Reading Like a Lawyer

Studies conducted since 1987 demonstrate that students who perform the best in law school read differently than students who perform poorly.¹ They read purposefully, inquisitively, and actively. They adopt the successful reading strategies of expert legal readers. They do not passively skim cases or ignore words they don’t understand. They do not read just to avoid embarrassment in class in the event they are called on. This type of reading takes time but it is time well spent. Not only does reading well correlate with better law school grades, but it trains students to read the way they will need to read in law practice. Lawyers who do not read well can embarrass themselves and hurt their clients’ interests.

The pages following on this pdf will give you a jump start in developing “active reading” skills. They are from Oates & Enquist, Reading and Analyzing Statutes and Cases, The Legal Writing Handbook, Chapter 3 (5th ed. 2010).

¹ See, e.g., Christensen, Legal Reading and Success in Law School: An Empirical Study, 30 Seattle U. L. Rev. 603 (2007); Christensen, Legal Reading and Success in Law School: The Reading Strategies of Law Students with Attention Deficit Disorder (ADD), 12 Scholar 173 (2010); Oates, Beating the Odds: Reading Strategies of Law Students Admitted Through Alternative Admissions Programs, 83 Iowa L. Rev. 139 (1997).
When you think about becoming a lawyer, what image comes to mind? Do you see yourself cross-examining a witness? Making an impassioned argument to a jury? Hugging your client when the jury returns the verdict in his or her favor?

Although some lawyers do these things, these are more likely the images of TV lawyering than they are of real lawyering. Real lawyers spend much of their time reading and writing. Consider the following quotation from an associate at a major law firm.

My view of lawyering has changed dramatically since I entered law school. In my first year of law school, I saw myself as a trial lawyer. I thought that most of my time would be spent either preparing for trial or in trial. The truth of the matter is that I have been inside the courthouse only three or four times during the last year and that was to look through court files. Instead, most of my time is spent reading and preparing documents, doing legal research, and writing memos and briefs. Don't get me wrong. The work that I do is extremely interesting. It is just that I never saw myself spending seven or eight hours a day reading and writing.

—Second-year associate at a large law firm

The way in which lawyers read is not, however, the way in which most individuals read. Therefore, part of learning how to think like a lawyer is learning how to read like a lawyer. In this chapter, we describe some of the strategies that lawyers use in reading statutes and cases.
§ 3.1  Good Lawyers Are Good Readers

Good lawyers are good readers. When they read a document, statute, or case, they read exactly what is on the page. They do not skip words, read in words, or misread words. In addition, they have good vocabularies. They recognize and understand most of the words that they read, and the ones they do not recognize or understand they look up in a dictionary.

There are a number of good, free dictionaries online. For example, Merriam-Webster Online dictionary is at http://www.m-w.com; JURIST's legal dictionaries are at http://jurist.law.pitt.edu/dictionary.htm; Findlaw's legal dictionary is at http://dictionary.lp.findlaw.com/, and an easy to use dictionary is at law.dictionary.com.

Poor reading skills can significantly affect your ability to understand what it is that you are reading. For instance, in Example 1, which is taken from the transcript of a law student reading a case aloud, Jackie, a first-year student, mispronounced and apparently did not recognize the word "palatial."

### Example 1  Transcript of a Student, Jackie, Reading a Case Aloud

Some months prior to the alleged imprisonment, the plaintiff, while in Jaffa, announced her intention to leave the sect. The defendant, with the help of the plaintiff's husband, persuaded the plaintiff to return to the United States aboard the sect's [sic] yacht, the Kingdom.

James, another student who read the same case, misread the following sentence. Example 2 shows how the sentence appears in the casebook. Example 3 shows how James read it when he read the sentence aloud.¹

### Example 2  Sentence as It Appears in the Casebook

According to the uncontradicted evidence, at no time did anyone physically restrain the plaintiff except for the defendant's refusal once the plaintiff announced her decision to quit the yacht to let the plaintiff use a small boat to take herself, her children, and her belongings ashore.

### Example 3  How James Read the Sentence

According to the uncontradicted evidence, at no time did anyone physically restrain the plaintiff except for the defendant's [pause] defendant's refusal once [pause] defendant's refusal once [pause] the plaintiff announced her decision to quit the yacht to let the plaintiff use a small boat to take herself, her children, and her belongings ashore.

¹ The examples in this section come from the following article: Laurel Currie Oates, Beating the Odds, Reading Strategies of Law Students Admitted Through Special Admissions Programs, 83 Iowa L. Rev. 139 (1997).
When questioned about what the court was saying in this sentence, James stated that the defendant had, on one occasion, refused to let the plaintiff take the boat. In fact, the court said that the refusal came once the defendant announced her decision to quit the yacht.

Although at first these errors may seem insignificant, in each instance they resulted in the student misunderstanding the case and thus the rules and the court's reasoning. In addition, in both instances, the errors were a harbinger of things to come. Both students ended up doing poorly on their exams. At the end of the first year, Jackie was in the bottom 20 percent of her class, and James had flunked out.

To determine whether you may be misreading cases, make two copies of one of the cases in your casebook. Keep one copy for yourself and give the other to a trusted classmate or teaching assistant. Then read aloud from your copy while your partner follows along on his or her copy, highlighting any words or phrases that you misread and any words that you mispronounce or do not appear to understand. After you have finished your reading of the case, compare your understanding of the case with your partner's. Did you both read the case in essentially the same way? If your partner noted more than one or two problems or if your understanding of the case is substantially different from your partner's understanding of it, try the following. First, try reading more slowly. You may be trying to read the material too quickly. Second, take the time to look up any words that you do not recognize or are not sure that you understand. Third, if the problems appear to be serious, ask your school's learning center if it can provide you with a more thorough evaluation of your reading skills.

§ 3.2

Good Legal Readers Read and Reread Material Until They Are Sure That They Understand It

While in some types of reading you can skip sections that you do not completely understand, such a strategy does not work when you are doing legal reading. If the document, statute, or case is one that is relevant to your problem, you need to read and reread it until you are sure that you understand it.

Example 1 shows how a student, William, stayed with a case until he was sure that he understood it. The material in the regular typeface is the text of the case. The material in italics is what William said after he had read that section of the text.

EXAMPLE 1 Transcript of a Student, William, Reading a Case Aloud

WHITAKER V. SANFORD
110 Me. 77, 88 S. 399 (1912)

Savage, J. Action for false imprisonment. The plaintiff recovered a verdict for $1100. The case comes up on defendant's exceptions and a motion for a new trial.

So the defendant is the appellant and is appealing the verdict of $1100.
The plaintiff had been a member of a religious sect which had colonies in Maine and in Jaffa, Syria, and of which the defendant was a leader. Some months prior to the alleged imprisonment, the plaintiff, while in Jaffa, announced her intention to leave the sect.

I need to reread this again. [Rereads sentence.] So just prior to the alleged imprisonment the plaintiff was in Jaffa and expressed an intention to leave the sect. At this point, I am a bit confused about who the parties are. I need to reread this to make sure that I have the facts straight. [Rereads from the beginning.] OK. This is an action for false imprisonment. The plaintiff recovered a verdict for $1100. The case came up on the defendant's exceptions. The plaintiff is a member of the sect and the defendant is the head of the sect so Whittaker is the member of the sect and Sanford is its leader.

Although it took William more time to read the case than some other students took, the payoff was substantial. Although his undergraduate GPA and LSAT placed William in the bottom 10 percent of his entering law school class, at the end of his first year, he was in the top 10 percent.

There are several things that you can do to make sure that you understand the cases that you are reading. First, see if you can diagram the action. At the trial court level, who sued whom and what was the cause of action? Who "won" at trial, who filed the appeal, and what is the issue on appeal?

Second, do not underestimate the value of preparing your own case briefs. While it may be faster and easier to highlight sections of a statute or case, highlighting does not ensure that you understand the material you are reading. In fact, there is some evidence that students who highlight remember less than students who do not highlight: in highlighting a section, some students focus their attention on the process of highlighting, not on the material they are highlighting. As a result, when they are asked to recall what it is that they just highlighted, they are unable to do so.

Finally, after reading a section, test yourself to make sure that you understood what it is that you have just read. After you have finished reading a statute or case, close the book or your computer and summarize what the statute or case said.

§ 3.3 Good Legal Readers Engage in Both Analysis and Synthesis

In addition to reading accurately and until they understand the materials, good legal readers analyze and synthesize the material that they read.
Analysis is the process of taking a statute or case apart. In reading statutes, you analyze each section and subsection, making sure that you understand each. In reading cases, you identify the issue that was before the court, the rule or rules that the court applied in deciding that issue, the facts that the court considered in applying those rules, and the court's reasoning or rationale. When you "brief" a statute or case, you are engaging in analysis.

In contrast, synthesis is the process of putting the pieces together. You take each of the statutory sections and cases you have read and try to make sense of them. Are they consistent? What are the steps in the analysis? How do they fit into your existing conceptual frameworks?

Example 1 shows how a law professor engaged in both analysis and synthesis. Note both how she analyzes the case she is currently reading and how she tries to reconcile what the court says in that case with the Restatement section that set out the elements of false imprisonment. The text is set out in regular type and the professor's comments are in italics.

**EXAMPLE 1** Transcript of a Professor Reading a Case Aloud

There was evidence that the plaintiff had been ashore a number of times, had been on numerous outings and had been treated as a guest during her stay aboard the yacht. According to the uncontradicted evidence, at no time did anyone physically restrain the plaintiff except for the defendant's refusal, once the plaintiff announced her decision to quit the yacht, to let the plaintiff use a small boat to take herself, her children, and her belongings ashore.

I'm sort of getting a visual image of the boat that she was in and out of... um... the plaintiff had been ashore. I'm thinking about the elements that I just read [a reference to the Restatement section that had been set out immediately before the case] and I'm trying to see how, I guess, frankly how I would decide the case on a certain level before I even want to know what Judge Savage thought. [Pause.] I need to look at the Restatement section. [Looks back at the Restatement section.] Is the defendant acting to or with the intent to confine the plaintiff? She got off the boat. That kind of bothers me. That results directly or indirectly in confinement. Maybe that's relevant here. The other is conscious of the confinement or is harmed by it. Given the facts, that bothers me too.

Doing analysis and synthesis is both time-consuming and hard work. You are no longer reading just for information. Instead, as you are reading, you are either placing new information into existing conceptual frameworks or constructing completely new frameworks.

If you are like most law students, at some point you will argue that law school would be a lot easier if your professors put the pieces together for you, if they just gave you their conceptual frameworks. If you had come to law school just to learn the law, you would be right. It would be easier for both you and your professors if they just gave you the law. However, there is a lot more to law school than just learning the law. Although you will learn some law while you are in law school, the real reason that you came to law school was to learn to think like a lawyer. Thus, the primary skills that you will need to teach yourself while you are in law school are how to do legal analysis and synthesis. You need to be able to look at a statute and a group of cases and determine what the law is and how it might be applied in a particular situation.
§ 3.4 Good Legal Readers Place the Statutes and Cases They Read into Their Historical, Social, Economic, Political, and Legal Contexts

Good legal readers understand that statutes are usually enacted to solve a problem or to promote certain interests and that judicial decisions reflect, at least in part, the time and place in which they were written. As a consequence, in reading statutes and cases, good legal readers place them in their historical, social, economic, political, and legal contexts. They note the date that the statute was enacted and amended and the year in which the case was decided. They think about the social and economic conditions during those periods and about the political issues that were in the headlines when the statute was enacted or the case was decided. Finally, they place the case in its larger legal context. They determine how the particular issue fits into the broader area of law, they note whether the decision is from an intermediate court of appeals or the highest court in the jurisdiction, and they read the court's decision in light of the standard of review that the court applied. Was the court deciding the issue de novo, or was it simply looking to see whether there was sufficient evidence to support the jury's verdict?

PRACTICE POINTER

If you do not know what the phrase “de novo” means, look it up in a book or online dictionary. When you look up this term on dictionary.law.com you retrieve the following information:

de novo
adj. Latin for “anew,” which means starting over, as in a trial de novo.
For example, a decision in a small claims case may be appealed to a local trial court, which may try the case again, de novo.

In reading the case that was described earlier in this chapter, the professor placed the case in its historical, social, and political context. First, she noted that the case was an old one. It was decided by the Supreme Court of Maine in 1912. Second, she noted that in 1912, $1,100 would have been a substantial sum of money. Third, she considered the social climate in 1912: the role of women and their rights and the public's attitudes about “religious cults.” She knew that in 1912 women had far fewer rights. For instance, it was often the husband who determined where the couple lived and what religion they practiced. What she did not know is how religious cults were viewed. In 1912 did people view religious cults in the same way that most people view them today? Were cults seen as a problem? How did these factors influence the court's decision and the way the judge wrote the opinion?

You need to think about the cases that you read in similar ways. When you are reading cases, pay close attention to the dates of the decisions and the courts that issued them. If you read the cases in chronological order, can you
discern a trend? Over the last fifty, twenty-five, or five years, have the rules or the ways the courts apply those rules changed? If the answer is yes, what social, economic, or political events might account for those changes? In contrast, if you arrange the decisions by jurisdiction, does a pattern appear? For example, do industrial states tend to take one approach and more rural states another? Are some jurisdictions more conservative while others are more liberal? As you read between the lines, what do you think motivated the judges and persuaded them to decide the case in one way rather than another?

§ 3.5 Good Legal Readers “Judge” the Statutes and Cases They Read

As a beginning law student, you may be tempted to accept everything you read. Who are you to judge the soundness of a Supreme Court Justice’s analysis or Congress’s choice of a particular word or phrase? Do not give in to this temptation. If you are going to be a good legal reader, you need to question and evaluate everything you read.

In judging the cases you read, make sure you do more than evaluate the facts. Although in Example 1 William engages in some evaluation, it is the evaluation of a nonlawyer. William evaluates the witness’s testimony, not the court’s choice of rule, application of the rules to the facts, or reasoning. Once again, the text of the case is set out in a regular typeface and William’s comments are in italics.

**EXAMPLE 1 Transcript of a Student, William, Reading a Case Aloud**

There was evidence that the plaintiff had been ashore a number of times, had been on numerous outings and had been treated as a guest during her stay aboard the yacht.

> So at this point I’m getting a picture of what happened. . . . I’m not sure though. There is evidence that the plaintiff had been ashore so at this point I’m thinking was she really held against her will? So I have doubts, doubts about the plaintiff’s story at this point.

According to the uncontradicted evidence, at no time did anyone physically restrain the plaintiff except for the defendant’s refusal, once the plaintiff announced her decision to quit the yacht, to let the plaintiff use a small boat to take herself, her children, and her belongings ashore.

> Well, . . . the defendant by this point isn’t really stopping the plaintiff from leaving.

Throughout the entire episode the plaintiff’s husband was with her and repeatedly tried to persuade her to change her mind and remain with the sect.

> At this point, mentally, I think, . . . I don’t think the plaintiff’s story doesn’t hold water, . . . that’s what I am thinking. Because her husband was there so maybe you, there’s in my mind that her story doesn’t hold water. So I am thinking at this point that the court might end up reversing her position.
In contrast, the professor evaluated the court's conclusion and reasoning. After she finished reading the case, the professor made the following comments. Note how the professor talks about the elements of the tort and how she poses a hypothetical.

**EXAMPLE 2 Transcript of Professor's Comments**

I'm not sure that the plaintiff proved all of the elements of false imprisonment. For example, I'm not sure that the plaintiff proved that the defendant intended to confine the plaintiff. If I remember correctly, on a number of occasions he allowed her to go ashore. He just wouldn't let her use the small boat to take her children and their things ashore. It would have been interesting to know what would have happened if a boat had come to get the plaintiff. Would the defendant have let her go? If he would have, there wouldn't have been false imprisonment. [Pause.] The facts may, however, support a finding that the defendant's actions resulted in confinement. In those days, the plaintiff may not have had a way to contact anyone on shore to ask them to come get her. Although the court may have reached the right result, I wish that Judge Savage had done more analysis. [Pause.] I get the feeling that he had made up his mind, maybe he didn't like cults, and then just tried to justify his conclusion.

**§ 3.6 Good Legal Readers Read for a Specific Purpose**

The reading that you do for your law school classes is very different from the reading you will do in practice. In law school, you read so that you will be prepared for class. Consider the following comment made by James.

When I read cases, I usually read them not for briefing cases per se, but more out of fear of being called on in class. I don't want to look like a fool so I just want to know the basic principles.

In contrast, in practice you will read for a specific purpose. For example, you will read to keep up to date in an area of law, to find the answer to a question that a client has posed, to find statutes or cases to support your client's position, or to find holes in your opponent's arguments.

In reading the statutes and cases for your legal writing assignments, read not as a student, but as a lawyer. Initially, read to find out what the law is. Analyze the statutes and cases that you have found, and then put the pieces together. Then read the cases as the parties and the court would read them. Begin by putting yourself in your client's position. How can your client use the statutes and cases to support its position? Put yourself in the other side's shoes. How could the opponent use the same statutes and cases to support his or her position? Finally, put yourself in the court's position. If you were the judge, how would you read the statutes and cases?
§ 3.7 Good Legal Readers Understand That Statutes and Cases Can Be Read in More Than One Way

Different people have different beliefs about text. While some people believe that there is a right way to read each statute or case, others believe that most statutes and cases can be read in more than one way. For those in the first group, the meaning of a particular text is fixed. For those in the second group, the meaning of a particular text is "constructed" by juries and judges and by the attorneys who talk to them.

As a general rule, the students who seem to have the easiest time in their first year of law school are those who believe that statutes and cases can be read in more than one way, that the meaning of a particular text can be socially constructed. These students have an easier time seeing how each side might interpret a particular statute and stating a rule so that it favors their client's position. When they talk about a court's holding, they refer to it as "a holding," not "the holding."

If you are a student who believes that meaning is fixed, be aware of how your belief system is affecting the way in which you read statutes and cases and the way in which you make arguments. In reading cases, can you see how both the plaintiff and the defendant might be able to use the same case to support its argument? In making arguments, are you able to see what the other side might argue and how you might be able to respond to those arguments? Are you spending too much time looking for the correct answer and not enough time creating that answer? In contrast, if you are a student who believes that meaning is socially constructed, be careful that you do not become cynical or only a hired gun. Although there may be many ways of reading a particular statute or case, not all of those readings will lead to a "just" result.

Reading and thinking like a lawyer are not skills that you can learn overnight. There are no crash courses, short cuts, or magic wands. Instead, you will learn to read and think like a lawyer through trial and error and by observing how real lawyers, not TV lawyers, read and think about statutes and cases.