Chapter 3

Reading for Comprehension

I. Learning to Read for a Purpose
II. Reading Statutes
   A. Basic Structure of a Statute
   B. Reading Statutes Critically
III. Reading Judicial Opinions
    A. Basic Parts of a Judicial Opinion
    B. Reading Judicial Opinions Critically

Reading the law is not always a natural, intuitive process; instead, good legal reading is a learned skill.

This chapter explains how to critically read the legal authorities controlling your client's question. *Critical reading* is defined as "thinking while you read." Put differently, critical reading means actively engaging each bit of information and questioning it rather than passively accepting every word as written.

You must read legal authorities critically because the goal of legal reading is not just to get the gist of the idea, but to deeply comprehend the material so that you can analyze your client's legal question. As a result, legal reading is a demanding task, requiring that you read carefully, comprehensively, and efficiently.

Although this chapter focuses on reading two primary sources of law, statutes and cases, you can use critical reading skills for any source, from law review articles to the latest novel.

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2. *Id.* at 299.
I. Learning to Read for a Purpose

Reading the law is different from most types of reading. In other disciplines, you may read generally and broadly for the big picture. In legal reading, you need the big picture, but you also need to understand the details and the nuances of the material. In rocket science, having a calculation off by even one percent can change the entire trajectory of a rocket. The same holds true in legal reading: Failing to understand one word, failing to discern one sentence, phrase, or comma can change the entire analysis.

Reading has two aspects: speed and comprehension. Generally, the faster you read, the less you will comprehend. Conversely, the more you read for comprehension, the slower you will read. A lawyer, however, needs to read fast and comprehend deeply. You can do both provided you use the critical reading tools in this chapter.

So, how do you read critically? Taking three steps with everything you read can make you an expert critical reader who reads efficiently and effectively. To read critically, you must (1) get context, (2) skim the text, and (3) read the text closely and question it. Look at the details of each step in Table 3-A.

<table>
<thead>
<tr>
<th>Table 3-A - Three steps of critical reading</th>
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<tbody>
<tr>
<td>1. Get context.</td>
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<td>Figure out the who, what, when, where, why, and how of the material:</td>
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<tr>
<td>- Who are the key parties?</td>
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<td>- What are you reading?</td>
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<td>- When was it written?</td>
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<td>- Where is its position in the body of law?</td>
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<td>- Why is the authority important—is it controlling or persuasive authority?</td>
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<tr>
<td>- How does the authority analyze the issue?</td>
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<tr>
<td>2. Skim the text.</td>
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<tr>
<td>Get a comprehensive overview of the substance before you get into the details.</td>
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<tr>
<td>3. Read and question the text.</td>
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<tr>
<td>Read slowly and closely, thinking about the purpose of each word or phrase and how the substantive parts fit together.</td>
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The most effective legal readers may repeat the third step multiple times. Reading legal authority is a recursive process that builds on itself. You may read a legal authority fairly well the first time; however, you will see things in a case or statute during your third or fourth read that you did not see the first time. As you analyze other authorities that address the same issue, you become a smarter reader. When you then return to a legal authority, you will be able to read it with greater depth and understanding.

3. These steps are adapted from Mary A. Lundeberg, Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis, 22 Reading Res. Q. 407, 421, 427-29, Appendix 1 (1987).

II. Reading

To discern what the statute (The treaty Article 11, Statue 3B) means.

A. Basic Steps

To read a statute, you will need to:

1. Read the statute fully. Review the title, section, and subsections. The statute might consist of multiple sections.

2. Define key terms. Use a dictionary or other reference materials to define key terms. It is important to understand the meaning of each word in the context of the statute.

3. Identify the purpose of the statute. Consider the intent of the legislature when passing the statute. What problem does the statute address, and how does it intend to solve it?

4. Apply the statute. Determine how the statute applies to specific cases or situations. Consider whether the statute is applicable in the current context.

5. Consult secondary sources. Look up related cases, interpretations, and commentary on the statute to gain a broader understanding of its meaning and application.

6. Stay informed. Keep up with changes to the statute, as laws can be amended or revised over time. Regularly consult updates or annotations to stay informed.

7. Seek legal advice. If there is ambiguity or uncertainty, consider consulting with a lawyer or legal expert. They can provide guidance on interpreting and applying the statute accurately.

In a minor rather than "title" and the article ture, in Nebraska.

Although the statute consists of multiple sections, it generally uses the word "$statute" to refer to the use word "$statute" to refer to which "$statute" in which "$statute" "$statute" are the...
Reading authorities carefully, multiple times, may seem like a daunting, time-consuming task. You will, however, get faster as you gain more experience. The rest of this chapter applies these critical reading steps to statutes and judicial opinions.

II. Reading Statutes

To discern the most likely interpretation of a statute, you must understand what the statute says. To do that, you must critically read the statute. (The full process of statutory interpretation is covered in Chapter 11, Statutory Analysis.)

A. Basic Structure of a Statute

To read a statute, you must first understand how statutes are structured when they are published.

In a majority of states and in federal law, statutes are organized into “titles.” A “title” is simply a group of statutes organized by topic. For example, in the federal system, Title 18 includes all statutes relating to “Crimes and Criminal Procedure.” Titles are then broken down into “articles” or “chapters.” The articles or chapters are then broken down into “sections.”

You can see this structure in the federal kidnapping statute in Example 3-B. Title 18, Crimes and Criminal Procedure, is broken down into chapters, and one of those chapters, Chapter 55, addresses “Kidnapping.” Chapter 55 is then broken down into sections, including § 1201, which defines kidnapping and lists the elements of the crime.

In a minority of states, the statutes are first organized into “chapters,” rather than “titles.” The chapters are then broken down into “articles,” and the articles are broken down into “sections.” You can see this structure in Nebraska’s kidnapping statute, which is in Example 3-C.

Although a statute may be only one section long, typically, statutes consist of multiple related sections, as do the kidnapping statutes in Examples 3-B and 3-C. Attorneys use the word “statute” loosely. They may use the word “statute” to refer to one “section,” or they may use the word “statute” to refer to multiple related sections. For our purposes, we will use the word “statute” to refer to one section and “statutory scheme” to refer to multiple interrelated sections.

4. A few states deviate from the patterns described in the text. In Illinois, the statutes are broken down into “chapters,” then “acts,” and then “sections.” In Maryland, Minnesota, and Wisconsin the statutory compilations have only two divisions, in which “Titles” or “Chapters” are divided into “sections.” In every state, however, “sections” are the fundamental unit of each state’s statutory scheme.
Example 3-B • Federal kidnapping statutes

Title 18 — Crimes & Criminal Procedure
Chapter 55 — Kidnapping

Sec.
1201. Kidnapping.
1202. Ransom Money.
1203. Hostage taking.
1204. International parental kidnapping.

§ 1201. Kidnapping
(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—
(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense;...
shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.
...
(b) As used in this section, the term "parent" does not include a person whose parental rights with respect to the victim of an offense under this section have been terminated by a final court order....

(June 25, 1948, ch. 645, 62 Stat. 760; Aug. 6, 1956, ch. 971, 70 Stat. 1043...

§ 1202. Ransom Money
(a) Whoever receives, possesses, or disposes of any money or other property or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of §1201 of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined under this title or imprisoned not more than ten years, or both....

(June 25, 1948, ch. 645, 62 Stat. 760....)
Example 3-C • Nebraska state kidnapping statutes

Chapter 28 — Crimes and Punishments
Article 3 — Offenses Against Persons

Section
28-301. Compounding a felony, defined; penalty.
28-302. Homicide; terms, defined.
...
28-312. Restrain, abduct; defined.
28-313. Kidnapping; penalties.
28-314. False imprisonment in the first degree; penalty.
28-315. False imprisonment in the second degree; penalty.
...

§28-312. Restrain, abduct; defined.
As used in sections 28-312 to 28-315, unless the context otherwise requires:
(1) Restrain shall mean to restrict a person's movement in such a manner as to interfere substantially with his liberty:
   (a) By means of force, threat, or deception; or
   (b) If the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of him; and
(2) Abduct shall mean to restrain a person with intent to prevent his liberation by:
   (a) Secreting or holding him in a place where he is not likely to be found; or
   (b) Endangering or threatening to endanger the safety of any human being.

Source: Laws 1977, LB 38, §27

§28-313. Kidnapping; penalties.
(1) A person commits kidnapping if he abducts another or, having abducted another, continues to restrain him with intent to do the following:
   (a) Hold him for ransom or reward; or
   (b) Use him as a shield or hostage; or
   (c) Terrorize him or a third person; or
   (d) Commit a felony; or
   (e) Interfere with the performance of any government or political function.

(2) Except as provided in subsection (3) of this section, kidnapping is a Class IA felony.

(3) If the person kidnapped was voluntarily released or liberated alive by the abductor and in a safe place without having suffered serious bodily injury, prior to trial, kidnapping is a Class II felony.

The sections within a statutory scheme are often organized in a common pattern. The sections at the beginning of a statutory scheme will usually identify the statute's name, its purpose, any findings on which the legislation was based, definitions, and the scope of the legislation. Operative provisions come next. Those sections explain the general rule, any exceptions to the rule, the consequences of violating the rule, and how the rule will be enforced. Some statutes also include closing provisions. Closing provisions identify the effective date of the statute and create severability, which is the idea that if one part is determined invalid, the rest will continue to operate.  

Some statutes may not include all of these parts; however, you can see the Nebraska kidnapping statute, in Example 3-C, follows this basic pattern. Definitions, in § 28-312, are described before the operative section, § 28-313, which explains the prohibition against kidnapping and the consequences if someone is found guilty of kidnapping.

B. Reading Statutes Critically

The three critical reading steps described above apply to statutes. Table 3-D shows you how.

<table>
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<tr>
<th>Table 3-D • Three steps of critical statutory reading</th>
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<tr>
<td>1. Get context for the statute.</td>
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<td>2. Skim the most pertinent statutory sections.</td>
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<td>3. Read the text closely and question it.</td>
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Look at each of these steps, and see why they are important in reading a statute.

1. Get context

Typically, to answer a client's legal question, you will focus on one or two statutory sections; however, those sections must be read in the context of the whole statutory scheme.

For example, suppose you have been asked to research whether a father can be guilty of kidnapping his step-child. Your client has been charged under federal law, and you have identified 18 U.S.C. § 1201 as the statutory section that prohibits kidnapping. Your first step in understanding that section would be to consider its relationship to other statutes within the statutory scheme that addresses kidnapping.

You can get a quick overview of a statutory scheme by reviewing the table of contents for the relevant statutory sections. In Example 3-B, the kidnapping statute is preceded by a list of sections that make up the statutory scheme. The list is composed of section titles. Reading those section titles shows how the section relevant to your client's question fits within the statutory scheme. Reviewing the list may also alert you to other sections that may be relevant to your client's question.

In addition to reviewing this list, many attorneys find it helpful to look at a print edition of the statute and flip through the sections to develop a better sense of the statutory scheme as a whole. For instance, if your client had been charged under the Nebraska state kidnapping statute, Nebraska Revised Statute § 28-313 (shown in Example 3-C) you would find it very helpful to skim the sections surrounding § 28-313, the section that defines "kidnapping." Skimming for context would alert the attorney that an earlier section, § 28-312, defines some of the terms used in the later section, § 28-313.

After reviewing how the relevant section fits within the larger statutory scheme, you will want to gather some background information about the section most relevant to your client's question. For example, you should ask whether the statute is criminal or civil because that affects the procedural rules that will govern the litigation and the penalties that will apply if your client is held responsible.

You should also verify that the section you are reading governs your client's legal question. Of course, the statute must be from the governing jurisdiction. In addition, you should verify that the statute you have found was in effect at the time your client's legal problem arose. Sections can be added or modified at various times. Sometimes a provision within a statutory scheme will state the section's effective date. If no such provision exists, look at the section's historical notes and scan the dates. If the historical notes include any dates since the time your client's problem arose, you will know that the section has been modified in some way. A reference li-
2. Skim the most pertinent statutory sections

Now that you have context, the next step is to get a better understanding of how the statutory section works. Skimming the relevant section will help you gain an initial understanding of how it works.

For example, skimming §1201 (in Example 3-B) will allow you to see the purpose of each sub-section. Sub-section 1201(a) tells you what actions constitute kidnapping. A later sub-section, §1201(h), defines the word “parent,” a term that will be relevant to your client.

Skimming will also allow you to see the relationship among subsections within a section. For instance, think about the question you need to answer: Can a father be charged with kidnapping his step-child, or is he a “parent,” and thereby exempt? You may initially examine only sub-section 1201(a), which explains that “any” person may be guilty of kidnapping; however, sub-section 1201(a) cannot be read alone. To correctly answer your client’s question, you will need to note that sub-section 1201(h) defines the term “parent” and states parents who take their minor child cannot be prosecuted.

While skimming, you should also note whether the statute is made up of elements, factors, or both. Chapter 4, Finding Your Argument, will give a detailed explanation of elements and factors, but for now just know the basic definitions: Elements are requirements that must be met before a standard can be established. Every element must be met for a standard to apply. A factor is a condition that a court can consider when determining whether a standard is met. Usually factors are weighed by the court, and not all factors must be met for a party to win.

For example, the federal kidnapping statute is made up of elements because the operative part of the statute has distinct requirements that must be met for the crime to occur. Although you will carefully parse the elements in the next stage of critical reading, be aware of the statute’s composition as you skim.

Finally, you should note whether the section cross-references any other sections. If a section cross-references another section, you will have to read the cross-referenced section as well to see how it affects the provision that governs your client’s question. For instance, §1202, Ransom Money, makes an explicit cross-reference to §1201. The cross-reference tells you that the provision about ransom money applies only if kidnapping charges in §1201 have been proven.

6. If you are using a print edition, be sure to look at the pocket parts (the paper supplement in the back of the hard copy book) for the most up-to-date version of the statute and most recent historical notes.

3. Read

To uncover the story behind the legal principles, you must work through each key phrase, or pivotal word, for your analogous words can give you a better understanding of the situation.

As you read the text, note two groups of words that are integral in
(a) Red flags
“Red flag”
limited. The
allow behavior which

Table 3-E: Rules of "Logical" Language
- And
- Or
- Either
- Unless
- Except
- if... then
- Shall*
- Must
- Shall not*
- May not
- Must not
- Provided that...

*Although “shall”*
Now that you have skimmed the statute and you understand generally how the statute works, you are ready to dig into the meat of the text to understand exactly how it operates.

3. Read the text closely and question it

To understand exactly how the statute controls your question, you must read the statute, slowly and carefully, noting each significant word, phrase, or punctuation mark. The words themselves are the foundation for your analysis. You must give every word effect because even innocuous words can change how the statute is construed.

As you read the statute word-by-word, you will want to particularly note two groups of words. First, you will want to note any “red flag” words that affect the statute’s operation. Second, you will want to group the words into the elements or factors that will satisfy the statute.

(a) Red flag words

“Red flag” words are words or phrases that signal some action or restriction. These words may also be called “special operative” words. Red flag or special operative words include any conjunctions, permissive words, limiting words, or language of exception, and they can limit, dictate, or allow behavior (Table 3-E). Because statutory language requires precise understanding, take special care to mark all of the red flag words.

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<th>Table 3-E • Red flag words</th>
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<td><strong>And</strong></td>
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<td><strong>Or</strong></td>
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<tr>
<td><strong>Either</strong></td>
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<tr>
<td><strong>Unless</strong></td>
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<tr>
<td><strong>Except</strong></td>
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<tr>
<td><strong>If ... then</strong></td>
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<tr>
<td><strong>Shall</strong></td>
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<tr>
<td><strong>Must</strong></td>
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<tr>
<td><strong>Shall not</strong></td>
</tr>
<tr>
<td><strong>May not</strong></td>
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<tr>
<td><strong>Must not</strong></td>
</tr>
<tr>
<td><strong>Provided that</strong></td>
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* Although “shall” is typically interpreted as mandatory language, courts sometimes construe it as permissive. See Bryan A. Garner, Legal Writing in Plain English: A Text with Exercises 105-06 (Univ. Chie Press 2001).

** See id. at 107-08 (discussing the multiple meanings of “provided that” and recommending that drafters avoid the phrase).
Words in common speech may have different meanings than they do in a statute. Ordinary words like the word “shall” might mean “will.” In a statute, however, the word “shall” can mean far more; it can expand or limit a person's right or duty to act, or it can tell a court how to act or to refrain from acting. So, in a statute, “shall” can present either a mandatory or permissive meaning, depending on the context. In Example 3-F, you can see how “shall” differs depending on the context.

Example 3-F • Connotations of “shall”

“Shall” in a statute
In the Kidnapping Act, any person who commits the act of kidnapping “shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.” 18 U.S.C. §1201(a).

“Shall” in verse
“Well, if any man in Italy have a fairer table which doth offer to swear upon a book, I shall have good fortune.” William Shakespeare, The Merchant of Venice, Act II, Scene II.

In the statutory excerpt in Example 3-F, the word “shall” means “must,” and the court has no discretion in allowing a sentence less than the options the statute sets out. Although “shall” does not always mean “must,” it does mean “must” in the statutory example.

In the second excerpt in Example 3-F, “shall” is used in the subjunctive tense and is expressing a wish or a command. At most, the use of “shall” here could mean “will,” but the word does not mean “must” as it did in the statutory excerpt.

As you get deeper into statutory analysis and interpretation later in this book (Chapter 11, Statutory Analysis), you must understand the red flag words and their specific functions. For now, be aware that terms can be ambiguous, so read the statute carefully to understand how each term regulates the bounds of behavior.

(b) Elements and factors
Finding the red flag words and phrases can help you identify the elements or factors needed to satisfy the standard set out in the statute. For example, the federal kidnapping statute is diagrammed in Table 3-G. To meet the standard, any person who meets each of the elements listed in §§1201(a)(1-5) commits kidnapping.

III. Reading Judicial Opinions

The second part of this chapter introduces the reader to the very distinct and different styles of judicial opinions. Some are quite clear and concise; others are complex and detailed. A judicial opinion is a written decision by a court that explains its reasoning and provides a legal analysis of the case. It serves as a record of the court's decision and can be used as a precedent in future cases.

A. Basic Part

A judicial opinion usually begins with a statement of the facts of the case. The court then reviews the relevant laws and principles and applies them to the facts of the case. The court may also cite relevant statutes, regulations, and case law. The court's conclusion is often stated at the end of the opinion, where it rules on whether the defendant is guilty or not guilty.

Table 3-G • Diagram of the Federal Kidnapping statute

| 1. Unlawfully se away AND |
| 2. holds for ransom |
| 3. the act is done or to a particu |

EXCEPT
The act will not app
Table 3-G - Diagramming the kidnapping statute

1. Unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away

   AND

2. holds for ransom, reward, or otherwise

WHEN

3. the act is done within the federal jurisdiction through interstate commerce or to a particular group of people

EXCEPT

The act will not apply to a parent taking his or her own child.

For kidnapping to occur, each of the three elements of the crime must be met. Thus, carrying someone from one location to another at that person’s request would not be kidnapping because the first element, that the carrying be unlawful, would not be satisfied.

Reading the statute carefully will require you to pay close attention to the words of the statute itself and the context of the subsection in the overall statutory scheme. Only by reading carefully can you properly interpret the statute and apply it to your client’s case.

III. Reading Judicial Opinions

The second major type of authority you will need to read well is judicial opinions. Critical reading skills will make reading judicial opinions much easier. First, understand the parts of a judicial opinion.

A. Basic Parts of a Judicial Opinion

A judicial opinion explains the dispute before the court, the legal questions the dispute raises, and the ruling the court has made on the legal questions. A judicial opinion typically contains four parts, each of which performs a function: procedural information, contextual information, the court’s analysis, and the publishing tools used by the publishers of the case reporters. To see these parts, look at Figure 3-H.
Figure 3-H • A reported case*

Supreme Court of Rhode Island.
Cheryl DOWDELL
v.
Peter BLOOMQUIST.
No. 2002-630-Appeal.

Background: Homeowner sued neighbor for planting trees on his property in violation of spite fence statute. The Superior Court, Washington County, Gilbert v. Indegla, Jr., entered injunction against neighbor. Neighbor appealed.

Holdings: The Supreme Court, Flaherty, J., held that:
(1) In a matter of first impression, row of trees was a “fence” under spite fence statute; (2) privacy was insufficient justification for presence of trees; and (3) injunctive relief was appropriate relief not prohibited by statute.

Disposition

Affirmed.

Flanders, J., concurred in part, dissented in part, and filed opinion.

West Headnotes
[1]KeyCite Notes
  30 Appeal and Error
  30XVI Review
    30XVI(I) Questions of Fact, Verdicts, and Findings
      30XVI(I)3 Findings of Court
      30k1008 Conclusiveness in General
      30k1008.1 In General
      30k1008.1(1) k. In General.

Factual findings are entitled to great weight and will not be disturbed by reviewing court absent proof that they are clearly wrong or that the trial justice overlooked or misconceived material evidence.

[2]KeyCite Notes
  30 Appeal and Error
    30XVI Review
      30XVI(I) Questions of Fact, Verdicts, and Findings
        30XVI(I)3 Findings of Court
        30k1008 Conclusiveness in General
        30k1008.1 In General
        30k1008.1(4) k. Credibility of Witnesses; Trial Court’s Superior Opportunity.

Credibility determinations are entitled to great weight and will not be disturbed by reviewing court absent proof that they are clearly wrong or that the trial justice overlooked or misconceived material evidence.

* This sample case is based on Dowdell v. Bloomquist, 847 A.2d 827 (R.I. 2004). It has been edited. Individual edits are not noted in the text.
OPINION: Flaherty, J.

The plaintiff, Cheryl Dowdell, brought this action in Superior Court alleging that the defendant, Peter Bloomquist, planted four western arbor vitae trees on his Charlestown property solely to exact revenge against her, to retaliate by blocking her view, and in violation of the spite fence statute. The presiding Superior Court Justice found that the trees were planted to satisfy defendant's malicious intent, not his pretextual desire for privacy. The trial justice granted plaintiff injunctive relief. We affirm the judgment of the trial justice.

The facts pertinent to this appeal are as follows. The parties' homes are on adjoining lots. Dowdell's home sits at a higher elevation than Bloomquist's and has a distant view of the ocean over the Bloomquist property. In June 2000, defendant purchased the home from his mother. Prior to that time, the Dowdell family had an amicable relationship with defendant's mother. Change was in the wind in the fall of 2000, however, when defendant petitioned for a zoning variance seeking permission to build a second-story addition to his home. The plaintiff expressed concern about the petition, anxious that the addition would compromise her view of the Atlantic Ocean. For six months the parties argued before the Zoning Board of Review as to the merits of the addition. As a result, the relationship between the neighbors became less than friendly. In March 2001, defendant began clearing land and digging holes to plant the disputed trees in a row between their homes. In April, defendant's counsel sent a letter to plaintiff warning him against trespass onto the Bloomquist property. In May, one day after the zoning board closed its hearing on defendant's variance request, defendant began planting the four western arbor vitae trees that now stand in a row bordering the property line. The forty-foot-high trees enabled little light to pass into Dowdell's second- and third-story picture windows.

The trial justice made a finding that the row of trees were a fence. He further found that the objective of privacy claimed by defendant was "no more than a subterfuge for his clear intent to spite his neighbors by erecting a fence of totally out of proportion trees." Hence, the trial justice found that the trees constituted a spite fence. He noted testimony that plaintiff's real estate values had depreciated by as much as $100,000. Bloomquist was ordered "to cut the four Western Arborvitae to no more than 6' in height and keep them at that level or remove them entirely with no more Western Arborvitae to be planted."

This is the first occasion this Court has had to address the issue of whether a row of trees may be considered a fence within the meaning of the spite fence statute, § 34-10-20. We believe the trial justice properly referred to the definition of "lawful fences" found in the statute to understand the simple meaning and legislative intent behind its use of the word "fence." Based upon the language of § 34-10-1, a fence clearly includes a hedge. And based upon the expert testimony relied on by the trial justice, a row of western arbor vitae trees may constitute a hedge. However, even if the trees were not a hedge, the spite fence statute refers to "[a] fence or other structure in the nature of a fence." The trial justice considered the proximity of the four trees that touched one another, and the broad
The court reaches a holding about whether trees can be a fence in the second to last sentence of the paragraph.

The next issue the court addresses is the defendant's main argument, that he planted the trees for privacy.

The court reaches a holding about the defendant's privacy argument.

The court states the disposition.

span of sixty feet across which they spread, and rationally interpreted that the trees were a fence. We believe that the trees, when taken as a whole, fall well within the statutory definition of a "structure in the nature of a fence." This may not be the most optimal species for the creation of a hedge owing to their enormous stature and girth. However, it is specifically because of their towering presence, as well as their relative positioning on defendant's land, that we can consider the trees nothing less than a fence. What makes a spite fence a nuisance under the statute is not merely that it blocks the passage of light and view, but that it does not "unnecessarily" for the malicious purpose of annoyance.

We next consider defendant's contention that the trial justice erroneously discounted defendant's testimony that the trees were erected for the beneficial purpose of privacy. Defendant relies on Musumeci v. Leonard, 77 R.I. 255, 259-60, 75 A.2d 175, 177-78 (1980), for the proposition that when a fence is erected for a useful purpose, despite spiteful motive, no relief may be granted. We recognize that some useful purpose for a fence may render the victim of one even maliciously erected without a remedy. In Musumeci, this Court determined that a fence served the useful purpose of preventing water from entering the premises of the first floor of the complainant's house. Hence, because the purpose of the fence was not wholly malicious, it was not enjoined as a private nuisance. Musumeci, 77 R.I. at 258-59, 75 A.2d at 177.

However, based on the turbulent history between the parties, the provocative statements made by defendant, the notice of trespass letter sent to plaintiff, and the size, timing, and placement of the trees, we cannot say that the trial justice was wrong to give defendant's testimony little weight and to find his claim that the fence was installed to enhance his privacy lacked credibility. In the circumstances of this case, we agree with the trial justice that defendant needed to provide more than just privacy as justification for the fence. This is especially true when a row of smaller arbor vitae already stood between the homes. As the trial justice noted, "Accepting privacy alone would simply result in the statute being rendered meaningless and absurd." The very nature of a fence is such that privacy could always be given as the reason for erecting it. In an egregious case such as this, where evidence of malicious intent plainly outweighs the discounted benefit claimed by defendant, the court correctly found defendant's actions to violate the spite fence statute.

Conclusion

For the reasons set forth above, we affirm the judgment of the Superior Court. The record shall be remanded to the Superior Court.

1. Procedural information

(a) The caption

The caption is the case's title and sets out the parties. When listing the parties involved, the caption typically lists the full names of all the parties involved. In a civil case, the parties may be individuals, as in Example 3-I.

Example 3-I

The parties in

Example 3-J

WILLI

Example 3-K

UNITEC

Example 3-L

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Example 3-I • Individuals in a civil action

Cheryl DOWDELL v. Peter BLOOMQUIST

The parties may include entities, as in Example 3-I.

Example 3-J • An entity in a civil action

WILLIAM HOWARD WEST, JR., and wife, CAROLYN SUE WEST v.
KING’S DEPARTMENT STORE, INC.

In trial court opinions, the captions also tell which party is bringing the suit. The person instigating a civil lawsuit, known as the “plaintiff,” is listed first, and the party being sued, the “defendant,” is listed second. For example, in Example 3-I, Ms. Dowdell is the plaintiff, and Mr. Bloomquist is the defendant.

In a criminal case, the prosecutor is the party instigating the suit and the defendant is the other party. If the prosecutor is the federal government, the caption might look like Example 3-K.

Example 3-K • Parties in a federal criminal action

UNITED STATES OF AMERICA, Respondent/Appellee, v. TIMOTHY
JAMES McVEIGH, Movant/Appellant.

If the prosecutor is a state, the caption might look like the one in Example 3-L.

Example 3-L • Parties in a state criminal action

STATE OF OREGON, Appellant, v. FREDERICK WENGER, JR., Respondent.

On appeal, the caption will typically tell you which party is bringing the appeal. The terms “appellant” or “petitioner” follow the party who filed the appeal first. The terms “appellee” or “respondent” will follow the other party, who may also appeal some issues. The parties may not be listed in the same order on appeal as they were in the trial court. In Examples 3-K and 3-L, you can see captions that identify the appellant and respondent.

(b) The citation

Near the case name (and at the top of the page in a reporter) you will see the official case citation. Citations are important because they explain where to find the case, the level of court deciding the case, and the age of the case.
For instance, look at the two citations below in Figures 3-M and 3-N. Each citation tells you the reporter in which the case was published, the volume of the reporter, and the page of the reporter. In parentheses, the citation tells the court that decided the case (if the reporter's title does not already do so) and the year in which the court decided the case.

**Figure 3-M • Citation tells reader where to find the case**

<table>
<thead>
<tr>
<th>Volume</th>
<th>Reporter</th>
<th>Initial page</th>
</tr>
</thead>
</table>

The citation in Figure 3-M explains that the case is located in volume 128 of *Oregon Reports, Court of Appeals* on page 274. The case was decided by the Oregon Court of Appeals in 1994.

**Figure 3-N • Citation components**

<table>
<thead>
<tr>
<th>Volume</th>
<th>Reporter</th>
<th>Initial page</th>
</tr>
</thead>
<tbody>
<tr>
<td>469</td>
<td>F.3d</td>
<td>572 (6th Cir. 2006)</td>
</tr>
</tbody>
</table>

The next citation, in Figure 3-N, indicates that the case is in volume 469 of the *Federal Reporter, Third Series*, at page 572. The case was decided by the United States Court of Appeals for the Sixth Circuit in 2006.

Notice that in a citation the court can be indicated in the reporter or in the parenthetical. If the deciding court is clear from the reporter, the court will not be indicated in the parenthetical. In Figure 3-M, the reporter's abbreviation indicates that the court is the Oregon Court of Appeals, and so no further information about the court is necessary in the parenthetical. If, however, the reporter contains decisions from many courts and the reporter does not indicate the court and its level, the court will be indicated in the parenthetical. In Figure 3-N, the reporter, the *Federal Reporter, Third Series*, contains cases from many federal appellate courts; therefore, the parenthetical specifies that the Sixth Circuit decided the case.

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(c) The author of the opinion

At the beginning of the opinion, you can find the author of the opinion, noted by the author’s last name, followed by the letter “J.”

In federal jurisdictions, a single trial judge for a district court may issue a reported opinion. (In state trial courts, opinions are not published; instead, judges just render decisions on the record.) Appellate courts—whether state or federal—sit in panels of judges, usually three judges for intermediate appellate courts, or five to nine (sometimes more) for the highest appellate courts in the jurisdiction. Judges vote on the outcome of a case, and one judge from the majority writes the opinion.

The letter “J” can stand for either justice or judge, depending on the court—usually “justice” refers to members of the highest court in a jurisdiction and “judge” refers to members of the lower intermediate and trial courts. Occasionally, you will see other letter designations such as “C.J.” for Chief Judge or Chief Justice and “S.J.” for Special Judge. You will not likely need to use the name of the judge in your memoranda, but opinions written by well-known or prominent jurists may sometimes be more influential. At other times, knowing the writer of the opinion can give you insight into the author’s ideology.

2. Contextual Information

(a) The facts

Within the first few paragraphs of the opinion, a court will set out the story, or underlying events, of the case. The depth and clarity with which courts describe the facts varies. This section is important to read carefully because most cases are fact-driven, meaning the court’s decision hinges on the facts before it. As you read the facts, look for clues as to which facts the court thought were most important. Often, a court will emphasize those facts on which its decision turns. Keep an eye out for the critical facts, those facts that triggered the court’s decision. When the case examines more than one legal issue, you will have to determine which facts were critical to each issue addressed. Some attorneys read the fact section once and then again after reading the court’s analysis. Doing so will allow you to distinguish critical facts from background facts and match the facts relevant to each issue.

(b) The procedural history

In either the fact section or an adjacent section, the opinion may explain the legal path the case took after the plaintiff initiated the lawsuit. This information is called “procedural history.” When describing the procedural history of a case, a court may explain the claims that were filed; motions that were made before, during, or after the trial; or any appeals
that were brought. Within this section, the writing judge may also include information about the arguments each party made in the lower court and the lower court's opinion.

What the parties argued and what the lower court said are not part of a court's holding unless the court indicates that it is adopting those arguments. Be sure to note whether the appellate court is merely describing or actually adopting those arguments.

(c) The issue or issues

In a single opinion a court may decide many legal questions, which can be raised by either party to the dispute. An issue is one of the legal questions the court is asked to decide. An opinion typically addresses many issues, not all of which will be relevant to your client's problem. Sometimes a court will clearly state the issues it will address and organize its opinion around those issues; other times, you will have to discern the issues the court addressed.

Take for example, Paul Adams's case, discussed in the memo in Chapter 1, How Attorneys Communicate (Example 1-A). If his case were to go to trial, the defendant might ask the court to decide one issue: whether Paul Adams's statement would be admissible against him.

To answer that question, the court has to answer a sub-issue: whether Paul Adams was stopped. If he was not stopped, then his statement was "mere conversation" and is admissible. Accordingly, to decide the party's issue, the court would have to answer two questions: "Was Paul Adams stopped?" and "Is his statement admissible at trial?"

Actual judicial opinions differ from the cases in law school textbooks because of the number of issues each addresses. In most textbooks, the author has edited the case so that the case describes just one legal issue illustrating one point of law. Every other part of the opinion not relevant to that one point has been edited out.

In practice, the cases you read will not be edited; they will contain multiple issues, and some of those issues may be quite long and complex. In unedited cases, you must discern which of the many issues in the opinion will be relevant to your case.

3. The court's analysis

(a) The rule of the case

The rule of the case is the point of law the opinion will represent to future cases.

Sometimes—over time—a case comes to represent a particular point of law. Before that time, however, attorneys may argue about the rule of law that the case represents. Only after attorneys have argued about it, after a subsequent court has stated how we should understand the case, can we be certain about the rule of the case.

(b) The holding

A holding is the proposition of law decided by the court, as opposed to the facts of the particular case, the decisional result. If the court is writing a holding, then it is making a pronouncement about the law that will apply to future cases. Although the holding is tied to the facts of this one case, on the one hand the court is not necessarily discussing the particular facts of this case, on the other hand the holding is tied to the facts of all similar cases.

To make the holding precise, the court may state the concept by using language such as "the holding is the proposition of law that will apply to similar cases." For example, the holding of an opinion may state that "a defendant must prove that the plaintiff was negligent before he can be held liable for the plaintiff's injuries." The holding is, in this case, the proposition of law that will apply to similar cases.

(c) The rationale

The rationale provides the reasoning and basis for the holding. The rationale explains why the court decided the case as it did and why the holding is valid. It is often referred to as the "reasoning" or "rationale" of the opinion.

Thus, to understand the rationale of a holding, you need to read the opinion carefully and pay attention to the court's reasoning. You should also consider the facts of the case and how they relate to the holding.

(d) Dicta

Dicta are statements in an opinion that are not necessary to the holding or ruling of the case. They can be factual statements, legal concepts, or other information that the court has included for the benefit of the reader. Dicta can be important to remember as they can sometimes be cited as authority in future cases.

Remembe
Remember, too, that if a case addresses more than one issue—as most cases do—more than one rule can be derived from the case.

(b) The holding or holdings

A holding of a case is the court’s answer to one of the questions presented by one of the parties. Thus, for every legal issue you identify in a case, you should also find a holding.

Although the holding and the rule of the case resemble each other, the holding is tied to the facts of the case before the court. The rule of the case, on the other hand, is a general principle of law the case will represent in the greater body of law.

To make matters a little more complicated, courts often use the terms imprecisely, calling the holding a rule of the case or calling a rule of the case the holding. For example, if the court said, “We rule that Officer James impermissibly stopped the defendant when the officer placed his hand on the defendant’s shoulder and physically prevented him from leaving,” the court’s statement is a holding because it is tied to the particular facts of that case, even though the court used the word “rule.”

On the other hand, the court may write, “We hold that a stop occurs when an officer uses a physical show of authority to keep a person from leaving.” This general statement is really a rule of the case because it is not tied to the facts of the case but, instead, represents the point the case will stand for in the body of law.

Thus, to distinguish between a holding and a rule of the case, pay attention to the facts. A holding is tied to facts; a rule of the case is not.

(c) The reasoning

The reasoning of the case is the analysis the court follows to get from an issue to its holding about that issue. For each issue, the opinion will assess the governing law—whether it comes from statutes, common law, policy concerns, or some combination of those authorities. Then, the court will apply that law to the facts of the case. The reasoning is the “meat” of the opinion, and it requires several careful and thorough readings.

(d) Dicta

Dicta are assertions or statements by the writing judge on points that are not necessary to address an issue presented by a party. A common form of dicta is a hypothetical. Often, a court will assert that had one fact in the case been different, its holding would have been different. Since that fact was not before the court, the court’s statement about that different fact is dictum. Courts have authority to decide only the issues before them; thus, dicta are not a binding part of the opinion. That said, dicta can sometimes be persuasive to a future court, and attorneys may rely on dicta as persuasive but not mandatory authority.
4. Publishing tools to note
(a) Argument
In case reporters, immediately after the caption and preliminary information, you will usually see a one-paragraph synopsis of the case. The synopsis describes the most basic issue and underlying facts, the disposition of the case, and suggests the decision of the court. The synopsis is helpful for identifying the case and for determining whether to file a case. The synopsis is not part of the judgment or disposition of the case.

You should never cite a synopsis as a summary of the case and, on occasion, can be inaccurate. You should read the court's decision to determine the disposition of the case.

(b) Concurring and dissenting opinions
Concurring and dissenting opinions only apply to appellate court cases decided by a panel of judges. As noted earlier, after the court issues its decision, the concurring and dissenting opinions may be recommended for internal consideration, or may be published in the official journal.
(b) Headnotes

In most reported cases, particularly all of the cases reported by the West Publishing Company, after the synopsis you will find headnotes. A headnote is a one-paragraph blurb for each point of law presented in the case. Headnotes act like a table of contents to the case and direct the reader to the portions of the case that address each point of law. Headnotes are also not part of the judicial opinion and cannot be cited. Nor should the content of the headnotes be quoted; instead, go directly to the portion of the opinion to which the headnote refers and use the official opinion.

Even after recognizing each part of an opinion mentioned above, understanding judicial opinions requires you to read critically.

B. Reading Judicial Opinions Critically

Reading critically requires you to question every statement on the page. After critically reading a case, you should be able to answer such questions as

- What issues did the court decide?
- Did the court construe the problem broadly or narrowly?
- How did the court answer the questions presented for review?
- Is the court's analysis logical and supported by primary authority?
- Do the facts and the law support the court's answer?
- Is the analysis flawed?
- Did the court adopt the argument of one of the parties? Whose?
- Did the court actually do what it said it was doing?
- Did the court omit any facts or analysis pertinent to the disposition of the issue? Why did it do so?
- Does this case begin, change, or end a trend established by other cases on the same topic?
- How does this case fit into the body of law?

Legally trained readers tend to answer the above questions routinely, often without consciously realizing they are doing so.

The three critical reading steps explained before will help you answer these questions. By walking through the steps and answering the questions above, you can examine a case and understand it quickly. Table 3-0 summarizes the critical reading steps as applied to an opinion.7

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7. These steps are adapted from Mary A. Lundeberg, supra note 5, at 428-29, and Appendix 1; Peter Dewitz, Legal Education: A Problem of Learning From Text, 23 N.Y.U. Rev. L. & Soc. Change 225, 240 (1997).
Table 3-0 • Steps for critical case reading

<table>
<thead>
<tr>
<th>Step</th>
<th>Ask these questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Get context for the case.</td>
<td>- Who are the parties? Individuals or entities? Private parties or the government?</td>
</tr>
<tr>
<td></td>
<td>- Is this a criminal or civil case?</td>
</tr>
<tr>
<td></td>
<td>- What is the jurisdiction? Federal or state?</td>
</tr>
<tr>
<td></td>
<td>- What level of court wrote the opinion? Trial? Intermediate appeals? Highest</td>
</tr>
<tr>
<td></td>
<td>appeals court?</td>
</tr>
<tr>
<td></td>
<td>- What year was the case decided?</td>
</tr>
</tbody>
</table>

2. Skim.                                   | Glean the basic information about the case so that you will have a framework of     |
|                                           | the issues presented and how they were decided. If you get the overall framework  |
|                                           | of the case in this step, you will be able to read more slowly with greater        |
|                                           | comprehension and depth of understanding in the next step.                         |
|                                           | - What is the overall structure of the case? How does the court organize          |
|                                           | the discussion of the issues in the body of the opinion?                          |
|                                           | - What are the key issues?                                                        |
|                                           | - What is the basic, underlying factual dispute?                                   |
|                                           | - What are the key facts? (Start to get a visual image of the factual story.)      |
|                                           | - What is the procedural path the case has taken thus far?                        |
|                                           | - What did the lower courts do?                                                    |
|                                           | - What was the disposition of the case?                                            |
|                                           | - Look at the structure of the opinion again. Try skimming the first sentence       |
|                                           | of every paragraph. Do these sentences give you an outline of the court's reasoning?|

3. Read the case closely and question it.   | Now that you have a good framework of what the case does and says, you are ready  |
|                                           | to dig into the meat of the case. For each issue presented to the court, answer     |
|                                           | the questions posed below.                                                         |
|                                           | - What was the governing law? Is it statutory? Common law? A combination of both?   |
|                                           | - What facts did the court rely on in making its decision?                         |
|                                           | - Does the issue turn on particular facts, or is the court addressing a pure       |
|                                           | question of law—that is, is the court merely explaining what the law is?          |
|                                           | - Whose argument does the court appear to be following? A party's? The lower       |
|                                           | court's? Its own?                                                                  |
|                                           | - Does the court's interpretation of the law make sense?                           |
|                                           | - Does the court's application of the law to the facts make sense?                 |
|                                           | - Is the court's argument flawed? On what specific points?                         |
|                                           | - What is the rule of the case? How will it apply to future cases?                 |
|                                           | - Does the court include policy reasons for its decision?                          |
|                                           | - Any concurring opinions? On what points do the judges agree? Disagree?           |
|                                           | - Any dissenting opinions? What does the dissenting judge object to in the         |
|                                           | majority opinion? Does the dissent's argument make more sense?                    |
|                                           | - How does this case fit with other cases or governing laws on the topic?          |
|                                           | - What new words should you look up?                                               |

This list of readers typic through a leg grasping the their analysis.

With practicing, they for you to rec increase as welling cases that spend less to illegal reader i case. Note th Table 3-P.

Table 3-P • The

**Expert legal reader**

- Read parts of the case more slowly during parts.
- Read facts slowly twice that speed.
- Pay attention to small details that they start reading.
- Note the opinion of the court as they read for the first time.
- Look carefully at the visual pictures.
- Note what the court said it was.
- Notice whose argument was stronger.
- Question the notoriety of the decision based on other cases.
- Note the thoughts that arise in later cases.

*This chart is derived from Paraphrase: Talkin.*
This list of questions may seem very long. Even so, most expert legal readers typically think about and answer these questions as they go through a legal document. Novice legal readers tend to read superficially, grasping the big picture, but not the key details that will be necessary for their analysis.

With practice, you will also start asking, and more importantly answering, these questions as you read cases. Further, the time it takes for you to read, comprehend, and analyze a case will dramatically decrease as well. An expert legal reader does not spend more time reading cases than a novice reader; in fact, the expert legal reader usually spends less time. The critical distinction between the expert and novice legal reader is the depth of comprehension each takes away from the case. Note the differences between expert and novice legal reading in Table 3-P.

### Table 3-P • The differences between expert and novice legal readers of judicial opinions*

<table>
<thead>
<tr>
<th>Expert legal readers tend to:</th>
<th>Novice legal readers tend to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Read parts of the opinion at varying speeds, reading more slowly during key parts, more quickly during parts not relevant to the issue.</td>
<td>• Read quickly without much comprehension.</td>
</tr>
<tr>
<td>• Read facts slowly; read the rest of the case at twice that speed.</td>
<td>• Read each portion of the opinion at an equal rate.</td>
</tr>
<tr>
<td>• Pay attention to the context of the case before they start reading for detail.</td>
<td>• Ignore contextual details such as the level of court, date, characteristics of the parties.</td>
</tr>
<tr>
<td>• Note the opinion's length and organization before they read for details.</td>
<td>• Read the facts superficially, without close attention.</td>
</tr>
<tr>
<td>• Look carefully at the facts of the case, creating a visual picture of the parties and what happened.</td>
<td>• Accept the rationale and factual interpretation of the court without question.</td>
</tr>
<tr>
<td>• Note what the court actually did versus what the court said it was doing.</td>
<td>• Fail to notice whose story the court was accepting.</td>
</tr>
<tr>
<td>• Notice whose argument prevailed and why that argument was persuasive to the court.</td>
<td>• Look for only the outcome of the case.</td>
</tr>
<tr>
<td>• Question the reasoning and application of the law, noting whether the court formed a solid argument based on the law.</td>
<td>• Fail to notice what the court omitted.</td>
</tr>
<tr>
<td>• Note what the court omitted.</td>
<td>• Fail to think about the case's place in the body of law.</td>
</tr>
<tr>
<td>• Think about how the rule from the case will affect later cases.</td>
<td></td>
</tr>
</tbody>
</table>

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* This chart is derived from the works of Peter Dewitz, supra note 7, at 230-31, and Elizabeth Fajans and Mary R. Falk, Against the Tyranny of Paraphrase: Talking Back to Texts, 78 Cornell L. Rev. 163, 179-81 (Jan. 1993); see Lundeberg, supra note 3, at 412-17.
By learning these critical reading steps, you will become an expert legal reader quickly and, just as importantly, you will begin to build your legal analysis. Building a legal analysis depends not only on effective reading but also on effective organization, which brings us to the next phase of the legal writing process: finding your legal argument and organizing what you have read.

**Practice Points**

- Reading has two aspects: speed and comprehension. Employing critical reading tools can help a lawyer excel in both aspects.
- Whether reading a statute or a judicial opinion, use these critical reading steps:
  1. Get context,
  2. Skim the text, and
  3. Read closely and question the text.

---

Chapter 4

**Finding**

I. Determine the
   A. A Statute
   B. Common
   C. A Synthesis

II. Inventory the
    A. Elements
    B. Factors
    C. Red Flag
    D. Tests

III. Think Like a Lawyer

IV. Identify Individual
    A. Example
    B. Example

By now, you day, after you spent an hour or so from your conversation. As you read, whether they see you are finding.

Getting from initial steps:

1. Determine
2. Inventory
3. Break the

Those three arguments that, with argument. Thus, by b