



TEXAS SOUTHERN UNIVERSITY

Thurgood Marshall School of Law



## **Fall 2023 J.D. New Students Orientation**

**Date: August 14—18, 2023**

**Location 1: McCoy Auditorium, School of Public Affairs  
(August 14-16, 2023)**

**Location 2: Auditorium, School of Business  
(August 17-18, 2023)**



# Daily Schedule

(McCoy Auditorium, School of Public Affairs )

## Monday, August 14, 2023

- Time: 8:00—8:50 AM** Breakfast and Sign-In
- Time: 9:00—9:25 AM**  
Topic: Welcome and Introduction of Thurgood Marshall Law Administrators and First Year Faculty  
Presenter: Okezie Chukwumerije, *Interim Dean and Professor of Law*
- Time: 9:25—10:25 AM**  
Topic: How to Brief Cases  
Presenter: Ahunanya Anga, Associate Dean of Teaching and Faculty Development  
Lisa DeLaTorre, Associate Director of Academic Success and Bar Readiness  
Ronald Hopkins, Assistant Director of Academic Success and Bar Readiness  
Daniel Dye, Assistant Director of Academic Success and Bar Readiness  
Reem Haikal, Assistant Professor of Law
- Time: 10:25—10:50 AM**  
Topic: How to Outline  
Presenter: Academic Success
- Time: 11:00—11:25 AM**  
Topic: Ways to Thrive in Law School: Tips for Wellness, Managing Stress and Anxiety  
Presenter: Alicia Freeman, *Texas Lawyers Assistance Program, TLAP*
- Time: 11:25 —11:50 PM**  
Topic: Mindfulness! Meditation! Why It Can Be a Game Changer for You  
Presenter: Lydia Johnson, *Professor of Law and Faculty Advisor, TMSL Honor Court*
- Time: 12:00—1:00 PM** **Lunch Provided**
- Time: 1:00—1:25 PM**  
Topic: Character and Fitness  
Presenter: Nahdiah Hoang, *Executive Director, Texas Board of Law Examiners*
- Time: 1:25 —1:50 PM**  
Topic: Character and Fitness Amendments for TMSL  
Presenter: *Crystal Ridgley, Associate Dean of Admissions*  
*Gabriel Aitsebaomo, Professor of Law and Admissions Committee Chair*
- Time: 2:00 —2:50 PM**  
Topic: How to Study/How to Write an Application  
Presenter: Academic Success
- Time: 3:00—3:25 PM**  
Topic: Yesterday's Review, Academic Standards Petition, Legislative Externship  
Presenter: James M. Douglas, *Distinguished Professor of Law*
- Time: 3:25—3:50 PM**  
Topic: Welcome from State Bar of Texas and Texas Young Lawyers Association (TYLA)  
Presenter: Attorney Laura Gibson, *Immediate Past President of the State Bar of Texas*  
Attorney Ashley Hymel  
Attorney Timothy Adams, *District 6, Place 6, Harris County District Attorneys Office*

# Daily Schedule

(McCoy Auditorium, School of Public Affairs )

## Tuesday, August 15, 2023

**Time:** 8:00—8:50 AM Breakfast and Sign-In and Student ID Pickup

**Time:** 9:00—9:50 AM  
Topic: Briefing and Outlining  
Presenter: Academic Success

**Time:** 10:00—10:50 AM  
Topic: Writing an Application or Analysis  
Presenter: Academic Success

**Time:** 11:00—11:50 AM  
Topic: How to Write for Law School—CRAC/IRAC  
Presenter: Academic Success

**Time:** 12:00—1:15 PM **Lunch Provided by BARBRI**

**Time:** 1:25—1:50 PM  
Topic: Academic Standards/Academic Affairs  
Presenter: Shaundra Lewis, *Associate Dean of Academic Affairs and Professor of Law*

**Time:** 2:00—2:50 PM  
Topic: Student Conduct  
Presenter: Shaundra Lewis, *Associate Dean of Academic Affairs and Professor of Law*  
Tanisha Green, *Assistant Dean of Student Development*  
Lydia Johnson, *Professor of Law and Faculty Advisor, TMSL Honor Court*  
Jennifer Points, *Assistant Professor of Law, TMSL Honor Court*  
Regal Dean, *Chief Justice, TMSL Honor Court*  
Roman Porsche, *Chief Prosecutor, TMSL Honor Court*

**Time:** 3:00 —3:25 PM  
Topic: Title IX  
Presenter: Armand Byrd, *TSU Title IX Investigator and Compliance Officer*  
Cheryl Cash, *Adjunct Professor, TMSL Title IX Liaison*

**Time:** 3:25—3:50 PM  
Topic: Campus Police and Parking Management  
Presenter: TSU Police Department

# Daily Schedule

(McCoy Auditorium, School of Public Affairs )

## Wednesday, August 16, 2022

**Time: 8:00—8:50 AM**

Breakfast and Sign-In and Student ID Pickup

**Time: 9:00—9:50 AM**

Topic: Briefing and Outlining

Presenter: Academic Success

**Time: 10:00—10:50 AM**

Topic: Writing an Application

Presenter: Academic Success

**Time: 11:00—11:50 AM**

Topic: How to Write for Law School - CRAC/IRAC

Presenter: Academic Success

**Time: 12:00—1:00 PM**

**Lunch Provided**

**Time: 1:00—1:25 PM**

Topic: Student Disability Services (Accommodations)

Presenter: Kirsten Butler, *Coordinator of TSU Student Accessibility Services Office (SASO)*  
Sharron Benavides, *Director of Student Accessibility Services Office*

**Time: 1:25—1:50 PM**

Topic: Student Counseling

Presenter: Crystal Taylor, *Counselor, TSU University Counseling Center*

**Time: 1:50 - 2:15 PM**

Topic: Registration, Exam Numbers, Instructional Support

Presenter: Pearly Pendenque, *TMSL Registrar*

Amy Ratra, *Associate Dean of Student Services and Instructional Support*

**Time: 2:30—4:30 PM**

Topic: Computer Training

Presenter: Westlaw and LexisNexis

Location: Thurgood Marshall School of Law, Room 202 (Sections 1 & 2)

Thurgood Marshall School of Law, Room 203 (Sections 3 & 4)

**Time: 6:30—7:30 PM (Online Session)**

Topic: Financial Planning for Law School

Presenter: Access Lex and Academic Success

Video Conference Link: [https://accesslex-org.zoom.us/webinar/register/WN\\_NTcTdJSIR7GFSSuWI-v5HQ](https://accesslex-org.zoom.us/webinar/register/WN_NTcTdJSIR7GFSSuWI-v5HQ)



# Daily Schedule

(Auditorium, School of Business)

## Thursday, August 17, 2023

**Time:** 8:00—8:50 AM Breakfast and Sign-In & Student ID Pickup

**Time:** 9:00—9:50 AM  
Topic: Briefing and Outlining  
Presenter: Academic Success

**Time:** 10:00—10:50 AM  
Topic: How to Write for Law School-CRAC, IRAC  
Presenter: Academic Success

**Time:** 11:00—11:50 AM  
Topic: Time Management and Schedules-How To Do Law School  
Presenter: Academic Success

**Time:** 12:00—1:00 PM **Lunch Sponsored by TSU Newman Center**

**Time:** 1:00—1:15 PM  
Topic: Civil Procedure Connected Quizzes and Practice Perfect Registration  
Presenter: Suzy Coit, Aspen Publishing

**Time:** 1:15—1:50 PM  
Topic: Review, Q&A  
Presenter: Academic Success

**Time:** 2:00—2:25 PM  
Topic: Earl Carl Institute (ECI)  
Presenter: Cheri A. Buggs, Assoc. Director for Special Projects & Student Development (ECI)

**Time:** 2:25—2:50 PM  
Topic: Clinical Programs & Externships  
Presenter: Thelma Harmon, *Director of Clinical Education and Associate Professor of Law*

**Time:** 3:00— 3:50 PM  
Topic: Career Services  
Presenter: Sarah Doezema, Assistant Dean of Career *Services*

# Daily Schedule

(Auditorium, School of Business)

**Friday, August 18, 2023 (Business Formal Attire)**

**8—8:50 AM** Breakfast and Sign-In

**Time: 9:00—9:50 AM**

Topic: The Importance of Equity and the Law on Society

Presenter: Jenn Hunter '10, *Chief Impact Officer, Big 12 Conference*

**Time: 10:00—10:50 AM**

Topic: SBA Student Organizations Fair

Presenter: Aaron Abram, *SBA President*  
Student Organizations

**Time: 11:00 —11:50 AM**

Topic: Professionalism and Law School Oath

Presenters: Attorney Peter Clark '96  
Honorable Vonda Bailey '14, 255th Family District Court

**Time: 12:00—12:10 PM Alumni Welcome and Introduction**

**Time: 12:10—12:25 PM Keynote Address**

**Time: 12:35—2:00 PM Lunch Pickup and Breakout Sessions**

Hosted by: Thurgood Law Alumni Board

( Please see the schedule sent from Thurgood Law Office of Advancement & Alumni Engagement. )

# Appendix



TEXAS SOUTHERN UNIVERSITY  
Thurgood Marshall School of Law

### Thurgood Marshall School of Law Oath of Professionalism\*

I, \_\_\_\_\_ (*Print Name*), promise to live up to the high ideals of the legal profession and to uphold the highest standards of academic honesty, ethical practice, and to demonstrate professionalism throughout my training and for my entire professional life. I understand that as I join this academic community, I have begun my professional career. From this day forward, I will conduct my academic, professional, and personal life to honor the values of the Texas Southern University Thurgood Marshall School of Law, adhering to conduct that is a model of integrity, civility, professionalism, and respect.

I will be courteous, civil, and prompt in oral and written communications.

I can disagree without being disagreeable. I recognize that effective discussion does not require antagonistic or obnoxious behavior.

I understand that, as a law student, I am responsible to protect the dignity and decorum of the law school classroom.

I will conduct myself in class in a professional manner and demonstrate my respect for the law school class, professor, and fellow classmates.

I will treat all the faculty, staff, and students with courtesy and respect.

I will be punctual.

I will not engage in any conduct which offends the dignity and decorum of the law school class.

I will follow all the provisions of the Thurgood Marshall Law Honor Code.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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\* As partially derived from the Texas Lawyers' Creed.

# Legal Pedagogy

## Legal Opinions

### **What's in a Legal Opinion**

- ◇ Caption
- ◇ Case Citation
- ◇ Author of Opinion
- ◇ Facts of the Case
- ◇ Law of the Case
- ◇ Concurring or Dissenting Opinions

### **Common Legal Terms Found in Opinions**

- ◇ Read cases with a legal dictionary nearby!
- ◇ Learn terms for civil and criminal disputes
- ◇ Learn basic terms in appellate litigation

### **What You Need to Learn From Reading a Case**

- ◇ Facts
- ◇ Specific Legal Arguments Made by the Parties
- ◇ Disposition – The Action the Court Ultimately Took
- ◇ Reasoning of the Majority Opinion
- ◇ Significance of the Majority Opinion
- ◇ Understand Any Concurring or Dissenting Opinions

### **Why Do Law Professors Use the Case Method?**

- ◇ The Historical Reason: We inherited English tradition of Common Law or “judge-made law.” Judges can only decide real cases or controversies precedent and stare decisis

### **Why do Professors Use the Case Method?**

- ◇ The Practical Reason/Lawyering Skill: Reasoning By Analogy – Compare your facts to other sets of facts

### **When You First Begin Reading Opinions**

- ◇ Before Worrying About Briefing, You Must: (1) Read the case critically and (2) understand the coherent big picture
- ◇ Use the Beginning Case Reading Worksheet: it will serve as a template. Print out copies or fill out individual copies as you read. This will make briefing go faster and will train your brain to see what you need as you read



# Legal Pedagogy Cont.

## 10 Things Lists

### By First Day of Classes

1. Create separate folders for all five classes.
2. Set up at-home study area.
3. Update your computer with virus protection, word processor, etc.
4. Purchase all office supplies: pens, pencils, legal pads, highlighters, rolling-bag/backpack, lock for locker, calendar.
5. Create a professional email address
6. Buy/order online all casebooks for the semester.
7. Have a few suits and professional outfits that *fit* ready to be worn to school.
8. Get student ID card and library card.
9. Print schedule and have a copy with you for the first week of school.
10. Clean up social networking pages to reflect a more professional image.

### By the End of the Your First Week

1. Get parking permit.
2. Have all casebooks.
3. Take time to look at each class syllabus – put important dates in your calendar and start dividing reading pages.
4. If a tutor has been assigned, get his/her contact information.
5. Pick your seat in the class wisely.
6. Start getting yourself in the habit of not getting distracted by social media.
7. If you were not able to get used books for a good price, buy new.
8. Get a locker if you are planning to use one.
9. If you have any issues outside of law school (car mechanic, home, etc.), try to get that fixed before busy times start.
10. Get all unfinished paperwork for the school done. You don't want to leave anything behind.

# Legal Pedagogy Cont.

## 10 Things Lists cont.

### By the End of Your First Month

1. Begin outlining for each class.
2. Know what study habits are best for you.
3. Reflect on how you have been utilizing your time, make adjustments if you see areas you could be more productive.
4. Know midterm exams schedule, have those dates in your calendar.
5. Get advice from your tutor or professor about your outline and case brief.
6. Strategize how will you approach exams and how to study (flash cards, Emanuel outlines, etc.)
7. Get study supplements from the school library. Good books finish first.
8. If you have issues with any concept, approach your professor or tutor and ask. Please don't wait until late in the semester.
9. Study for class as if you're studying for the exam. The week of exams flies fast therefore, you should always be prepared.
10. Be confident; this will be an amazing ride.

# Office of Academic Success and Bar Readiness: Here to Support Your Success

Thurgood Marshall School of Law has a comprehensive Office of Academic Success and Bar Readiness (OAS), and professional staff are here to support you at every point in your law school career.

Dean Ronda Harrison leads the office, with additional support from three Assistant Directors: Ronald Hopkins, Lisa DeLaTorre and Daniel Dye . (A quick note on appropriate forms of address: “Dean Harrison” , “Director Hopkins” or “Mr. Hopkins”, “Director DeLaTorre” or “Ms. DeLaTorre”, “Director Dye” or “ Mr. Dye”.)

OAS will communicate with you using your TSU/TMSL student email account. It is your responsibility to check that account frequently to stay up to date on all the important programming and announcements we have to offer!

## Office of Academic Success and Bar Readiness, programming for 1Ls:

1. **Tutorials:** For each of your 1L doctrinal classes, your section will be assigned a tutor. Each tutor holds a tutorial session once per week, beginning early in the semester. This means you have access to four hours of tutorials nearly every week during your fall semester of your 1L year, and five hours during spring. Attendance is taken at every session; you should attend every single session of tutorials.
2. **Tutorial Lab:** The student tutorial lab is staffed by high-achieving upper-level students who each hold office hours ten hours per week and who provide tutorial services to any student who stops by for assistance. Office hours will be available early in the fall. Stop in to the tutorials lab to see how they can help you!
3. **One-on-One Appointments:** Do you have a question about law school in general, a specific class, or about a skill you hope to develop? We can help with all of that. Make an appointment or drop by!
4. **Practice Exams:** bar exam preparation begins now, during the **first year** of Law School. In the next session offered by OAS, you will see how ALL of your first year subjects are tested on the bar exam. At the end of each semester OAS administers a practice mini-uniform exam covering all of the first-year doctrinal courses (torts, contracts, property, civil procedure, and criminal law. These comprehensive exams allow you to engage in self-assessment, to know your strengths, and where you need to work harder, while you have plenty of time to do so.
5. **Need something else?** Just ask! We are here to support each student’s success from Orientation through bar passage.

## Four Step Study Method

### I. Prepare for Class

- Pre-Read for Context
- Read Cases
- Brief/Brief-Brief/ Take notes, etc.

### II. Attend Class

- Take proper notes
- Participate either explicitly (i.e. by commenting in class) or implicitly (i.e. by actively engaging the dialogue and answering/criticizing other' answers in your head).

### III. Review After Class/Cumulative Review

- End of week, together with Step IV.
- Create outline, continue to update adding new concepts and rules.
- Self-teach the law: Review notes; use hornbooks; work with study group, etc.
- Then, memorialize this maximum understanding for future use.
- The point is *to teach yourself* the law in this step.

### IV. Test Yourself: Objective Self -Assessment

- Prove to yourself that you really do understand the law
- Use MCQs or your own materials to test your understanding of the subjects covered in steps I-III.
- If you get about 7/10 or more right, you likely understand the subject and can move on.
- If you get 5-6/10 or below, you need to return to Step III and eliminate areas of misunderstanding.

**30 Things That Academically Successful Law Students Should Be Doing**  
**TMSL OFFICE OF ACADEMIC SUCCESS**

#	Managing Your Classes
1	Attend all of your classes
2	Complete all assigned readings before each class
3	Complete all required briefs before each class
4	Review before and recap after each class
5	Pay attention in class (When possible, sit toward the front of the class)
6	If you have a question in class, ask the question during class (Time permitted)
7	Take appropriate notes during each class (Don't try to write everything but what's most important)
8	Prepare outlines for each of your classes
9	Take the time to introduce yourself to your professors outside of class
10	After quizzes and exams, if you don't receive the grade you wanted, meet with the professor to find out where you went wrong
	<b>Managing Your Homework/Studying</b>
11	Know your preferred learning style and use it to study and learn material <a href="http://www.educationplanner.org/students/self-assessments/learning-styles-quiz.shtml?event=results&amp;A=8&amp;V=7&amp;T=5">http://www.educationplanner.org/students/self-assessments/learning-styles-quiz.shtml?event=results&amp;A=8&amp;V=7&amp;T=5</a>
12	Set aside 3-5 hours per class, per week to actually study versus simply doing homework
13	When possible, do homework the day/night before each class
14	Participate in a study groups, at least once per week, per class (3-4 per group)
15	Attend all offered tutorials
16	Participate in Skills Academy events offered
17	Take advantage of professor feedback/practice questions submitted by the professor, or ask professor for practice questions
18	Do practice questions while studying throughout the semester
19	Ask for help from peers, OAS staff or faculty when needed
	<b>Managing Your Time</b>
20	Create & follow a detailed weekly study calendar/schedule
21	Don't procrastinate when it came to class writing assignments
	<b>Managing Your Personal Life</b>
22	Have a routine to help with your stress
23	Don't get overly caught up in the unhealthy competition aspect of law school
24	Get adequate sleep (5-8 hours per night)
25	Maintain a healthy balance with regard to your personal life and law student schedule/requirements
26	Budget our finances appropriately (don't live beyond your means)
	<b>Managing You Social/Professional Life</b>
27	Take the opportunity to make friends with TMSL staff and faculty, not just your fellow students
28	Take advantage of every social opportunity to network and add to your network
29	Treat everyone around the law school with respect (Don't be a jerk)
30	Refrain from being a constant complainer or that student who files frivolous complaints against professors



# Academic Success and Bar Readiness Cont.

## Your Bar Exam: preparation begins now

	<b>Subjects tested on the Bar Exam</b>	<b>1L required courses</b>
1	Civil Procedure →	Civil Procedure
2	Contracts →	Contracts
3	Criminal Law Constitutional Protections→	Criminal Law (spring only)
4	Real Property →	Property
5	Torts →	Torts
6	Evidence	
7	Constitutional Law	

# Academic Success and Bar Readiness Cont.

## Weekly Study Schedule (Orientation Sample 1L Sec 2)

	Monday	Tuesday	Wed	Thursday	Friday	Sat.	Sunday
<b>8am</b>	Commute/Library Review for K (8:30-8:50)	Commute/Library	Commute/Library Review for K (8:30-8:50)	Commute/ Library	Commute/Library Review for K (8:30-8:50)		
<b>9am</b>	<b>Contracts Class</b> (9-9:50) Prof. Eluyode	<b>LP Class</b> (9-9:50) Prof. Cash	<b>Contracts Class</b> (9-9:50) Prof. Eluyode	<b>LP Class</b> (9-9:50) Prof. Cash	<b>Contracts Class</b> (9-9:50) Prof. Eluyode		Chores
<b>10am</b>	<u>Recap</u> K (10-10:25) w 5 min break Review Prop 10:30-11:50)	<u>Recap</u> LP (10-10:25) Review Civ Pro (10:30-11:50)	<u>Recap</u> K (10-10:25) w 5 min break Review Prop 10:30-11:50)	<u>Recap</u> LP (10-10:25) Review Civ Pro (10:30-11- 50)	<u>Recap</u> K (10-10:25) w 5 min break Review Prop (10:30-11:50)	Contracts Study/Group (10-11:30)	Chores
<b>11am</b>	<b>Property Class</b> (11-11:50) Prof. Duruigbo	<b>Civ Pro Class</b> (11 -12:15) Prof Points	<b>Property Class</b> (11-11:50) Prof. Duruigbo	<b>Civ Pro Class</b> (11-12:15) Prof Points	<b>Property Class</b> (11-11:50) Prof. Duruibgo	<i>Contracts Study/Group (10-11:30)</i>	Torts <b>H/W</b> (11 -1pm)
<b>noon</b>	<u>Recap</u> Prop +Lunch (12-12:30) Review Torts (12:30-1:50)	<u>Recap</u> Civ Pro (12:30-1pm)	<u>Recap</u> Prop +Lunch (12-12:30) Review Torts (12:30-1:50)	<u>Recap</u> Civ Pro (12:30-1pm)	<u>Recap</u> Prop +Lunch (12-12:30) Review Torts (12:30-1:50)	Property Study/Group (12-1:30)	<b>Torts H/W</b> (11-1pm)
<b>1pm</b>	<b>Torts Class</b> (1-1:50) Prof. Fain	Lunch + Break (1-2pm)	<b>Torts Class</b> (1-1:50) Prof. Fain	Lunch+ Break (1-2pm)	<b>Torts Class</b> (1-1:50) Prof. Fain	<i>Property Study/Group (12-1:30)</i>	Lunch Break/ Chores
<b>2pm</b>	<u>Recap</u> Torts (2-2:30) <u>Break</u> - 2:30-3pm	Torts <b>H/W</b> 2-4pm	<u>Recap</u> Torts (2-2:30) <u>Break</u> - 2:30-3pm	<b>LP (RS) Class</b> (2-2:50) Prof. Harris	<u>Recap</u> Torts (2-2:30) <u>Break</u> - 2:30-3pm	Torts Study/ Group (2-3:30)	Prop <b>H/W</b> (2-4pm)
<b>3pm</b>	Commute or Civ Pro H/W (3-5pm)	<b>Torts H/W</b> 2-4pm	Commute or Civ Pro H/W (3-5pm)	<u>Recap</u> LP R Class/LP H/W	Commute or Civ Pro H/W (3-5pm)	<i>Torts Study/ Group (2-3:30)</i>	<b>Prop H/W</b> (2-4pm)
<b>4pm</b>	Commute or Civ Pro H/W (3-5pm)	Commute or Break (4-4:30) <del>Prop H/W</del> -- (4:30-6:30)	Commute or Civ Pro H/W (3-5pm)	Commute or Break (4-4:30) <del>Prop H/W</del> -- (4:30-6:30)	Commute or Civ Pro H/W (3-5pm)	Civ Pro Study/Group (4-5:30)	Break/ Chores
<b>5pm</b>	<u>Break</u> - (5-5:30) LP <b>H/W</b> (5:30-6:30)	Prop <b>H/W</b> (4:30-6:30)	<u>Break</u> - (5-5:30) LP <b>H/W</b> (5:30-6:30)	Prop <b>H/W</b> (4:30-6:30)	Free Time	<i>Civ Pro Study/Group (4-5:30)</i>	Contracts <b>H/ W</b> (4-6pm)
<b>6pm</b>	Commute or Dinner Break	Dinner Break	Commute or Dinner Break	Dinner Break	Free Time	Dinner	<b>Contracts H/ W</b> (4-6pm)
<b>7pm</b>	<b>Study</b> Con- tracts (7:30-8:30)	Contracts H/W (7-9pm)	<b>Study</b> Property (7:30-8:30)	Contracts H/ W (7-9pm)	Free Time	Free Time	Dinner
<b>8pm</b>	<b>Study</b> Con- tracts Break (8:30-9pm)	<i>Contracts H/W</i> (7-9pm)	<b>Study</b> Property Break (8:30-9pm)	<i>Contracts H/ W</i> (7-9pm)	Free Time	Free Time	Complete left- over H/W/ Optional Study
<b>9pm</b>	<b>Study</b> Torts (9-10pm)	Break (9-9:30) <b>Study</b> Civ Pro (9:30-10:30)	Flex Study/ Outlines	Break (9- 9:30) <b>Study</b> LP (9:30-10:30)	Free Time	Free Time	Complete left- over H/W/ Optional Study
<b>10pm</b>	Flex Study/ Outlines	<b>Study</b> Civ Pro (9:30-10:30)	Flex Study/ Outlines	<b>Study</b> Civ Pro (9:30-10:30)		Free Time	Complete left- over H/W/ Optional Study
<b>11pm</b>	Flex Study/ Outlines						

# Academic Success and Bar Readiness Cont.

	Monday	Tuesday	Wed	Thursday	Friday	Sat.	Sunday
8am							
9am							
10am							
11am							
noon							
1pm							
2pm							
3pm							
4pm							
5pm							
6pm							
7pm							
8pm							
9pm							
10pm							
11pm							
12pm							

# CHAPTER 1

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## BEFORE READING: THE PURPOSE FOR READING CASES

### I. SUMMARY

Expert legal readers recognize:

- the purpose for reading cases, and
- the role of critical reading in law.

At the conclusion of this chapter, you will understand that:

- experts read cases to solve problems,
- critical reading involves skills such as analysis and evaluation rather than memorization, and
- while some of your current reading strategies may be suitable for reading cases, additional techniques will also be useful.

### II. CHECKLIST

Each chapter starts with a reading checklist that summarizes all of the reading skills in this book. The technique that is the focus of the chapter is highlighted in bold. Use the checklist as a guide and create your own checklist with the techniques that work best for you. (A template to use to construct your checklist is located in Appendix A.)

#### CASE READING CHECKLIST

Warning: Do not just highlight and underline.

##### Phase 1: Before Reading

1. **Read for a purpose** and assume the role of advocate or judge.
2. Read with energy and focus.
3. Notice case structure.
4. Understand the general subject matter by examining:
  - a. course syllabus, casebook table of contents, or research assignment, and
  - b. parties, citation, court, and date.

5. Read for an overview by skimming and noticing organization, headings, who won, and what case is generally about.

Phase 2: Reading More Carefully

1. Understand the facts.
2. Reread, look up unfamiliar words, analyze confusing language, and vary reading speed.
3. Understand the main ideas set forth in the issue, holding, and reasoning.
4. Identify the rule.
5. Take notes with your reactions and brief the case.

Phase 3: After Reading

1. Evaluate the decision, ask questions, and talk with professors.
2. Determine how cases fit together with other cases and synthesize.

### III. BEFORE READING STRATEGIES

Expert legal readers take specific actions before they read a case. They do not just dive into reading. As seen in Figure 1.2, the first four chapters focus on reading strategies that are used before reading a case more carefully. These four chapters examine reading goals. They also provide valuable information about the structure of cases and procedure as well as techniques for skimming cases for an overview. The before reading strategies will make your reading more efficient and effective.



**Figure 1.2**  
**Before Reading Topics**

Chapter	Topic
1	Reading for a purpose
2	Reading as an advocate and reading with focus
3	Understanding case structure and procedure
4	Understanding case context and skimming for an overview

## IV. THE PURPOSE FOR READING CASES

### A. PURPOSE CHANGES THE WAY WE READ

This chapter examines the purpose for reading cases because we read differently depending on our **purpose** and the task at hand. For example, if you needed to fix the brakes in your car, you would read the owner's manual differently than if you were taking an exam that tested your knowledge of the manual. To fix your brakes, you would look for information in the manual related to brakes, find diagrams, and then try to solve the problem. To prepare for an exam, you would memorize terms and facts so that you could answer specific questions. **The purpose for reading affects what we pay attention to as we read and how we read.**

### B. LAWYERS READ TO SOLVE PROBLEMS

The purpose for reading cases also affects how we read cases. **The purpose for reading cases is to solve legal problems.** People come to lawyers to get assistance when they have been evicted, arrested, or fired from a job. Lawyers read cases to understand legal principles and key rules and then apply those principles to the issues faced by their clients. One law school professor gave entering first year students the following advice: “[w]hat you will learn in law school . . . is not information in the usual sense, not a set of repeatable propositions, but how to *do* something. Our primary aim is not to transmit information to you, but to help you learn how to do what it is that lawyers do with the problems that come to them.”<sup>1</sup>

The purpose for reading in law school is different than the purpose for reading in most undergraduate courses. As undergraduates, students often read to memorize facts. Students are required to demonstrate that they have learned facts and concepts when they write papers and take exams.

<sup>1</sup> James B. White, *Talk to Entering Students*, 13 Occasional Papers L. Sch. U. Chi. 1, 4 (1977).

When reading cases, it may not be important to memorize the specific date of a decision or the location of a crime or the name of the person who entered into a contract. However, it is necessary to understand and analyze rules and the rationale for the rules. Attorneys use this information to assist clients in resolving problems. Expert legal readers understand the purpose for reading law while novices read cases to memorize facts.

Figure 1.3 summarizes the differences in the purpose for reading judicial opinions and undergraduate texts.

Figure 1.3  
Reading Purposes: Pre-Law/Law School

Pre-Law	Law School
Remembering dates, places, names	Finding and understanding rules
Mapping the sequence of events	Applying rules to factual situations
Understanding cause and effect	Understanding policy
Remembering scientific principles	Analyzing multiple cases

Although the purpose for reading is different in law school, some of the reading strategies you used in other courses may still be effective. If you looked up the meaning of words, skimmed for an overview before reading more carefully, reread material, and took notes, these techniques will work well in law school. Continue to use the strategies that were useful but be open to adopting new methods that may be more effective in meeting the demands of law school. In Reflection Exercise 1.1, think about reading strategies that have been helpful for you in the past. Practice Exercise 1.2 provides the opportunity to consider how the purpose for reading a case can affect the types of things you look for as you read.

Note: There are Reflection and Practice Exercises at the end of each chapter. For the Reflection Exercises, think about how techniques you have used may be helpful in law school. The Practice Exercises are opportunities to try out the strategies explained in the chapter. Answers for the Practice Exercises are in Appendix P.

### C. PURPOSE FOR READING CASES: EXPERT LEGAL READERS

Experts read differently than novices, in part, because they recognize that the purpose for reading cases is to solve problems and not simply to memorize facts. In one study (Oates), the reading strategies of a law school professor and four law students were examined. All four students had undergraduate GPAs and LSAT scores that predicted they would be “in the bottom 10% of their entering class.”<sup>2</sup> However, Figure 1.4 shows that Maria

<sup>2</sup> Laurel Currie Oates, *Leveling the Playing Field: Helping Students Succeed by Helping Them Learn to Read as Expert Lawyers*, 80 St. John's L. Rev. 227, 230 (2006).

ended up “in the top 15% of her class,”<sup>3</sup> in part, because she recognized that the purpose for reading in law school was different than the purpose for reading as an undergraduate. On the other hand, Jackie “was in the bottom 20 percent of her class”<sup>4</sup> at the end of the first year, in part, because she did not understand the significant differences between the demands of college and law school.

Figure 1.4  
Reading Purpose: Oates Study

Student	Reading Purpose
Maria (Top 15%)	“understood that, while for most of her undergraduate exams her professors had wanted her to demonstrate that she knew a particular set of facts or that she knew how to do a particular act, for example, to solve a particular type of problem, her law school professors wanted her to identify the issue, set out the rules that governed that issue, and to present and evaluate each side’s arguments.” <sup>5</sup> (emphasis added).
Jackie (Bottom 20%)	“She had gotten her undergraduate degree in history from a college that emphasized the memorization of facts. For her classes, Jackie would memorize events, names, and dates of historical events, and she would then recite these on exams.” “Although at some level Jackie knew that her law school classes were different from her college classes, she did not understand the significance of those differences. Thus, she read the cases for information.” <sup>6</sup> (emphasis added).

## V. CRITICAL READING

### A. WHAT IS CRITICAL READING?

In order to solve clients’ problems, attorneys must engage in **critical reading**. Critical readers understand a court’s decision as well as the underlying rationale for the decision. In addition, they take the next step and evaluate the usefulness of the case to solve a problem. Critical reading

<sup>3</sup> *Id.* at 239.

<sup>4</sup> *Id.* at 230.

<sup>5</sup> *Id.* at 240.

<sup>6</sup> *Id.* at 240–41.

involves more than just memorization. Lawyers use the following types of critical thinking skills to read and analyze cases:<sup>7</sup>

*Remembering:* Lawyers must first have basic knowledge of the facts of a problem, the vocabulary used in a case, and the sequence of legal procedures.

*Understanding:* Lawyers need to understand the main ideas in a case.

*Applying:* Lawyers apply the principles in a case to solve new problems.

*Analyzing:* Lawyers analyze a case to understand the rules and the court's decision.

*Evaluating:* Lawyers evaluate multiple cases, analyze the interrelationships among the cases, and make judgments regarding whether the cases are appropriate to use to advance a legal position.

*Creating:* Lawyers use cases to create a solution to a problem by synthesizing multiple authorities and then writing a memorandum or making an argument on behalf of a client.

These skills build on each other. Therefore, if the reader does not understand the vocabulary in a decision, he will not be able to accomplish the higher level tasks of analyzing a case to understand the rules or evaluating several cases for clients. As illustrated in Figure 1.5, expert legal readers master these critical thinking skills differently from novice legal readers.

**Figure 1.5**  
**Critical Thinking Skills: Expert/Novice Legal Readers**

Skill	Expert Readers	Novice Readers
Remembering	Remember vocabulary and procedural terms	Skip over unfamiliar words and procedures.
Understanding	Create diagrams of facts.	Skip over the facts.
Applying	Think about problem to be solved.	Read case in isolation from any actual problem.
Analyzing	Brief cases (summarize key elements of cases).	Use commercial briefs or other students' briefs.

<sup>7</sup> Bloom's Taxonomy is a framework for classifying educational objectives. David R. Krathwohl, *A Revision of Bloom's Taxonomy: An Overview*, 41 *Theory into Practice* 212, 215 (2002).

Evaluating	Ask questions.	Assume cases have a fixed meaning
Creating	Synthesize cases to solve problems	Examine cases in isolation from each other.

Each chapter identifies the thinking skills that will be used to master the reading strategies introduced in the chapter. This is done to emphasize that reading cases involves many critical thinking skills in addition to remembering and understanding concepts.

### B. THE ROLE OF METACOGNITION

Another component of critical reading is the reader's awareness of his or her understanding. The fancy term for this is *metacognition*, which means knowing about knowing. It is essential to develop an awareness of when you understand something and when you do not. This is so important that major law firms have stated that a key skill new lawyers need to master is to "know when they don't know."<sup>8</sup> Studies have shown that we often overestimate our comprehension. Therefore, if you think you might not understand something, assume that you need to go back over the material.

Because metacognition is so important to your success, each chapter ends with a Practice Exercise titled Self-Assessment so that you can assess your own progress. Each self-assessment exercise contains a problem to solve using the concepts introduced in the chapter. The self-assessment exercises conclude with a rubric which is a scoring tool you can use to determine if you understand the topics in the chapter and if you can perform at a proficient level.

### C. DOES EVERYONE FIND IT DIFFICULT TO READ CASES?

The discussion of critical thinking skills would not be complete without mentioning that reading cases is difficult for everyone. Many law students believe that everyone else gets it and they are the only ones who find it difficult to understand cases. Students have reported the following feelings about reading cases:

- "I feel like an idiot. Why is this so hard for me to figure out?"<sup>9</sup>

<sup>8</sup> Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 Mich. St. DCL L. Rev. 447, 472 (2003).

<sup>9</sup> Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 Reading Res. Q. 407, 416 (1987).



- “It’s easy to get lost in cases, which can seem like just one following another.”<sup>10</sup>
- It was like “looking for a purple dinosaur without knowing what a dinosaur was or what the color purple looked like.”<sup>11</sup>

No one is born with the innate ability to understand complicated legal jargon and decipher the structure of judicial opinions. Law students must learn a new language and new ways to solve problems. Most law students, law professors, and practicing lawyers find some cases challenging to read. The good news is that you can learn how to read cases, and reading becomes easier as you become familiar with critical reading techniques. Practice Exercise 1.3 is an opportunity to examine a short excerpt from a case and identify some of the reasons why cases are difficult to read. Practice Exercise 1.4 is the self-assessment exercise for this chapter.

One reason that cases are difficult to read is that they contain many terms that are unfamiliar to novice legal readers. A glossary of common legal terms is provided in Appendix Q for reference.

#### D. A WORD ABOUT TIME

You may be concerned that you do not have time to complete all of the steps in the checklist. You may feel that it would be easier to use a highlighter and underline key points so that you can get reading done quickly for class. Actually, critical reading techniques take little additional time. The strategies suggested in the first four chapters, the before reading phase, probably take about 30 seconds. It takes no additional time to read for the purpose of solving a problem. It also takes no additional time to read as an advocate. (Chapter 2). Understanding case structure and procedure will add no time to your reading. (Chapter 3). Reading for an overview may add about 30 seconds. (Chapter 4).

These techniques will make you a more efficient and effective reader. One student who used this checklist said that he liked it because it was “nice to have a system in place for efficiency” when faced with the high reading demands of law school.<sup>12</sup> Remember that this is your checklist. Try out the suggested techniques and modify them to suit your needs.

#### E. A WORD ABOUT CASE BRIEFS

You may have heard about case briefs, which are summaries of the key elements of a case. Once you understand the components of a case and master the basic reading strategies addressed in Chapters 2 through 9, it

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<sup>10</sup> William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 41 (2007).

<sup>11</sup> Jane Bloom Gris , *Critical Reading Instruction: The Road to Successful Legal Writing Skills*, 18 W. Mich. Univ. Cooley J. of Prac. & Clinical L. (forthcoming 2017).

<sup>12</sup> *Id.*

is recommended that you prepare summaries of cases. Case briefing is fully addressed in Chapter 10.

## VI. CASE EXAMPLE: PURPOSE FOR READING CASES

At the end of each chapter, *Fisher v. Carrousel Motor Hotel, Inc.*, 424 S.W.2d 627 (Tex. 1967) is used to illustrate the concepts addressed in the chapter. The reported case (with annotations) is found in Appendix B-1.

As discussed in this chapter, the purpose for reading the *Fisher* case determines how the case will be read. Assume that you have received a call from Joe Parker, who wants to make an appointment to discuss an incident that occurred at Smith Cars. Mr. Parker was injured when he fell after a mechanic at Smith Cars grabbed his cell phone.<sup>13</sup> After discussing this call with a senior partner, you have preliminarily concluded that Mr. Parker may have a claim for the intentional tort of battery.<sup>14</sup> The purpose for reading the *Fisher* case is to get guidance regarding the law of battery before you meet with Mr. Parker to get additional information.

Given that the purpose for reading is to begin to understand the law that applies to Mr. Parker's problem, an attorney reading the *Fisher* case would look for rules relating to battery to better understand how courts deal with these claims. The attorney would not read to memorize names and dates mentioned in the *Fisher* decision. The attorney would also think about the facts provided by Mr. Parker and compare those facts with the facts in *Fisher*. The purpose for reading the case affects what we look for as we read.

## VII. PRACTICE

### Reflection Exercise 1.1 Successful Reading Strategies

**Goal:** The goal of this exercise is to provide you with the opportunity to reflect on effective reading strategies you have used in the past and think about whether these techniques will be useful when you read cases to solve problems.

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<sup>13</sup> This fictitious scenario is based upon an actual case, *Picard v. Barry Pontiac-Buick, Inc.*, 654 A.2d 690 (R.I. 1995).

<sup>14</sup> Torts are civil wrongs. This means that someone has caused physical, emotional, or economic injury to someone through their action or inaction. Intentional torts are civil wrongs where a person intends to do an act. The intentional tort of battery occurs when someone intentionally engages in the harmful or offensive touching of a person or something associated with a person.

1.1-1 Think about successful reading strategies you have used in the past and list them.

<b>Effective Reading Strategies Used Before Law School</b>

1.1-2 In addition to the strategies listed above, have you ever used the following techniques? Were they helpful?

Reading Strategy	Used Strategy?	Was Strategy Helpful?
Skim for overview		
Read headings		
Look for main ideas		
Look up words		
Take notes		
Use graphic organizers		
Reread		
Read aloud		
Talk with other students		
Talk with professor		

- 1.1-3 Given of the purpose for reading in law school, list strategies you plan to continue to use.

<b>Reading Strategies to Continue in Law School</b>

**Practice Exercise 1.2  
Reading Purpose Affects How We Read**

**Goal:** This exercise is an opportunity to notice how your reading purpose affects what you look for as you read.

In this exercise, answer the questions below regarding *Fisher v. Carrousel Motor Hotel, Inc.*, 424 S.W.2d 627 (Tex. 1967) (Appendix B-1). Notice if the purpose for reading affects how you read.

**Purpose #1: Historical Analysis**

Assume that you are reading *Fisher* to write an article about the development of the law of battery in the United States.

- 1.2-1 Would the dates of other decisions referenced in the *Fisher* case be important to remember?
- 1.2-2 Would you pay attention to the law review article from 1939 referred to in the *Fisher* opinion on page 270 of Appendix B-1?
- 1.2-3 Would you analyze each stage in the development of the law?
- 1.2-4 Would you look for current rules regarding the law of battery?

**Purpose #2: Representation of Client**

Assume that you are reading *Fisher* to understand the law of battery before you meet with a client who wants to bring a battery lawsuit.

- 1.2-5 Would the dates of other decisions referenced in the *Fisher* case be important to remember?
- 1.2-6 Would you pay attention to the law review article from 1939 referred to in the *Fisher* opinion on page 270 of Appendix B-1?
- 1.2-7 Would you analyze each stage in the development of the law?
- 1.2-8 Would you look for current rules regarding the law of battery?

**Practice Exercise 1.3**  
**Why Is This Case Difficult to Read?**

**Goal:** The goal of this exercise is to think about why cases are difficult to read.

Reading cases is difficult for everyone. Read the following short passage from *Fisher v. Carrousel Motor Hotel, Inc.*, 424 S.W.2d 627, 628 (Tex. 1967) and think about why the passage is difficult to read.

“This is a suit for actual and exemplary damages growing out of an alleged assault and battery. The plaintiff Fisher was a mathematician with the Data Processing Division of the Manned Spacecraft Center, an agency of the National Aeronautics and Space Agency, commonly called NASA, near Houston. The defendants were the Carrousel Motor Hotel, Inc., located in Houston, the Brass Ring Club, which is located in the Carrousel, and Robert W. Flynn, who as an employee of the Carrousel was the manager of the Brass Ring Club. Flynn died before the trial, and the suit proceeded as to the Carrousel and the Brass Ring. Trial was to a jury which found for the plaintiff Fisher. The trial court rendered judgment for the defendants notwithstanding the verdict. The Court of Civil Appeals affirmed. 414 S.W.2d 774. The questions before this Court are whether there was evidence that an actionable battery was committed, and, if so, whether the two corporate defendants must respond in exemplary as well as actual damages for the malicious conduct of Flynn.”

- 1.3-1 Circle any words you do not understand.
- 1.3-2 Underline any sentence you do not understand after reading the sentence once.
- 1.3-3 Why is the passage difficult to read?

**Practice Exercise 1.4**  
**Self-Assessment**

**Goal:** Lawyers need to develop metacognition, which is an awareness of what they know and do not know. Each chapter ends with a self-assessment exercise so that you can determine if you understand the concepts presented. After completing the exercise, use the rubric at the end of the exercise to evaluate your proficiency.

In this exercise, think about how the purpose for reading affects how you read.

Assume that you are working in a law firm and have been contacted by Evelyn Michel, who is a nurse at Central Baptist Hospital in New York City. Evelyn has recently been terminated from her employment at Central Baptist because she failed the National Council Licensure Examination

(NCLEX). She wants guidance regarding whether or not she may be eligible for unemployment insurance benefits. A senior partner has given you a case to examine on this topic, *De Grego v. Levine*, 347 N.E. 2d 611 (N.Y. 1976),<sup>15</sup> which is in Appendix C.

As you answer the following questions, think about the types of information you will look for in the case to solve your client's problem.

- 1.4-1 Is it necessary to memorize the name of the first case mentioned, *In re James*?
- 1.4-2 Is it necessary to memorize the date that De Grego was discharged from his employment?
- 1.4-2 Is it useful to understand the rules relating to whether or not De Grego was eligible for unemployment benefits when he was terminated from his job?

Evaluate your understanding of the skills in this chapter by completing the following rubric. For each skill, circle whether you are at the proficient or developing level. Everyone can get to the proficient level over time.

Skill	Competency Level	
	Proficient	Developing
Understands purpose for reading cases.	<ul style="list-style-type: none"> <li>• Reads case to solve new legal problem.</li> </ul>	<ul style="list-style-type: none"> <li>• Reads case to memorize dates, places, and names.</li> </ul>
Understands that reading cases is difficult for everyone.	<ul style="list-style-type: none"> <li>• Understands that reading cases is a new skill that must be learned.</li> <li>• Believes it is possible to learn effective case reading techniques.</li> <li>• Understands that reading cases is time consuming at the beginning of law school and allocates sufficient time to read.</li> </ul>	<ul style="list-style-type: none"> <li>• Feels inadequate because reading cases is difficult.</li> <li>• Believes good case reading is an innate skill that cannot be learned.</li> <li>• Believes reading cases should not take so much time.</li> </ul>

<sup>15</sup> This case was selected because I represented Dominic De Grego when I worked at Mid-Hudson Legal Services in Poughkeepsie, New York. The fictitious scenario involving Ms. Michel is based upon an actual case, *Michael v. Long Island College Hospital*, 401 N.Y.S.2d 591 (N.Y. App. Div. 1978), where the court relied on the *De Grego* decision.

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## CHAPTER 2

# INTENTIONAL INTERFERENCE WITH PERSON OR PROPERTY

### 1. INTENT

#### Garratt v. Dailey

Supreme Court of Washington, 1955.  
46 Wash.2d 197, 279 P.2d 1091.

HILL, JUSTICE. The liability of an infant for an alleged battery is presented to this court for the first time. Brian Dailey (age five years, nine months) was visiting with Naomi Garratt, an adult and a sister of the plaintiff, Ruth Garratt, likewise an adult, in the back yard of the plaintiff's home, on July 16, 1951. It is plaintiff's contention that she came out into the back yard to talk with Naomi and that, as she started to sit down in a wood and canvas lawn chair, Brian deliberately pulled it out from under her. The only one of the three present so testifying was Naomi Garratt. (Ruth Garratt, the plaintiff did not testify as to how or why she fell.) The trial court, unwilling to accept this testimony, adopted instead Brian Dailey's version of what happened, and made the following findings:

"III. \* \* \* that while Naomi Garratt and Brian Dailey were in the back yard the plaintiff, Ruth Garratt, came out of her house into the back yard. Some time subsequent thereto defendant, Brian Dailey, picked up a lightly built wood and canvas lawn chair which was then and there located in the back yard of the above described premises, moved it sideways a few feet and seated himself therein, at which time he discovered the plaintiff, Ruth Garratt, about to sit down at the place where the lawn chair had formerly been, at which time he hurriedly got up from the chair and attempted to move it toward Ruth Garratt to aid her in sitting down in the chair; that due to the defendant's small size and lack of dexterity he was unable to get the lawn chair under the plaintiff in time to prevent her from falling to the ground. That plaintiff fell to the ground and sustained a fracture of her hip, and other injuries and damages as hereinafter set forth."

"IV. That the preponderance of the evidence in this case establishes that when the defendant, Brian Dailey moved the chair in question *he did not have any wilful or unlawful purpose* in doing so; that *he did not have any intent to injure the plaintiff, or any intent to bring about any unauthorized or offensive contact with her person* or any objects appurtenant thereto; that the circumstances which immediately preceded the fall of the plaintiff established that the defendant, *Brian*

*Dailey, did not have purpose, intent or design to perform a prank or to effect an assault and battery upon the person of the plaintiff.*" (Italics ours, for a purpose hereinafter indicated.)

It is conceded that Ruth Garratt's fall resulted in a fractured hip and other painful and serious injuries. To obviate the necessity of a retrial in the event this court determines that she was entitled to a judgment against Brian Dailey, the amount of her damage was found to be \$11,000. Plaintiff appeals from a judgment dismissing the action and asks for the entry of a judgment in that amount or a new trial.

The authorities generally, but with certain notable exceptions, [c] state that when a minor has committed a tort with force he is liable to be proceeded against as any other person would be. \* \* \*

In our analysis of the applicable law, we start with the basic premise that Brian, whether five or fifty-five, must have committed some wrongful act before he could be liable for appellant's injuries. \* \* \*

It is urged that Brian's action in moving the chair constituted a battery. A definition (not all-inclusive but sufficient for our purpose) of a battery is the intentional infliction of a harmful bodily contact upon another. \* \* \*

We have in this case no question of consent or privilege. We therefore proceed to an immediate consideration of intent and its place in the law of battery. In the comment on clause (a) of § 13, the Restatement says:

*"Character of Actor's Intention.* In order that an act may be done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to a particular person, either the other or a third person, the act must be done for the purpose of causing the contact or apprehension or with knowledge on the part of the actor that such contact or apprehension is substantially certain to be produced." [C]

We have here the conceded volitional act of Brian, i.e., the moving of a chair. Had the plaintiff proved to the satisfaction of the trial court that Brian moved the chair while she was in the act of sitting down, Brian's action would patently have been for the purpose or with the intent of causing the plaintiff's bodily contact with the ground, and she would be entitled to a judgment against him for the resulting damages. [Cc]

The plaintiff based her case on that theory, and the trial court held that she failed in her proof and accepted Brian's version of the facts rather than that given by the eyewitness who testified for the plaintiff. After the trial court determined that the plaintiff had not established her theory of a battery (i.e., that Brian had pulled the chair out from under the plaintiff while she was in the act of sitting down), it then became concerned with whether a battery was established under the facts as it found them to be.



In this connection, we quote another portion of the comment on the "Character of actor's intention," relating to clause (a) of the rule from [Restatement (First) Torts, 29, § 13]:

"It is not enough that the act itself is intentionally done and this, even though the actor realizes or should realize that it contains a very grave risk of bringing about the contact or apprehension. Such realization may make the actor's conduct negligent or even reckless but unless he realizes that to a substantial certainty, the contact or apprehension will result, the actor has not that intention which is necessary to make him liable under the rule stated in this section."

A battery would be established if, in addition to plaintiff's fall, it was proved that, when Brian moved the chair, he knew with substantial certainty that the plaintiff would attempt to sit down where the chair had been. If Brian had any of the intents which the trial court found, in the italicized portions of the findings of fact quoted above, that he did not have, he would of course have had the knowledge to which we have referred. The mere absence of any intent to injure the plaintiff or to play a prank on her or to embarrass her, or to commit an assault and battery on her would not absolve him from liability if in fact he had such knowledge. [C] Without such knowledge, there would be nothing wrongful about Brian's act in moving the chair and, there being no wrongful act, there would be no liability.

While a finding that Brian had no such knowledge can be inferred from the findings made, we believe that before the plaintiff's action in such a case should be dismissed there should be no question but that the trial court had passed upon that issue; hence, the case should be remanded for clarification of the findings to specifically cover the question of Brian's knowledge, because intent could be inferred therefrom. If the court finds that he had such knowledge the necessary intent will be established and the plaintiff will be entitled to recover, even though there was no purpose to injure or embarrass the plaintiff. [C] If Brian did not have such knowledge, there was no wrongful act by him and the basic premise of liability on the theory of a battery was not established.

It will be noted that the law of battery as we have discussed it is the law applicable to adults, and no significance has been attached to the fact that Brian was a child less than six years of age when the alleged battery occurred. The only circumstance where Brian's age is of any consequence is in determining what he knew, and there his experience, capacity, and understanding are of course material.

From what has been said, it is clear that we find no merit in plaintiff's contention that we can direct the entry of a judgment for \$11,000 in her favor on the record now before us.

Nor do we find any error in the record that warrants a new trial.

\* \* \*

The cause is remanded for clarification, with instructions, [for the trial court judge] to make definite findings on the issue of whether Brian Dailey knew with substantial certainty that the plaintiff would attempt to sit down where the chair which he moved had been, and to change the judgment if the findings warrant it. \* \* \*

Remanded for clarification.

[On remand, the trial judge concluded that it was necessary for him to consider carefully the time sequence, as he had not done before; and this resulted in his finding "that the arthritic woman had begun the slow process of being seated when the defendant quickly removed the chair and seated himself upon it, and that he knew, with substantial certainty, at that time that she would attempt to sit in the place where the chair had been." He entered judgment for the plaintiff in the amount of \$11,000, which was affirmed on a second appeal in *Garratt v. Dailey*, 49 Wash.2d 499, 304 P.2d 681 (1956).]

## Wagner v. State

Supreme Court of Utah, 2005.  
2005 UT 54, 122 P.3d 599.

[Mrs. Wagner was standing in line at a K-Mart store when she was suddenly attacked from behind by Mr. Giese who grabbed her by the head and hair and threw her to the ground. Mr. Giese was a mentally disabled patient accompanied by state employees who had brought him to K-Mart as part of his treatment program and remained there to supervise him. Mrs. Wagner and her husband filed negligence claims against the State, alleging its employees did not properly supervise Mr. Giese. The trial court granted a 12(b)(6) motion to dismiss based on the State's argument that the attack constituted a battery, a tort for which the State has retained immunity from suit. The appellate court affirmed that ruling and the Wagners then petitioned the Utah Supreme Court for review. It too affirmed.]

WILKINS, ASSOCIATE CHIEF JUSTICE: \* \* \* The Wagners argue that Mr. Giese's attack could not legally constitute a battery because that intentional tort requires the actor to intend harm or offense through his deliberate contact, an intent Mr. Giese was mentally incompetent to form. The State, on the other hand, argues that the only intent required \* \* \* is simply the intent to make a contact. The contact must be harmful or offensive by law, but the actor need not intend harm so long as he intended contact.

\* \* \* While there is some variation among the definitions of the tort of battery, Prosser and Keeton on the Law of Torts § 8, at 33-34 (W. Page Keeton et al. eds., 5th ed. 1984) (hereinafter Prosser), Utah has adopted the Second Restatement of Torts to define the elements of this intentional tort, including the element of intent. \* \* \*

We conclude that the plain language of the Restatement, the comments to the Restatement, Prosser and Keeton's exhaustive explanation of the meaning of intent as described in the Restatement, and the majority of case law on the subject in all jurisdictions including Utah, compels us to agree with the State that only intent to make contact is necessary.

In order for a contact to constitute a battery at civil law, two elements must be satisfied. First, the contact must have been deliberate. Second, the contact must have been harmful or offensive at law. We hold that the actor need not intend that his contact be harmful or offensive in order to commit a battery so long as he deliberately made the contact and so long as that contact satisfies our legal test for what is harmful or offensive.

Section 2 of the Restatement (Second) of Torts defines the term "act" as "an external manifestation of the actor's will and does not include any of its results, even the most direct, immediate, and intended." *Id.* § 2. To illustrate this point, the comments clarify that when an actor points a pistol at another person and pulls the trigger, the act is the pulling of the trigger. *Id.* at cmt. c. The consequence of that act is the "impingement of the bullet upon the other's person." *Id.* It would be improper to describe the act as "the shooting," since the shooting is actually the conflation of the act with the consequence. For another example, the act that has taken place when one intentionally strikes another with his fist "is only the movement of the actor's hand and not the contact with the other's body immediately established." *Id.* Thus, presuming that the movement was voluntary rather than spastic, whether an actor has committed an intentional or negligent contact with another, and thus a tort sounding in battery or negligence, depends not upon whether he intended to move his hand, but upon whether he intended to make contact thereby.

The example the Restatement sets forth to illustrate this point is that of an actor firing a gun into the Mojave Desert. Restatement (Second of Torts) § 8A cmt. a. In both accidental and intentional shootings, the actor intended to pull the trigger. *Id.* Battery liability, rather than liability sounding in negligence, will attach only when the actor pulled the trigger in order to shoot another person, or knowing that it was substantially likely that pulling the trigger would lead to that result. *Id.* § 8A cmts. a & b. An actor who intentionally fires a bullet, but who does not realize that the bullet would make contact with another person, as when "the bullet hits a person who is present in the desert without the actor's knowledge," is not liable for an intentional tort. *Id.*

\* \* \* We agree with the Wagners that not all intentional contacts are actionable as batteries, and that the contact must be harmful or offensive in order to be actionable. We do not agree, however, that, under our civil law, the actor must appreciate that his act is harmful or offensive in order for his contact to constitute a battery. \* \* \*

Prosser echoed the Restatement when he clarified that "[t]he intent with which tort liability is concerned is not necessarily a hostile intent, or a desire to do harm. Rather, it is an intent to bring about a result which will invade the interests of another in a way that the law forbids." Prosser, *supra*, § 8, at 36. \* \* \* [Prosser] lists as one type of intentional tort the act of "intentionally invading the rights of another under a mistaken belief of committing no wrong." *Id.* § 8, at 37.

\* \* \* We recognize that, in this instance, the retained immunity doctrine bars the caretakers of a handicapped person from taking responsibility for the conduct of their charge. It is unfortunate, and perhaps it is improvident of the State to retain immunity in this area. But it is not our role as a judiciary to override the legislature in this matter; it is for us only to interpret and apply the law as it is. We will not limit the recoveries of all other plaintiffs similarly injured by defining the

tort of battery in such a way as to make it far more burdensome for plaintiffs to satisfy its elements and recover, nor will we distort the plain language of the Restatement so as to elevate an actor's "right" to deliberately touch others at will over an individual's right to the preservation of her bodily integrity.

\* \* \* Applying the rule we have laid out today to the facts of this case, it is clear that Mr. Giese's attack constituted a battery upon Mrs. Wagner. There is no allegation that his action was the result of an involuntary muscular movement or spasm. Further, the Wagners concede that Mr. Giese affirmatively attacked her; they do not argue that he made muscular movements that inadvertently or accidentally brought him into contact with her.

\* \* \* So long as he intended to make that contact, and so long as that contact was one to which Mrs. Wagner had not given her consent, either expressly or by implication, he committed a battery. Because battery is a tort for which the State has retained immunity, we affirm the court of appeals' decision to dismiss the case for failure to state a claim.

[Concurring opinion omitted.]

## Ranson v. Kitner

Appellate Court of Illinois, 1889.  
31 Ill.App. 241.

CONGER, J. This was an action brought by appellee against appellants to recover the value of a dog killed by appellants, and a judgment rendered for \$50.

The defense was that appellants were hunting for wolves, that appellee's dog had a striking resemblance to a wolf, that they in good faith believed it to be one, and killed it as such.

Many points are made, and a lengthy argument failed to show that error in the trial below was committed, but we are inclined to think that no material error occurred to the prejudice of appellants.

The jury held them liable for the value of the dog, and we do not see how they could have done otherwise under the evidence. Appellants are clearly liable for the damages caused by their mistake, notwithstanding they were acting in good faith.

We see no reason for interfering with the conclusion reached by the jury, and the judgment will be affirmed.

Wallace v. Rosen

Court of Appeals of Indiana, 2002.  
765 N.E.2d 192.

KIRSCH, J. Mable Wallace appeals the jury verdict in favor of Indianapolis Public Schools (IPS) and Harriet Rosen, a teacher for IPS. On appeal, Wallace raises the following issues:

I. Whether the trial court erred in refusing to give her tendered jury instruction regarding battery. \* \* \*

We affirm.

FACTS AND PROCEDURAL HISTORY

[Rosen was a teacher at Northwest High School in Indianapolis. On April 22, 1994, the high school had a fire drill while classes were in session. The drill was not previously announced to the teachers and occurred just one week after a fire was extinguished in a bathroom near Rosen's classroom. On the day the alarm sounded, Wallace, who was recovering from foot surgery, was at the high school delivering homework to her daughter Lalaya. Wallace saw Lalaya just as Wallace neared the top of a staircase and stopped to speak to her. Two of Lalaya's friends also stopped to talk. Just then, the alarm sounded and students began filing down the stairs while Wallace took a step or two up the stairs to the second floor landing. As Rosen escorted her class to the designated stairway she noticed three or four people talking together at the top of the stairway and blocking the students' exit. Rosen did not recognize any of the individuals but approached "telling everybody to move it." Wallace, with her back to Rosen, was unable to hear Rosen over the noise of the alarm and Rosen had to touch her on the back to get her attention. Rosen then told Wallace, "you've got to get moving because this is a fire drill." At trial, Wallace testified that Rosen pushed her and she slipped and fell down the stairs. Rosen denied pushing Wallace, but admitted touching her back. At the close of the trial, the trial court judge refused to give the jury an instruction concerning civil battery that was requested by plaintiff. The jury found in favor of IPS and Rosen on the negligence count, and Wallace appealed.]

## DISCUSSION AND DECISION

\* \* \*

## I. Battery Instruction

Wallace first argues that it was error for the trial court to refuse to give the jury the following tendered instruction pertaining to battery:

A battery is the knowing or intentional touching of one person by another in a rude, insolent, or angry manner.

Any touching, however slight, may constitute an assault and battery.

Also, a battery may be recklessly committed where one acts in reckless disregard of the consequences, and the fact the person does not intend that the act shall result in an injury is immaterial. \* \* \*

The Indiana Pattern Jury Instruction for the intentional tort of civil battery is as follows: "A battery is the knowing or intentional touching of a person against [his] [her] will in a rude, insolent, or angry manner." 2 Indiana Pattern Jury Instructions (Civil) 31.03 (2d ed. Revised 2001).<sup>2</sup> Battery is an intentional tort. [C] In discussing intent, Professors Prosser and Keeton made the following comments:

In a loose and general sense, the meaning of "intent" is easy to grasp. As Holmes observed, even a dog knows the difference between being tripped over and being kicked. This is also the key distinction between two major divisions of legal liability—negligence and intentional torts. . . .

It is correct to tell the jury that, relying on circumstantial evidence, they may infer that the actor's state of mind was the same as a reasonable person's state of mind would have been. Thus . . . the defendant on a bicycle who rides down a person in full view on a sidewalk where there is ample room to pass may learn that the factfinder (judge or jury) is unwilling to credit the statement, "I didn't mean to do it."

On the other hand, the mere knowledge and appreciation of a risk—something short of substantial certainty—is not intent. The defendant who acts in the belief or consciousness that the act is causing an appreciable risk of harm to another may be negligent, and if the risk is great the conduct may be characterized as reckless or wanton, but it is not an intentional wrong. In such cases the distinction between intent and negligence obviously is a matter of degree. The line has to be drawn by the courts at the point where the known danger ceases

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<sup>2</sup> The Indiana Pattern Jury Instructions are prepared under the auspices of the Indiana Judges Association and the Indiana Judicial Conference Criminal and Civil Instruction Committees. Although not formally approved for use, they are tacitly recognized by Indiana Trial Rule 51(E). [C]



to be only a foreseeable risk which a reasonable person would avoid, and becomes in the mind of the actor a substantial certainty.

The intent with which tort liability is concerned is not necessarily a hostile intent, or a desire to do any harm. Rather it is an intent to bring about a result which will invade the interests of another in a way that the law forbids. The defendant may be liable although intending nothing more than a good-natured practical joke, or honestly believing that the act would not injure the plaintiff, or even though seeking the plaintiff's own good.

W. PAGE KEETON et al., PROSSER AND KEETON ON THE LAW OF TORTS, § 8, at 33, 36-37 (5th ed. 1984) (footnotes omitted).

[Witnesses] testified that Rosen touched Wallace on the back causing her to fall down the stairs and injure herself. For battery to be an appropriate instruction, the evidence had to support an inference not only that Rosen intentionally touched Wallace, but that she did so in a rude, insolent, or angry manner, i.e., that she intended to invade Wallace's interests in a way that the law forbids.

Professors Prosser and Keeton also made the following observations about the intentional tort of battery and the character of the defendant's action:

In a crowded world, a certain amount of personal contact is inevitable and must be accepted. *Absent expression to the contrary, consent is assumed to all those ordinary contacts which are customary and reasonably necessary to the common intercourse of life, such as a tap on the shoulder to attract attention, a friendly grasp of the arm, or a casual jostling to make a passage. . . .*

The time and place, and the circumstances under which the act is done, will necessarily affect its unpermitted character, and so will the relations between the parties. A stranger is not to be expected to tolerate liberties which would be allowed by an intimate friend. But unless the defendant has special reason to believe that more or less will be permitted by the individual plaintiff, the test is what would be offensive to an ordinary person not unduly sensitive as to personal dignity.

KEETON et al., § 9, at 42 (emphasis added). \* \* \*

[The court quoted from the trial transcript concerning the nature of the touching.]

Viewed most favorably to the trial court's decision refusing the tendered instruction, the foregoing evidence indicates that Rosen placed her fingertips on Wallace's shoulder and turned her 90 degrees toward the exit in the midst of a fire drill. The conditions on the stairway of

Northwest High School during the fire drill were an example of Professors Prosser and Keeton's "crowded world." Individuals standing in the middle of a stairway during the fire drill could expect that a certain amount of personal contact would be inevitable. Rosen had a responsibility to her students to keep them moving in an orderly fashion down the stairs and out the door. Under these circumstances, Rosen's touching of Wallace's shoulder or back with her fingertips to get her attention over the noise of the alarm cannot be said to be a rude, insolent, or angry touching. Wallace has failed to show that the trial court abused its discretion in refusing the battery instruction. \* \* \*

[Other issues raised by the appeal were then discussed.]

Affirmed. [The concurring opinions are omitted.]

## Fisher v. Carrousel Motor Hotel, Inc.

Supreme Court of Texas, 1967.  
424 S.W.2d 627.

[Action for assault and battery. Plaintiff, a mathematician employed by NASA, was attending a professional conference on telemetry equipment at defendant's hotel. The meeting included a buffet luncheon. As plaintiff was standing in line with others, he was approached by one of defendant's employees, who snatched the plate from his hand, and shouted that a "Negro could not be served in the club." Plaintiff was not actually touched, and was in no apprehension of physical injury; but he was highly embarrassed and hurt by the conduct in the presence of his associates. The jury returned a verdict for \$400 actual damages for his humiliation and indignity, and \$500 exemplary (punitive) damages in addition. The trial court set aside the verdict and gave judgment for the defendants notwithstanding the verdict. This was affirmed by the Court of Civil Appeals. Plaintiff appealed to the Supreme Court.]

GREENHILL, JUSTICE \* \* \* Under the facts of this case, we have no difficulty in holding that the intentional grabbing of plaintiff's plate constituted a battery. The intentional snatching of an object from one's hand is as clearly an offensive invasion of his person as would be an actual contact with the body. "To constitute an assault and battery, it is not necessary to touch the plaintiff's body or even his clothing; knocking or snatching anything from plaintiff's hand or touching anything connected with his person, when done in an offensive manner, is sufficient." *Morgan v. Loyacomo*, 190 Miss. 656, 1 So.2d 510 (1941).

Such holding is not unique to the jurisprudence of this State. In *S.H. Kress & Co. v. Brashier*, 50 S.W.2d 922 (Tex.Civ.App.1932, no writ), the defendant was held to have committed "an assault or trespass upon the person" by snatching a book from the plaintiff's hand. The jury findings in that case were that the defendant "dispossessed plaintiff of the book" and caused her to suffer "humiliation and indignity."

The rationale for holding an offensive contact with such an object to be a battery is explained in 1 Restatement (Second) of Torts § 18 (Comment p. 31) as follows:

"Since the essence of the plaintiff's grievance consists in the offense to the dignity involved in the unpermitted and intentional invasion of the inviolability of his person and not in any physical harm done to his body, it is not necessary that the plaintiff's actual body be disturbed. Unpermitted and intentional contacts with anything so connected with the body as to be customarily regarded as part of the other's person and therefore as partaking of its inviolability is actionable as an offensive contact with his person. There are some things such as clothing or a cane or, indeed, anything directly grasped by the hand which are so intimately connected with one's body as to be universally regarded as part of the person."

We hold, therefore, that the forceful dispossession of plaintiff Fisher's plate in an offensive manner was sufficient to constitute a battery, and the trial court erred in granting judgment notwithstanding the verdict on the issue of actual damages: \* \* \*

Damages for mental suffering are recoverable without the necessity for showing actual physical injury in a case of willful battery because the basis of that action is the unpermitted and intentional invasion of the plaintiff's person and not the actual harm done to the plaintiff's body. Restatement (Second) of Torts § 18. Personal indignity is the essence of an action for battery; and consequently the defendant is liable not only for contacts which do actual physical harm, but also for those which are offensive and insulting. [Cc]. We hold, therefore, that plaintiff was entitled to actual damages for mental suffering due to the willful battery, even in the absence of any physical injury. [The court then held that the defendant corporation was liable for the tort of its employee.]

The judgments of the courts below are reversed, and judgment is here rendered for the plaintiff for \$900 with interest from the date of the trial court's judgment, and for costs of this suit.