

## CHAPTER 14 (READING CASES OUTSIDE OF CASEBOOKS)

### Practice Exercises:

1. As you've learned, reading for the "main idea" is a critical reading skill. You can't read for the "main idea" unless you are clear on the purpose for your reading. For this exercise, assume that you are a new associate in a medium-sized law firm, having just graduated from law school and passed the bar.

Your senior partner has approached you to ask you to do some research for one of the firm's long-term corporate clients. The question raised by the client is a personal one this time, and is not about the client's corporate work. Your client lives in a family neighborhood with individual, detached homes and fenced yards, and has lived there for several years. This past year, your client was given a new puppy, a Great Dane, as a gift. The Great Dane, Sandy, is now nine months old and is a good-sized dog. Sandy is a happy, playful dog. He has been to obedience school and is reasonably well trained, although our client has some difficulty keeping Sandy from jumping on guests and trying to lick them in the face. Sandy enjoys other animals and occasionally chases squirrels when they come in the yard.

A new neighbor has moved in next door. This new neighbor is afraid of dogs, and is especially afraid of Sandy because of his large size. The neighbor approached our client recently and told our client, "I think you should know that I am concerned about my safety around your dog. If your dog gets out of the yard and hurts me, I will get a lawyer and sue you for damages."

Your senior partner has done some research on statutes and local ordinances and is comfortable with your client's rights under such legislation. Your partner has found a recent case within your jurisdiction that addresses common law rights and responsibilities of pet owners who may have "dangerous" animals. Your partner does not have time to read the case and has asked you to read it to see, at least from the language of that case, whether your client needs to be concerned about Sandy.

As a new associate with that assignment in mind, please read the following case given to you by your partner **[printed beginning on p. 252 of the main text]**:

2. Neither you nor your senior partner would want to advise your client based on reading only one common law case. However, assuming that you had done more research and found that *Ray v. Young* is truly representative of the law in your jurisdiction, do you think your client needs to worry at this point about any personal harm Sandy might cause if he gets out of the fence? Are there behaviors from Sandy that you might warn your client to be alert for in the future?

*Assuming Ray v. Young is good law that would be affirmed by the Supreme Court of the state, it would seem that Sandy's owner does not need to worry about a common law claim (at least it does not look like he would lose a suit if the neighbor brought one. He still might worry about*

*the cost of litigation because it sounds like the neighbor might have litigious tendencies). Under Ray, the neighbor would have to establish two things: (1) that Sandy had vicious tendencies, and (2) that the neighbor knew he had vicious tendencies. The Court of Appeals expressly found that normal playfulness on the part of an animal is not going to be considered a sign of vicious tendencies as a matter of law. The Court ruled for the cat owner on a summary judgment motion, and did not find any facts that needed to be resolved by a jury in that case.*

*I would advise our client to keep an eye out for any tendencies that went beyond playfulness in Sandy – if Sandy started growling or acting in an aggressive manner towards people, he might have to consider different living arrangements for Sandy. Before we jumped to that conclusion, however, I would like to do more research to see if I could find a case where the court DID find for the plaintiff as a matter of law, hoping that the facts of that case might help me understand more fully what constitutes “dangerous, vicious, mischievous, or ferocious” behavior in a dog.*

3. A shift in reading purpose always causes a shift in reading focus. Let’s assume, now, that you are not a lawyer but rather are in graduate school studying social work. You are writing a thesis looking at the impact that litigation has on family relations. Go back now and re-read the case again from this point of view. In the space below, explain how this perspective changed your reading strategies:

*If I were reading from the perspective of a social worker, I would be much more tuned into the relationship issues between these two sisters and, perhaps, how the cat had become a metaphor for other difficulties in the relationships. I would be concerned about how these sisters would manage to continue to live next door to each other after the injury occurred and this suit was filed.*

When we read a case, we can’t really know what happened beyond what is reported in the case, at least not without more background information. Nonetheless, part of “expert” reading is being able to speculate about what you’re reading and make the text “come alive” by visualizing and engaging personally with the text. In the space below, write a paragraph about how you think the controversy reflected in this case might have changed relations between these family members, recognizing that there is no practical way to externally validate what you’re imagining:

*Because this case went all the way to the Court of Appeals, which would be an indication that feelings ran deep because both parties put a great deal of money into this legal battle, I would worry that the sisters are no longer getting along. In the ideal, I would hope that perhaps good lawyers could help the sisters separate the economic issues from the emotional issues in the case and encourage the renewal of positive family relations.*

If you were reading the case solely from the perspective of the new associate described in Question 1 above, would these speculations be part of the “main idea” of your reading? If not, would that influence how much time and attention you gave to them?

*These speculations couldn’t help but slip into my thinking as I read the case, but (apart from recognizing them so they didn’t confuse me with energy-draining “background noise”) I would focus on the legal issues raised in the case, not my reactions to them.*

4. About halfway through the case, the court states, “[t]he sole issue on appeal is whether the trial court erred in granting summary judgment to defendants.” The Court of Appeals ultimately decided that the trial court was correct, and affirmed the fact that summary judgment should have been granted for the defendants. By granting summary judgment for the defendants, the court decided, based on the pleadings, depositions, etc., that the plaintiff was not entitled to go to trial on the facts and that the defendants had no liability as a matter of law. Do you agree that there were no legally relevant facts in dispute in this case?

*Based on the facts as presented, I’m not sure I agree that NO reasonable jury could find that the cat owners had no warning that the cat might do something erratic (especially since he had been on medication and was no longer on medication). I personally like cats a lot, and I’m not used to having cats that bite and scratch when they play.*

Assume that the Court of Appeals had reversed the trial court’s grant of summary judgment, allowed a trial, and then (at that trial) the jury had decided that the defendants were not at fault. The result would have been the same – the defendants would not have been liable. Nonetheless, would you be more or less confident about the advice you would give Sandy’s owner if this had been the Court’s decision?

*If this case had been allowed to go to a jury, I would be more concerned about the plight of Sandy’s owner. A decision NOT to grant summary judgment here would be an indication that the Court believed that reasonable jurors could go either way on the question of whether the cat had vicious propensities within the meaning of the common law and on the question of whether the owners should have known it. Since Sandy’s situation is similar to that of “Charlie” (he is playful, not overtly vicious), that would cause me to be concerned that Sandy’s case might go to a jury, too. Once a case is in front of a jury, it is very difficult to predict who will win or lose.*

5. Go back to the last page of *Ray v. Young* and notice that there is a bracketed number ([7]) at the beginning of one of the last paragraphs. That bracketed number refers to Headnote #7 at the beginning of the case. How could you use this headnote (and the others) as a valuable reading tool without short-changing your understanding of the case?

*If I were an attorney with a case involving a pet owner’s duty to warn others that the animal had stopped taking medication, this headnote would catch my eye. I could skim the case, looking for the bracketed [7] in the left margin. Once I found it, I could read the corresponding paragraph to see if the case seemed to parallel the facts of my client’s situation. If it did, I would then go back and read the case in its entirety, paying attention to important legal issues like the procedural posture of the case and noting the exact legal question raised and answered by this court. If the case did not seem relevant after I skimmed to the section corresponding with the headnote of interest to me, and the case did not seem useful in any other way, I would know to move on quickly to a different case.*

6. Do you, personally, have strong feelings about animals?

*Students' answers to this question will, of course, vary.*

Did those feelings effect how you visualized the facts in this case?

*Students who feel strongly about animals – one way or the other – might have visualized these facts more vividly than those who do not.*

Did those feelings effect whether you believe the case was correctly decided?

*Students with strong feelings about animals might have had some difficulty keeping their biases out of the assumptions they made about the law and their reactions to the Court's decision.*

7. As you read this case, did you have feelings about the human and economic costs that this case may have accrued?

*To the degree that you considered it at all, you might have been disturbed at the amount of money and the stress that would have gone into this case which is, at least on its surface, about a cat and medical expenses.*

Despite the poignancy of the probable human and economic costs to the parties in *Ray v. Young*, did the decision of the court help you understand what your client's rights might be concerning Sandy?

*Yes, putting the emotional issues in the case aside, it is a clear explanation of the common law in North Carolina (at least at the Court of Appeals level in 2002) concerning pet owners' responsibilities if their pet injures someone.*