

Learning How to Read a Court Decision

Note: this handout addresses how to approach and read unabridged court decisions, rather than the edited versions that you obtain in casebooks and coursepacks.

One of the key skills that you should develop for your work in law school and beyond is the ability to quickly and efficiently read and accurately understand court decisions. The task is made difficult because court decisions do not have a prescribed format or structure. You therefore need to develop a system to identify and extract the information relevant for your purposes. The suggestion of this handout is that you accomplish this by developing and following a conscious strategy or process, which will eventually become habitual or second nature.

There is empirical research that concludes that experienced and expert legal readers approach and read cases differently from novices. For further information concerning this, consult the articles by Christensen and Lundeberg cited below. The suggestions in this handout are based upon information from these articles and my own experience.

If a case is relevant, you will generally read through it several times. This can proceed as follows.

1st reading: skim to confirm the relevance of the case.

2nd reading: read quickly to understanding the structure of the decision and identify key content.

3rd and subsequent readings: read closely and in depth to develop a sophisticated understanding of the case, and its interrelation to other cases.

First Question: Is this case relevant?

If you are not sure if the case is relevant:

Do a quick 1st Read: A quick scan for key information

Questions:

1. Does the case address the legal issue you are researching or studying?
2. Are the facts sufficiently similar for the case to be relevant?
3. Do the jurisdiction and level of court indicate that it is a significant decision?

To answer these questions,

1. quickly identify:

- A. the court that rendered the decision
 - i. jurisdiction, and
 - ii. level;
- B. the year of the decision; and
- C. the parties to the dispute;

2. read the headnote for a summary of the case (unless the case is very short);

3. locate the majority judgment and skim the judgment to confirm your conclusion from 1. and 2. above.

If the case is relevant, continue your case analysis.

Second Question: How do I most quickly and accurately find the key information?

Do a 2nd Read: Understand the structure of the decision

1. Is there more than one judgment?

If yes:

- identify the majority judgment?
- identify the minority or dissenting judgment (s)?
- are there concurring judgment (s) (reaching the same conclusion as another judge, but based on the application of different legal principles or findings of fact)?

If there are multiple legal issues decided in a case, there can be more complex patterns of dissenting and concurring judgments.

2. Flip to the end of the case or the end of the majority judgment to determine the result or disposition of the case. Sometimes this is stated at the outset. Possibilities include:

- A. rulings in favour of one party;
- B. rulings in favour of both parties;
- C. decisions regarding the remedy (ies); and
- D. awards of costs.

3. Scan the majority judgment to locate the following elements. They are more clearly indicated in some decisions than in others.

Focus your reading first on B. to E. below.

- A. Background information concerning the dispute:
 - a. Parties,
 - b. Events, and
 - c. harm (s) suffered.
- B. Statement of the legal issues.
- C. Statement of the applicable legal principles.
- D. The judge's findings of fact.
- E. The reasoning supporting the judge's decision concerning the outcome. This is the application of the legal principles to the legally relevant facts.

In addition,

- the decision may also include a judge's summary of the evidence and arguments of both parties.
- appellate decisions will usually include a summary of the decisions of the lower court decisions on the case regarding findings of fact and applicable legal principles.

If it is your personal copy of the decision, make marginal notes flagging the key content of the decision.

Third Question: What does this case contribute to my understanding of the legal issue (s)?

Read the case closely and in detail to develop a sophisticated understanding of the legal principles and their application. Begin with:

- the majority judgment, and
- key sections of the decision.

The How of Reading Cases

Do not read cases in a strict linear manner.

The articles cited below found that expert legal readers use the following reading techniques.

1. Begin with and continually return to your purpose in reading the case, to guide your analysis of what you need to extract from the case. Purposes can include:
 - A. understanding the framework of legal principles and the specific considerations that will be relevant to providing an opinion regarding the outcome of a case.
 - B. comparing and contrasting this case to other cases.
 - C. preparing for a client interview.
 - D. preparing to explain the law to a senior partner.
2. Determine the context of the decision (parties, court, year of decision).
3. “Engage” with the decision. Rather than passively following the text, as you read ask yourself:
 - A. Evaluative questions, such as the following.
 - i. Is the judge’s analysis sound?
 - ii. Is it correct based upon your reading and analysis of other cases?
 - iii. What are weaknesses in the judge’s reasoning?
 - iv. What are relevant counter-arguments?
 - v. What is my opinion concerning this case and the judge’s analysis?
 - B. Speculative questions, such as the following.
 - i. If this case is decided similarly to another case, then the judge will deal with this sub issue next.
 - C. Critical questions, such as the following.
 - i. Are there unspoken public policy issues or personal values that are underlying the decision and influencing the result?
 - ii. Why is the judge avoiding addressing certain issues (this can be highlighted by comparing majority and minority judgments)?
4. Read flexibly.
 - A. Skim less relevant passages.
 - B. On your first reading, read entire passages as a whole rather than analyzing them sentence by sentence. Then return to the beginning to reread and integrate the elements of the passage together.
 - C. Re-read complex and difficult sections, to ensure you have a sophisticated understanding of the law.
 - D. Refer back to earlier portions of the judgment for context and clarification of facts and legal principle.
5. Incorporate your prior knowledge and experience concerning the law (an ability acquired through time and effort).

Other Comments

Also:

- Consider the depth in which you need to read the minority judgment (s). Minority judgments can yield arguments relevant to the case you are dealing with, either for your side or the opposing side.
- What passages would you quote in a memo or argument?
- Is the result driven by an objective application of rigid principles, or is it based on underlying values and what the judge feels is the fair or right decision?
- In cases on appeal, clearly keep track of which party is the appellant and which is the defendant.

Note also:

- the secondary sources referred to by the judge;
- any reference to policy reasons in the decision; and
- other possible points of interest such as
 - the name of the judge (s),
 - the interveners, and
 - the counsel for each party.

Short versus Long Court Decisions

For short court decisions, less than five or six pages, many experienced or expert legal readers skip the headnote, and proceed directly to applying the above approach to the reading the case.

Further Reading

Leah Christensen, *The paradox of Legal Expertise: A Study of Experts and Novices Reading the Law*, Legal Studies Research Series <http://papers.ssrn.com/abstract=966675>.

Mary Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis* (1987) 22:4 Reading Research Quarterly