



Legal Authorities and Reasoning

Discovering Connections

ACTIVITY (PAGE 26)

Based on the American legal system, this is the preferred order.

- | | |
|------|------|
| 1. 3 | 3. 1 |
| 2. 4 | 4. 2 |

There may be some difference of opinion regarding the rank order of items 1 and 2, but the student should understand that, provided the statutory elements are met, recent on-point case law is the most persuasive of all of these items.

Legal Listening and Writing

Putting the Terms to Use (page 27)

A. Listening Script

[Note: In the script are several mistakes that are common in spoken English, such as faulty pronoun agreement. These types of mistakes are made by native speakers as well as nonnative speakers and are generally overlooked if made

infrequently. The mistakes have been underlined so you can discuss the issue with your students if you want to.]

Jens (a visiting German lawyer)

Simone (an American attorney)

Simone: Jens, good to see you again. I'm glad we're going to be working on this case together.

Jens: Me too. You were really a great help in Germany last year.

Simone: My pleasure. This time you'll need to help me pull it out of the fire.

Jens: What?

Simone: That's just an expression. It means you're going to help me save this case that my learned colleague, Ben, says is a lost cause.

Jens: Ah, well. I will do my best. One thing bothers me though—I have never actually been in an American courtroom. The only ones I've seen have been on TV.

Simone: Well, you'll be relieved to know that procedures in courtrooms bear very little resemblance to those on TV. However, there are some simple rules you might want to keep in mind.

Jens: Good. Where do we begin?

Simone: There are certain verbal and physical rules to follow. First, always stand when you speak to—we say address—the judge.

Jens: What do you call him?

Simone: Be careful. Many judges in America are women. You call her “Your Honor.”

Jens: Fine. What about the other attorney?

Simone: You can just call them “Mr.” whatever.

Jens: Mr.? Hmmm, are all American attorneys men?

Simone: Touché! Sorry. To be on the safe side use the neutral form “Ms.” for all women unless she introduces herself as “Mrs.”

Jens: Miss? I thought that was just for young, unmarried women.

Simone: No, not Miss, Ms.—the final sound is a z not an s.

Jens: Do I need to stand to speak to them?

Simone: No, you only stand to address the “Court.” That's another way to refer to the judge.

Jens: Thanks.

Answers to Putting the Terms to Use (page 27)

Part A

1. The United States
2. To succeed at something
3. You need to remember this. . . .
4. No. It's considered disrespectful.
5. Your Honor
6. No
7. Because she made the same type of sexist error that Jens did, and he called her attention to it
8. "Zee"
9. Yes, unless she indicates that she wants to be called "Mrs."
10. the "Court"

Part B (page 28)

Memo

Lee, Hall, and Barone, P.C.

To: Jens Weihrauch
From: **Student's Name or initials**
Subject: Preliminary Information on the Hradec Case
Date: **Current Date**

Simone Fort has asked me to explain the facts and issues of the Hradec case to you. Our client, Loretta Hradec, a well-known dancer, sued the privately funded Maly Ballet of Prague (henceforth MBP) for breach of contract. As attorney for the **plaintiff**, Ben Johnson attempted to show that MBP had breached the contract signed in New York by not paying Ms. Hradec following her car accident in which she broke her left arm. MBP maintained that it could not be sued in the U.S. since Ms. Hradec was to have performed in MBP's home theater in Prague, the Czech Republic. The **trial** court, mistakenly interpreting this case as falling under the Foreign Sovereign Immunities Act, found for the **defendant**. Ms. Hradec has chosen to **appeal** the decision. At that point Ms. Fort was given responsibility for the **appeal**.

As attorney for the **appellate**, Ms. Fort must file an **appellate** brief outlining the grounds for the **appeal**. Ms. Fort feels that our strongest ground for reversal is the jurisdictional issue: Were there sufficient minimal contacts within the United States to grant the court **jurisdiction**? As a jurisdictional expert, you will prove invaluable in convincing the appeals court to **remand** the case to the lower court for a reevaluation of the jurisdictional issue.

Legal Thumbnail

Exercise A. Citation Review

(page 31)

United States v. Alvarez:

1. Case. 2. *Federal Reporter, 2nd series*, volume 755, page 830. 3. Federal decision.

42 U.S.C.:

1. Statute. 2. *United States Code*. For statutes, you are given not the page number but the section number and title number of the statute. Title 42, section 9401. 3. Federal statute.

Crompton v. Commonwealth:

1. Case. 2. *South Eastern Reporter, 2nd series*, volume 389, page 460. The first citation is to a Virginia state reporter. 3. State decision.

Davis v. Monsanto Co.:

1. Case. 2. *Federal Supplement*, volume 627, page 418. 3. Federal decision.

Kan. Stat. Ann.:

1. Statute. 2. *Kansas Statutes Annotated*. The subject of the search is covered by section 59-102 of the code. 3. State statute.

Hall v. United States

1. Case. 2. *Atlantic Reporter, 2nd series*, volume 454, page 314. 3. District of Columbia case (treated like a state case).

Exercise B. Listening Comprehension



(page 33)

Attorney: Now that we have discussed the facts of your case, let me explain the filing procedure. We file a complaint at trial court. You would be what is called the plaintiff. The driver of the other car would be the defendant. We would file an initial complaint at trial court level. If we lose, we can always appeal to the court of appeals.

Jane: We aren't going to lose, are we?

Attorney: We hope not, but it is best to be prepared.

Jane: Does the jury decide about the case?

Attorney: Yes, they return the verdict.

Jane: Will I have to testify?

Attorney: Probably. We may ask you to testify on your own behalf. We will know more after the depositions, which are pre-trial questions of the parties. It is sort of like a "mini-trial" but without the judge.

Jane: What if we win?

Attorney: The defendant can appeal. The intermediate court, the court of appeals, could always reverse the decision.

Jane: Reverse? What happens if the decision's reversed?

Attorney: It is often remanded for review, given back to the trial court, the one with the jury, for a decision made in accordance with the views of the upper court.

Jane: How long will this take?

Attorney: It depends on whether or not they settle out of court and how crowded the court calendar (or docket) is. We will try for a settlement, of course.

Jane: I just need the hospital bills paid. I don't have health insurance, and the bills are enormous.

Attorney: I understand.

1. The plaintiff
2. The loser can appeal or accept the judgment of the court.
3. Depositions are oral questions answered in sworn testimony by the parties prior to a trial (a "mini-trial" without the judge).
4. The lower court if the case is remanded to it
5. The court calendar (when certain cases are being heard)

Exercise C. Reading for Details

(page 36)

1. At the trial court level, where fact determinations are made
2. The Supreme Court is the one with a final say on issues involving the Constitution or any other federal statute. The decisions of the other courts must follow Supreme Court decisions but not the reverse. State supreme courts have the final word on state law issues unless there is a conflict with the U.S. Constitution or federal law.
3. The issue(s) in the case must concern the Constitution or other federal laws.
4. It would mean that his or her request to have the Supreme Court hear the appeal was denied.
5. The majority opinion has greater authoritative weight. A plurality decision means that a majority of the justices do not agree upon the legal reasoning in a given situation. If the court hears a similar case in the future, there is no clear majority reasoning an attorney can rely on to prepare his or her arguments.

Exercise D. Reading for Details

(page 39)

1. Appellee
2. Defendant, White
3. Federal
4. Affirmed
5. All of them because it is a per curiam opinion, which means "by the court." There is no dissenting opinion.

Exercise E. Reading for Details

(page 41)

1. A station wagon
2. The key was in the ignition.
3. Found some money in the car and also siphoned gas from other cars
4. No. There is no evidence to that effect.
5. White discovered the money in the car that was used to pay for gas; he read maps and navigated; he also helped siphon gas.
6. Moving an item from one state to another

Exercise F. Reading and Analysis

(page 41)

1. A person must know a vehicle is stolen and transport it across state lines.
2. Yes
3. Things that are known have been proven in some satisfactory manner. One infers by looking at the circumstances and actions surrounding an event.
4. They could infer from his role in the entire event that he had joint control over the vehicle.
5. Because White could not be convicted under the federal statute (18 U.S.C. §2312) unless he crossed state lines with the stolen car

Exercise G. Statutory Interpretation and Paraphrasing

(page 43)

2. It is a question of actual physical control over the vehicle. I could “cause” a car to be transported without being anywhere near it. For example, I might offer to pay someone for the delivery of a car—making it clear that I did not care whether or not the car was stolen.
3. One possible rephrasing: The jury had sufficient evidence before it to determine White knew the car was stolen and transported it across state lines.

Exercise H. Writing and Reading for Details

(page 45)

Citation: *Smith v. U.S.*, 385 F.2d 252 (8th Cir. 1967)

Facts:

- Smith, appellant, in two instances, obtained rental cars, using fraudulent checks, driving the cars across state lines even after being notified that one of the cars had been reported as stolen.

Legal History:

- Smith was convicted by a jury under 18 U.S.C. §2312 on two separate counts of interstate transport of a stolen vehicle.
- He appeals on two grounds, only one of which is reported here. He contends that there was insufficient evidence to support a finding of intent under the Act.

Issue:

- Did the jury have sufficient evidence to find that Smith through the taking and abandoning of rental cars obtained via a deposit made with a fraudulent check show the intent required to deprive the owner of use of the cars?

Holding:

- Yes. There is evidence to support the jury's finding because giving a check with insufficient funds is stealing and no permanent intent to take the cars is required.

Reasoning:

- Using a check with insufficient funds to obtain a vehicle is stealing.
- There is no requirement under the Dyer Act that the vehicle be permanently taken.

Rule of Law:

- The Dyer Act is violated when a person converts a rental car for his own use if state borders were crossed, as they were in this case.

Exercise I. Reasoning

(page 50)

1. • Age of the child
 - Quality of the parental supervision (since this is only implied, students find they can use this element as part of the answer in question 3)
3. Keep in mind that this is the type of question in which cultural differences often manifest themselves. For example, in China the state exerts control over the birthrate by penalizing parents who have more than one child. This could affect the additional factors that a student might feel need to be considered.

Exercise J. Reasoning and Paraphrasing

(page 51)

1.

Case Name	Type of Accident/Action	Cause of Death	Intervening Cause	Outcome
Jackson	<i>auto accident</i>	<i>auto accident</i>	<i>none</i>	<i>for plaintiff</i>
Janovitch	<i>auto accident</i>	<i>tuberculosis</i>	<i>none</i>	<i>for defendant</i>
Janus	heart surgery	anesthesia	none	for plaintiff
Ji	auto accident	pneumonia caused by injuries from accident	none	for plaintiff
Jade	plane crash causing son's death	suicide	yes	for defendant
Johansson	auto accident	smoke inhalation	none	for plaintiff
Jerod	public intoxication	suicide	yes	for defendant

2. Sample answer: If the acts of the defendant were the proximate cause of the death, and nothing has intervened between the defendant's acts and the victim's death, then even the fact that a victim was already fatally ill will not serve as a defense to a wrongful death action.