

Contracts I

Section 8
Fall 2002
Mark Sidel

Legal methods exercises

Case briefing assignment

This case briefing assignment is handed out on Tuesday, August 27 and is due to Amanda Bibb in BLB room 486 on Wednesday, August 28 by 3:00 pm. Please put your name on this assignment. It will be returned to you.

Please brief either *Lucy v. Zehmer* (Burton casebook p. 12) or *Oswald v. Allen* (Burton casebook p. 22). Please use no more than one typed page for the brief and include sections dealing with the facts, issue(s), holding(s), reasoning and, if applicable, policy.

Pp. 28-34 of the Shapo, Walter and Fajans volume, Writing and Analysis in the Law provides a useful approach to case briefing. The Legal Writing Center may also have useful materials available.

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Legal methods exercises

Case holdings and synthesis assignment

This case holdings and synthesis assignment is handed out on Tuesday, August 27 and must be returned to Amanda Bibb in BLB room 486 by 3:00 pm on Tuesday, September 4. Please put your name on this assignment. It will be returned to you. This assignment must be typed, double-spaced, with a minimum of one inch margins and a minimum font size of 12, and a page limit of two pages. Thus there is a premium on careful expression in the very few words you have available in two pages.

State the holdings of each of the following cases and write a brief synthesis of these cases:

Mesaros v. United States (Casebook page 26)
Lefkowitz v. Great Minneapolis (Casebook page 31)
Chia T. Chang v. First Colonial Savings Bank (attached as edited)

Additional information:

Several excellent articles on writing case holdings and syntheses are available from the Writing Center, and you are encouraged to pick those up and read them. In addition to the materials at the Writing Center, a good source of information on how to find the holding of a case is contained in chapter 2 of Shapo, Walter and Fajans, Writing and Analysis in the Law.

Another useful source is Burton, An Introduction to Law and Legal Reasoning 37-39 (2d ed. 1995). He indicates that a holding is “a statement that captures in a sentence or two the probable significance of a single precedent as a base point for reasoning by analogy in future cases.” Thus, a holding will refer to those facts “that are likely to become a point of important similarity or difference” between the case at hand and cases that might arise in the future. It will also state the legal consequences of those facts in the particular case.

Make your statements of holding clear, substantively precise and grammatically correct. A case may have more than one holding, but even complicated opinions usually lend themselves to a brief statement of what it was the court actually decided.

The materials you will obtain from the Writing Center as well as the relevant sections of the Shapo, Walter and Fajans volume provide useful guidance on how to write a synthesis.

As Professor Andersen puts it, “[a] synthesis must be something more than a stringing together of abridged briefs of several cases. Although you will find it useful to say something about each opinion, you must show how the cases fit together within the context of a doctrinal idea. A synthesis will compare the important similarities and differences – both factual and legal – of the cases at hand. It will show how the holding of each contributes to a broader legal concept [or concepts]. The synthesis should leave the reader with a clear understanding of the law represented by the cases in question,” including how the cases are related to each other and relate to principles of law.

Good luck!

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First memorandum

To: Attorney (use #)
Fr: M.S., Vernon Law Offices
Re: Request for a Memorandum of Law

The firm's client, Mr. Johns and his children (as described below), reported the following facts to me. They have asked us to give advice about their rights and obligations in the following situation:

In response to a fund-raising program Hines University was undertaking, Ms. Jane Johns, a lawyer and a member of the Hines Board of Regents, pledged \$800,000 and agreed to pay that amount within six months of the pledge by means of cash and bonds. Ms. Johns signed and delivered to the University a statement detailing her promise.

A few days after the pledge was made, the President and Vice Presidents of the University met to discuss possible uses of the income generated by the \$800,000 Ms. Johns had pledged. Ms. Johns was a strong supporter of women's athletics and of the University's College of Law. After several hours of discussion, a decision was made to use half the money to support women's athletics at the University and the other half to provide merit scholarships to students at the Hines University College of Law, the recipients of the scholarships to be named "Johns Scholars." On the following day Ms. Johns dies without having executed a will.

Her husband of 48 years and two children, aged 41 and 43, survived her. The husband and the two children are our clients. Under the intestacy laws of the state in which she lived, one-third of the property she owned at death was to pass to her husband, with the other two-thirds being divided equally between her children. The administrators of Ms. Johns' estate have refused to honor the University's demand that the \$800,000 pledge be honored.

The University is exploring the possibility of filing a suit to require that the pledged funds be turned over to it.

I plan to meet with Mr. Johns and his children and would like to know the legal status of the parties so that I can advise the clients as they have requested. Please prepare a memorandum of law that will permit me to give informed advice to the client about the legal status of the parties. In particular, it would be useful to know whether Ms. Johns' pledge is an enforceable contract on a theory of consideration or reliance, and/or

enforceable under subsection (2) of section 90 of the Restatement (Second) of Contracts even without consideration or reliance. On the basis of your memo and my discussions with the client, I will decide what “action advice” to give. I am not seeking your assistance on “action advice” issue, however.

In preparing the requested memorandum of law, assume that the jurisdiction has no case in point and that the only case authorities available are the following three cases, which you should read and analyze:

Congregation Kadimah Toras-Moshe v. DeLeo, 540 N.E.2d 691 (Mass. 1989).

Jewish Federation of Central New Jersey v. Barondess, 560 A.2d 1353 (N.J. Super. Ct. Law Div. 1989).

Arrowsmith v. Mercantile-Safe Deposit and Trust Co., 545 A.2d 674 (Md. 1987).

Please locate these cases in the law library. You will almost certainly want to copy them for your use in thinking through and writing the memo. Please keep in mind that the summary of the case just preceding the Headnotes and the Headnotes themselves are comments by editors and not part of the court’s opinion. Do not cite or quote from the summary or the Headnotes, unless the case report indicates that the court itself prepared the Headnotes. Please do not focus on the portions of *Arrowsmith* that are not directly related to the issues raised above.

In addition to the three cases, you may cite or quote Restatement (Second) of Contracts § 90 (1981), with Comments as set forth following the three cases. No materials other than the three cases and the Restatement (Second) materials may be cited in the memo.

The fact that you have cases and a Restatement provision to cite should not be taken as eliminating the need for you to exercise your independent judgment and reason.

Citation form should follow the Bluebook, which is available at the law library or the bookstore. If you cite a case for anything but a general proposition of its holding or you quote from a case, the citation should include a reference to the page of the opinion on which the case as such starts, eg. 290 for *Mount Sinai*, and, in addition, the page from which the quote is taken or on which the cited point is made.

This memo must be double-spaced, no longer than four pages, with at least a one inch margin on each side and a font size of 12 or larger. This assignment is handed out on Tuesday, August 27 and must be turned in to Amanda Bibb in BLB room 486 by 12:00 noon on Friday, September 20. Points will be deducted for late memos.

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Deadline on the first memo

The first memo is due to Amanda Bibb in room 486 by 3:00 pm on Friday, September 20. Please do not put your name on this memo; Ms. Bibb will give you a number when you drop off your memo.

Good luck!

Mark Sidel

Suggestions on the first memo

Several of you have come by during office hours to ask about the structuring of the first memo. One useful way to think about structuring these kinds of memos (and some other forms of legal writing as well) is encapsulated by the acronym IRAC. IRAC stands for Issue, Rule, Application, and Conclusion. I've attached a two page brief description of IRAC by Joyce Klouda discussing this approach.

In general, the other advice I've been giving is to put yourself in the position of the senior lawyer and the client (as well as the more junior lawyer writing the memo) when you are thinking about this assignment, and to focus on what seem to be the key issues in the problem.

For example, you might consider what the client needs to know. He or she needs to know the legal issues he or she is faced with, the key rules that apply to those issues, how those rules might be applied to the facts of his or her particular situation, and some conclusion, or at least a sense, of how those rules, as applied to the client's facts, come out in the end. (By now you can spot IRAC in that last sentence!)

The senior lawyer needs much the same information. She or he needs to know what the legal issues are. You cannot assume that the senior lawyer will spot those from the facts presented, which a client may have presented in non-legal terminology, and without understanding which facts are more or less important from a legal perspective. The senior lawyer needs to know the key rules that govern those kinds of issues, rules that emerge from the very restricted universe of the three cases and Restatement provision you've been given. The senior lawyer needs to have some sense as to how those rules would be applied to the factors before you both. And the senior lawyer needs to have a sense for what the result might be – not necessarily expressed in a definitive or “hard” way, but some sense for how this might come out. (At this point I need not point out that this paragraph goes through IRAC once again.)

In most cases you will find it useful to begin the memo (before going into IRAC) with a brief review of the key facts presented. The problem here is digesting the facts to draw out the most important, not using too much space in a very limited four page memo. Merely repeating all the facts will likely take too much space, space that you do not have available.

I hope this helps as you work on the first memo. Feel free to ask me questions about any of this in office hours or after class next week.

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Introduction to IRAC

by

Joyce Deatrck Klouda

What is IRAC?

IRAC is the acronym for Issue, Rule, Application, and Conclusion. One can use **IRAC** to organize a **legal** argument based on one or more cases. This argument structure is divided into the following parts:

ISSUE **R**ULE **A**PPPLICATION **C**ONCLUSION

ISSUE

I stands for issue which is the general area or topic of law you plan to discuss. This is usually set forth in a phrase or sentence.

For example: To prove the defendant is liable for committing battery, . . .

RULE

R stands for the rule or rules that you draw from a case or cases concerning a specific area or topic of law. The order in which one

presents rules is essential to a full understanding of a given area of law. Thus, keep in mind the following conventions when drafting the rule section of any analysis.

Generally, one should describe:

the general or "standard situation" rule first,
then the remaining rules in logical order from general to specific; or
the elements first, followed by the defenses; or the claims, followed by the defenses; or
the major requirements, then the minor or occasional requirements; or
the general rule, then the exceptions to the rule.

Keep these common orders in mind whenever you discuss rules.
They are useful tools when presenting essay examinations.

APPPLICATION

A stands for application of precedent. In most analyses, you will need to illustrate a case first, using its facts, holding, and reasoning. Then, you will compare that case (or set of cases) to the fact pattern you wish to analyze.

CONCLUSION

Finally, **C** requires you to describe the conclusion or result of your analysis.

For example: In conclusion, the plaintiff proved the necessary elements to show the defendant is liable for battery by establishing the defendant intended to harm. . .

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Second memorandum

Instructions

This assignment consists of drafting a memorandum on a factual problem requiring close analysis of a document or statute. Like the first memo, this assignment requires you to assume the role of an attorney in a law firm or office. For this memo, one of the firm's senior attorneys has given you the assignment below. You are to prepare a memo addressing the senior attorney's concerns. The memo should provide an accurate analysis of your client's legal prospects, identifying and evaluating possible arguments where the law is reasonably arguable.

This assignment differs from the first memo in that here you are asked to focus on applying the language of a statute. Please focus on U.C.C. § 2-201 and its official comment, which are on pp. 35-38 of the statutory supplement, and the proposed revision to § 2-201, which is on pp. 180-181 of the statutory supplement. While you may gain insight from and refer to the U.C.C. § 2-201 cases in the casebook (*Nebraska Builders and Warder & Lee*), please note the limitations in the memo below, and please focus on U.C.C. § 2-201 (and the proposed revision). Be sure to discuss all issues that might reasonably arise under § 2-201, even if you find that one of them alone could determine the outcome.

The materials to be used in writing the memo are mentioned here; no library research is contemplated. Citation of materials other than those provided is not allowed.

Please include memo sections on facts, questions (or issues) presented, and discussion. At your option, you may also include a short answer (before the discussion) or a conclusion (after the discussion). You may include any other headings (within the four page limit) that you think worthwhile.

The memo may not exceed four pages, double-spaced (the entire memo must be double-spaced), with a font size of 12 or larger, and margins of one inch. Please number each page. Do not put your name on your memo; Amanda Bibb will assign a number when you turn this in on October 11. This memo is due to Ms. Bibb on Friday, October 11 at 3:00 pm.

Please use Bluebook citation form. When citing the U.C.C., cite the section number used and, when possible, indicate the subsection or comment number. Use "id." to refer back to the immediately preceding cite. If you can't make the "§" symbol on your computer, do not worry and use "sec." instead. So, for example:

The parties' course of performance can also shed light on the meaning of their agreement. U.C.C. § 2-208(1). A single occasion of conduct, however, does not establish a course of performance. Id.; see also U.C.C. § 2-208 cmt. 4.

Or: The parties' course of performance can also shed light on the meaning of their agreement. U.C.C. sec. 2-208(1). A single occasion of conduct, however, does not establish a course of performance. Id.; see also U.C.C. sec. 2-208 cmt. 4.

You are free to discuss the assignment with members of this small section, but the memo must be prepared on your own. You may (and are strongly encouraged to) consult the Writing Resource Center with your written drafts. Do not discuss the assignment with anyone other than members of this section and Writing Center staff. You may not use any sample memos, corrected memos or other aids.

Grading will be based on the memo's overall effectiveness, with particular attention paid to the quality of legal analysis, use of authority, and written expression. The memo's compliance with the format guidelines and with high technical standards in writing (such as grammar, spelling, and punctuation) will affect the grading.

Deadline

This memo assignment is handed out on Monday, September 23 and must be returned to Amanda Bibb in BLB room 486 by 3:00 on Friday, October 11.

TO: Associate
FR: Senior Attorney
DT: September 23, 2002
RE: Niloy Banerjee/Breach of contract claim

Our client, Niloy Banerjee, is a cat breeder who recently decided to diversify his business. He approached Mamta Saikia, whom he had met at the regional pets convention, about acquiring some puppies. On February 1, 2002, they met for lunch and talked at length about a possible deal. Ultimately, they agreed that Saikia would sell Banerjee 100 puppies. In exchange, Banerjee was to pay Saikia \$750 plus 20 cats of Saikia's choice.

As they negotiated, Banerjee scribbled figures on a scrap on a dinner napkin; when they reached a conclusion, each party initialed the napkin, which Banerjee kept. It reads:

You: 100 puppies
Me: \$750, + cats
NB MS

Banerjee and Saikia had reached a conclusion on other aspects of the deal as well, such as the date the exchange was to occur, and the specific type of puppies and cats involved. Nothing on the napkin, however, referred to those aspects of the agreement.

On February 3, Banerjee wrote Saikia a letter, which read: "This is to confirm that Mamta Saikia agreed to sell Niloy Banerjee 100 puppies in exchange for \$750 and 20 cats to be chosen by Saikia. Sincerely,". Banerjee intended to sign his name after the word "Sincerely," but forgot to. He hand-delivered the unsigned letter to Saikia's office that same day, putting it through the mail slot because she wasn't in her office.

Due to a sudden shortage of supply, the market supply of puppies began to rise. On February 10, Saikia called Banerjee. "I was away on vacation and just got your letter," she said. "I know we discussed selling puppies, but I don't remember ever reaching any agreement about it. I'm still willing to negotiate, but a hundred puppies will cost you at least \$1,200 plus 30 cats. Let me know if you're interested." Banerjee insisted that Saikia was bound by their agreement. On February 12, Saikia sent a letter to Banerjee, which read: "As I said on the phone, I object to your letter. We never reached any agreement about the sale of puppies."

Banerjee is upset that Saikia has (in his view) reneged on their deal, and wants to sue her for breach of contract. I have determined (and you can therefore assume) that the contract is one for "goods" and thus is governed by the U.C.C., and that the parties are

both merchants. I am concerned, however, that the contract may be unenforceable under U.C.C. § 2-201. Please write me a memo about the effect of § 2-201 on Banerjee's claim for breach of contract. Since our jurisdiction is also seriously considering adopting the proposed revisions to U.C.C. § 2-201, please indicate how your analysis might change if the proposed revisions are adopted, and the effect adoption of the proposed revision might have on this dispute.

There are no cases directly on point in this jurisdiction, although our courts have indicated a disfavor for the *Nebraska Builders* notion that several writings can be pieced together to satisfy the requirements of § 2-201. *Liebig v. Jones*, 123 N.W.3d 456 (2001). Assume that we can prove the facts as I have stated them. Confine your discussion to the effect of § 2-201 (and the proposed revision to § 2-201) on Banerjee's breach of contract claim. Do not, for example, discuss other possible claims he could make, or other defenses.

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Client letter

Please write a letter to Mr. Banerjee, our client in the second memorandum, explaining the results of your legal research on the effect of U.C.C. § 2-201 on Banerjee's claim for breach of contract. You may address the letter for Mr. Banerjee at 1500 Melrose Avenue, Iowa City, Iowa 52242 (but give it to Amanda Bibb, see below). The client letter may be no more than four pages long, double-spaced, 12 point font with one inch margins on all sides.

In writing the letter to Mr. Banerjee, you may utilize Article 1, Part 1 of the U.C.C. (§§ 1-101 – 1-108) and § 1-201 of the U.C.C. (the definitional section) in addition to U.C.C. § 2-201.

The attached material on writing a client letter may be useful.

The client letter is due to Ms. Bibb in room 486 at 3:00 pm on Friday, November 15. This deadline is later than the deadline mentioned in class and on the syllabus because you will receive the second memorandum back at the end of this week, and you may wish to consider that memorandum and my comments in drafting the client letter. Please note that this is a changed and later date from the date mentioned in class and on the syllabus.

Good luck and best wishes.