new sets of facts. You'll spend a lot of time doing this in class, and you can get a head start on your class discussions by asking the hypotheticals on your own before class begins.

Finally, you should accept that some opinions are vague. Sometimes a court won't explain its reasoning very well, and that forces us to try to figure out what the opinion means. You'll look for the holding of the case but become frustrated because you can't find one. It's not your fault; some opinions are written in a narrow way so that there is no clear holding, and others are just poorly reasoned or written. Rather than trying to fill in the ambiguity with false certainty, try embracing the ambiguity instead. One of the skills of top-flight lawyers is that they know what they don't know: they know when the law is unclear. Indeed, this skill of identifying when a problem is easy and when it is hard (in the sense of being unsettled or unresolved by the courts) is one of the keys to doing very well in law school. The best law students are the ones who recognize and identify these unsettled issues without pretending that they are easy.

Understand Any Concurring and/or Dissenting Opinions

You probably won't believe me at first, but concurrences and dissents are very important. You need to read them carefully. To understand why, you need to appreciate that law is man-made, and Anglo-American law has often been judge-made. Learning to "think like a lawyer" often means learning to think like a judge, which means learning how to evaluate which rules and explanations are strong and which are weak. Courts occasionally say things that are silly, wrongheaded, or confused, and you need to think independently about what judges say.

Concurring and dissenting opinions often do this work for you. Casebook authors edit out any unimportant concurrences and dissents to keep the opinions short. When concurrences and dissents appear in a casebook, it signals that they offer some valuable insights and raise important arguments. Disagreement between the majority opinion and concurring or dissenting opinions often frames the key issue raised by the case; to understand the case, you need to understand the arguments offered in concurring and dissenting opinions.

IV. WHY DO LAW PROFESSORS USE THE CASE METHOD?

I'll conclude by stepping back and explaining why law professors bother with the case method. Every law student quickly realizes that law school classes are very different from college classes. Your college professors probably stood at the podium and droned on while you sat back in your chair, safe in your cocoon. You're now starting law school, and it's very different. You're reading about actual cases, real-life disputes, and you're trying to learn about the law by picking up bits and pieces of it from what the opinions tell you. Even weirder, your professors are asking you questions about those opinions, getting everyone to join in a discussion about them. Why the difference?, you may be wondering. Why do law

schools use the case method at all?

I think there are two major reasons, one historical and the other practical.

The Historical Reason

The legal system that we have inherited from England is largely judge-focused. The judges have made the law what it is through their written opinions. To understand that law, we need to study the actual decisions that the judges have written. Further, we need to learn to look at law the way that judges look at law. In our system of government, judges can only announce the law when deciding real disputes: they can't just have a press conference and announce a set of legal rules. (This is sometimes referred to as the "case or controversy" requirement; a court has no power to decide an issue unless it is presented by an actual case or controversy before the court.) To look at the law the way that judges do, we need to study actual cases and controversies, just like the judges. In short, we study real cases and disputes because real cases and disputes historically have been the primary source of law.

The Practical Reason

A second reason professors use the case method is that it teaches an essential skill for practicing lawyers. Lawyers represent clients, and clients will want to know how laws apply to them. To advise a client, a lawyer needs to understand exactly how an abstract rule of law will apply to the very specific situations a client might encounter. This is more difficult than you might think, in part because a legal rule that sounds definite and clear in the abstract may prove murky in application. (For example, imagine you go to a public park and see a sign that says "No vehicles in the park." That plainly forbids an automobile, but what about bicycles, wheelchairs, toy automobiles? What about airplanes? Ambulances? Are these "vehicles" for the purpose of the rule or not?) As a result, good lawyers ***63** need a vivid imagination; they need to imagine how rules might apply, where they might be unclear, and where they might lead to unexpected outcomes. The case method and the frequent use of hypotheticals will help train your brain to think this way. Learning the law in light of concrete situations will help you deal with particular facts you'll encounter as a practicing lawyer.

Good luck!