pulled on the plaintiff's shirt, causing it to rip. The "intentional touching" element is therefore satisfied.

Sakamura v. Turner: Turner maintains that he did not commit common-law battery because Sakamura suffered no physical injury. This argument is without merit. In Olympus, a plaintiff is not required to prove that he suffered physical injury to prevail on a claim of battery. "Harmful or offensive contact" is defined as touching that causes actual physical injury, pain, or discomfort or touching that causes pain or discomfort or that is offensive to the plaintiff's personal dignity. Turner slapped Sakamura in the face during a business meeting, causing Sakamura to suffer mild pain and great humiliation. The contact in this case was both harmful and offensive.

Exercise 2-D(3)

Read the facts in each example. Apply the elements of battery that you identified in Exercise 2-D(1) to the facts. For each example, list issues that may arise from applying the elements to the facts. Predict whether a claim of common-law battery can be established in each example.

Example A

Peter Conrad is a manager at FGH Corp. Jason Young is one of Conrad's subordinates. After suffering a skiing injury, Young walked to work with a cane. Conrad, believing that Young was faking the injury, teased him and then grabbed his cane. Young stumbled and bumped his head on the copy machine. He did not suffer any physical injuries.

Example B

Edward Finch and Sally Booker were standing next to each other on a crowded subway train during the evening rush hour commute. The train lurched. To maintain her balance, Booker grabbed Finch's arm. She cut Finch with a key she was holding in her hand.

CHAPTER 3

Reading Cases and Writing Case Briefs

When you master this chapter, you will understand:

1. what a case is;
2. how reading cases helps you understand the law and analyze legal problems;
3. what a case brief is; and
4. how to write a useful case brief.

A. What Is a Case?

The word case has several meanings. Lawyers sometimes use the word case to refer to a lawsuit or other legal matter, such as a real estate transaction or corporate merger. They also use the word to refer to the arguments, law, and evidence that support a lawsuit: they speak of having "strong cases" and "weak cases." This chapter concentrates on a third meaning of the word case—a court's written decision, also referred to as an **opinion**.

Every case tells the story of a dispute that could not be resolved without resort to the courts. A court decides the legal question because the parties were unable or unwilling to settle the dispute themselves. Usually, once the court answers the legal question, its resolution becomes a matter of public record and the court's decision becomes legal authority to which other courts can turn.

Some decisions determine the *outcome* of the legal action—who wins and who loses. Many decisions do not address the ultimate merits of the action but rather resolve an *aspect* of it, such as the admissibility of evidence.

A case can answer a **substantive legal question**, a **procedural legal question**, or some combination of the two. An example of a substantive legal question is whether a defendant was negligent. An example of a procedural legal question is whether a court has **jurisdiction** over the parties, that is, the legal authority to hear a case involving the parties. Sometimes a case may decide both types of questions, such as the propriety of joining co-defendants (a procedural legal question) and the availability of an assumption of risk defense (a substantive legal question).

A court can write a decision at any stage of a legal proceeding when a legal question requires an answer. A trial court judge, for example, may issue a written opinion dismissing a complaint, deciding a legal question at trial, or granting a post-trial motion. A party who disagrees with a trial court's decision may appeal to an appellate court. If the appellate court finds that the trial court's decision was correct, it **affirms** the decision. If the appellate court finds that the trial court's decision was incorrect, it **reverses** the decision. Most opinions you read in law school come from appellate courts.

B. Why Lawyers and Law Students Read Cases

Lawyers and law students read cases for the same reasons. Lawyers read cases to understand the law, to determine how the law applies to a client's situation, and to predict how a court will view a client's problem. Similarly, as a law student, you will read cases to learn the law, to understand how the law applies to facts, and to resolve legal questions posed in the classroom, on exams, and in writing assignments.

1. Reading cases to learn the law

You must read cases to learn the common law. Cases establish and explain the elements of common-law claims and defenses. A court's decision, for instance, may tell you the elements required to state a common-law claim of false imprisonment or a common-law defense of contributory negligence. In addition, cases may determine general common-law principles, such as the distinction between an employee and independent contractor.

You also read cases to understand how the courts have interpreted statutes. As you learned in Chapter 2, cases often determine the applicability and scope of statutes. For example, while a statute may prohibit "consumer fraud," you likely will have to read cases to learn whether a car dealer's misrepresentation about the safety of a car constitutes consumer fraud under the statute. Cases also elucidate the meaning of constitutional provisions and administrative regulations.

2. Using cases to analyze legal problems

Once you understand the law established in a case or a group of cases, the next step is to analyze how the law applies to particular facts. The facts may come from a client's question or from a hypothetical scenario posed in the classroom, on an exam, or in a writing assignment. To determine if a case applies to your problem, ask yourself if it addresses the same legal question raised by your facts. If so, use it (together with other similar cases) to predict how a court would resolve your problem.

C. Understanding Cases

Read cases carefully and purposefully, constantly questioning what the text means. You must master the essence of a case so that you can explain it clearly. If you cannot explain a case directly and simply to a non-lawyer, you probably do not understand it. Moreover, you must learn to scrutinize the relationship *between* cases: do they deal with the same kind of facts, answer the same legal question, apply the same rule of law? Section D, p. 47, identifies and explains each part of a published decision. Learn the purpose of each part to help you read cases critically and master them.

A court's written opinion generally states:

1. the facts that gave rise to the dispute (including how the case got to court);
2. the issue—a question about what the law means or how (or whether) the law applies to the facts of the dispute;
3. the law applicable to the dispute;
4. the holding—the court's decision on the issue; and
5. the reasoning, including any relevant policy interest, that explains and supports the holding.

Many cases are very comprehensive; they lay out all of these components in great detail. Other cases are more abbreviated; a decision may explain these components summarily or may omit some of them altogether.

An appellate court opinion, usually decided by a panel of judges, may be unanimous; that is, all the judges agree on the result in the case and the reasons for it. If the appellate judges cannot reach a unanimous decision, the majority's opinion becomes the law; it is usually called the **majority opinion**. An appellate judge who disagrees with the result reached by the majority may write a **dissenting opinion** explaining how she would have ruled in the case and why. An appellate judge who agrees with the *result* reached by the majority but does not fully agree with the majority's *reasoning* may write a **concurring opinion**. A concurring opinion often presents alternative reasons for the result in the case. It is important to remember that a majority opinion sets out the law of the case. Dissenting and concurring opinions, although instructive, do not have any precedential value; they are not the law, although they often help to clarify what the majority has said.

In contrast to an appellate court case, a trial court case is usually decided by one judge or, in the case of a jury trial, by a jury that renders a verdict. Consequently, there are rarely dissenting or concurring opinions at the trial court level.

1. The facts of the case

Every case is based on a story: an employee is fired because of his race; a marriage fails and a spouse seeks a divorce; a drunk driver kills a pedestrian; a corporation defrauds its investors. The facts identify the parties and explain the basis for the legal action. Since each story is different, the facts of every case are unique. A court may recount the facts concisely and simply or in a lengthy and complicated manner.

All the facts in a case are not equally important. The **supporting facts** are not necessary to the outcome of the case, but assist the reader in understanding what happened. The **procedural facts** describe how the parties got to court and explain the court's rulings. The **necessary facts** are those the court relied on to reach its decision. Only after reading a case completely through, carefully analyzing the issues, rules, holdings, and reasoning, will you be able to discern which facts the court found necessary to decide the case as it did.

Judges may relate the facts in a variety of ways: they may provide a narrative summary, recite the facts as court findings, reprint the allegations of the parties, summarize the trial record (the testimony and exhibits submitted at trial), or use actual material from the trial record. You must identify all the necessary, supporting, and procedural facts in a case regardless of the manner in which they are presented.

2. The issue: The question about what the law means or how (or whether) the law applies to a particular situation

A legal issue is a question about what the law means or how (or whether) the law applies to a particular situation. A case often has more than one issue. The court might not discuss all the issues in one place. The court might intersperse them throughout the opinion. You must identify all the issues, wherever they appear in the opinion.

Some opinions identify the issues in a straightforward way: the court will use words like "The issue before us is . . . ." Occasionally the court will flag the issues for the reader by reciting what the parties have identified as the issues in their court papers. The court may then refine the issues in its own language, or it may continue with its analysis and decision. Whether the court delineates the issues or not, you must identify them and be able to state them clearly in your own words.

Issues are fact-sensitive when the answer to the legal question depends on the facts. A court may frame a fact-sensitive issue in broad terms, focusing on the claim or defense rather than on its elements. Note, however, that even when the issue is framed broadly in a case, the court usually analyzes the elements of the claim or defense separately. The following example illustrates a broadly framed issue; it focuses on the claim of slander, not on any of its elements:

- *Broadly framed issue*: The issue before us is whether a business owner has a claim for slander against a competitor who called him a cheapskate.

Alternatively, a court may frame a fact-sensitive issue narrowly, isolating elements of the claim. In the next example, the issue is narrow; it focuses on the "dwelling" element of a burglary statute:

- *Narrowly framed issue*: The issue before us is whether an abandoned car in which people live constitutes a "dwelling" under a statute that makes it a crime to burglarize a dwelling.

In contrast to fact-sensitive issues, some issues are purely legal questions, such as whether a statute is constitutional. The answers to such questions usually do not depend on particular facts. This chapter concentrates on the analysis of cases with fact-sensitive issues.

3. The law applicable to the dispute

In every case, the court must decide what law applies to the parties' dispute. The court usually explains the law it is applying. The law may come from a statute, an ordinance, a court decision or a group of decisions, the federal constitution, a state constitution, or an administrative regulation. The following are examples of statements of law:

- *Law from a statute*: "Physical injury" means impairment of physical condition or substantial pain. N.Y. Penal Law § 10.00(9) (McKinney 1998).

- *Law from a court decision*: To state a malicious prosecution claim arising out of a criminal action, the plaintiff must establish that (1) the defendant caused a criminal action to be commenced against him; (2) the defendant was actuated by malice; (3) there was no probable cause for the action; and (4) the action was terminated in his favor. *Lind v. Schmid*, 337 A.2d 365 (N.J. 1975).

- *Law from the federal constitution*: People are protected from unreasonable searches and seizures. Fourth Amendment to the U.S. Constitution.

There may be more than one source of law that applies in a case. Here again, as with the issues, the court may recite all the applicable law in one place in its decision or may intersperse it throughout the text. You must identify all the laws applied by the court to understand how the court resolved the issues.

4. The holding: The court's decision on the issue

A holding in a case is the court's decision on how the law applies to the facts. *It resolves the issues in the case.* The holding is important because it tells you under what factual circumstances the court will make the same decision again.

If the court is called upon to decide more than one issue, a case will have more than one holding. Sometimes you will find the words "we hold" in the decision, clearly identifying the court's determination, but just as often you will not. You must identify all the holdings to understand how the court resolved the issues. The examples that follow illustrate how holdings might apply the law to the specific facts of a dispute:

Example A

Law on the competency of the testator (a person who makes a will): To make a valid will, the testator must be competent. Competence means knowing how much property one has, to whom one is bequeathing it, and who is being excluded.

Holding applying the law to the facts: The testator was competent when she made her will because she knew what she owned and understood that she left all her property to a friend instead of to her sons.

Example B

Law on undue influence: The beneficiary of a will exerts undue influence over the testator when he acts to procure the will in his favor.

Holding applying the law to the facts: The defendant exerted undue influence when he took the testator to his own attorney, was present during the entire consultation, participated in decisions about the disposition of the testator's estate, and convinced her to leave him all of her property.

A general pronouncement of law applicable to facts *unnecessary* to resolving the parties' dispute is not a holding; it is called a **dictum** (the plural is **dicta**). Because it is not the holding, a dictum is not the law and therefore is not binding authority in future cases. A court may write dicta to explain or support its decision.

Here is an example of a dictum in a malpractice case: "Even though the plaintiff's action is barred by the statute of limitations, the court notes that the elements for stating a malpractice claim appear to have been met." Since the

court has dismissed the action because it is time-barred, the court's pronouncement on malpractice is not part of its holding. Because it is not a holding, the court's statement would not bind a judge who had to rule on a malpractice claim under similar facts. The judge in such a case could, however, use the statement to explain or support his decision.

5. The reasoning: The court's rationale and support for its holding

The **reasoning** is the court's rationale and support for its holding in a case. The court may explain why the law requires a particular result when applied to the necessary facts of the dispute. It may point to a social or economic policy interest as support for its holding. In a dispute concerning a statute, the court may justify its holding by referring to the legislature's intent in enacting the statute. If there is a split of authority on an issue, the court may explain why it applied one rule of law instead of another. Here are examples of ways that courts might explain their holdings:

- *Reasoning turning on public policy:* Recognizing a claim for negligent supervision by a parent in this matter would open the floodgates to frivolous litigation. Minor childhood squabbles should be settled on the playground, not in the courtroom.

- *Reasoning turning on legislative intent:* The plaintiff is entitled to have his day in court on the question of whether he was denied a salary increase because of his sexual orientation. Indeed, the legislature, in enacting the statute prohibiting employment discrimination, recognized that the legislation's remedial goal of eradicating unlawful discrimination in the workplace will be realized only if the courts entertain all colorable claims.

Occasionally, a court does not explain its reasoning, but merely announces its holding. Avoid the temptation to speculate in such a case. Your inferences and speculations are not persuasive. If you need a case that explains the reasoning for the holding so that you can analogize it to your situation, continue your research.

D. The Parts of a Case: An Annotated Case

The components of a published decision are identified and analyzed below.* Remember, however, that every decision is unique. Decisions vary greatly in both format and substance. The sample annotation that follows identifies the common components of a case:

1 205 A.D.2d 969

2 Josephine SANTALUCIA
et al., Respondents,
v.
COUNTY of BROOME, Defendant,
and
Thomas Hranek, et al., Appellants.

3 Supreme Court, Appellate Division,
Third Department

4 June 23, 1994.

5 Pedestrian struck on walking path by bicycle operated by five-year-old child sued parents, alleging negligent entrustment of dangerous instrument. The Supreme Court, Broome County, Monserrate, J., entered judgment for pedestrian and appeal was taken. The Supreme Court, Appellate Division, Cardona, P.J., held that, as matter of law, bicycle was not "dangerous instrument" in hands of five-year-old child who had been riding successfully for two years.
Reversed, cause of action dismissed.

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Reversed, cause of action dismissed.

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1. Parent and Child ⇐ 13(1)

Exception to general rule, that parents are not liable for negligent supervision of their children, provides that parent owes duty to third party to shield them from infant child's improvident use of dangerous instrument, at least, if not especially, when parent is aware of and capable of controlling its use.

2. Parent and Child ⇐ 13(1)

Determination of whether particular instrument is "dangerous instrument" for purposes of imposing duty on parent to supervise infant child's use of such instrument, depends upon nature and complexity of allegedly dangerous instrument, age, intelligence and experience of child, and his proficiency with instrument.

6 See publication Words and Phrases for other judicial construction and definitions.

3. Parents and Child ⇐ 13(2)

Determination as to whether parents had duty to supervise infant child in use of "dangerous instrument" may, when record is sufficiently developed, be made as a matter of law.

4. Parent and Child ⇐ 13(1)

Bicycle ridden by five-year-old child was not a "dangerous instrument," for purposes of imposing duty on parents to supervise a child who struck pedestrian; undisputed evidence established that child had been riding bicycle two years prior to accident, and that he possessed basic skills to ride it and had never had a prior accident.

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7 Levene, Gouldin & Thompson (David F. McCarthy, of counsel), Binghamton, for appellants.

James N. Cahill, Endicott, for respondents.

8 Before CARDONA, P.J., and MIKOLL, WHITE, WEISS and PETERS, JJ.

9 CARDONA, Presiding Justice.

10 Appeal from an order of the Supreme Court (Monserrate, J.), entered November 24, 1998 in Broome County, which denied a motion by defendants Thomas Hranek and Jan Hranek for summary judgment dismissing the complaint against them.

On May 25, 1992 plaintiff Josephine Santalucia (hereinafter plaintiff), while walking on a path at Otsiningo Park, owned and operated by defendant County of Broome, was struck and injured by a 16-inch bicycle ridden by five-year-old Aaron Hranek. At the time of the accident, plaintiff was just finishing her second trip around the path which she knew, from her first revolution, was used for different purposes, including skateboarding, skating and bicycling. On her second revolution plaintiff noticed that the condition of the path had become more congested with people. She was walking briskly and passing other walkers. When she was struck by the bicycle and as she was falling, she observed a little boy with a helmet falling. While she was on the ground, plaintiff observed a lady with two, big heavy dogs on a leash, near the accident site. Aaron was one of five people on a family outing riding separate bicycles. The group included both of Aaron's parents, defendants Thomas Hranek and Jan Hranek (hereinafter collectively referred to as defendants), his eight-year-old brother, Joey, and a neighborhood friend, eight-year-old Matthew.

11 Before starting out, Thomas Hranek gave specific instructions as to the order in which they would ride, to watch out for people and stay clear of dogs. Once on the path, Thomas Hranek took the lead, followed by either Joey or Matthew, then Aaron and then his mother. Immediately after the collision, Aaron told his father that he was distracted and afraid of three large dogs near the path and that he was paying attention to the dogs as he went around this group of people. He then looked up and saw the plaintiff, however it was too late to actually stop. Aaron's bicycle had been given to him when he was three years old. Initially, it had training wheels; however, they were removed at the end of the previous summer. Other than crashes and falls as he learned to ride, Aaron never had any prior accidents with his bike. In his father's opinion, on the day of the accident Aaron possessed basic skills like any youngster and was good at riding his bike.

12 Following the accident, plaintiff commenced a personal injury action[1] against the County[2] and defendants, individually and as the parents and natural guardians of their son. The complaint alleged, *inter alia,* that

14 Aaron negligently rode his bike and defendants negligently supervised their son by entrusting to him a dangerous instrument, his bicycle. Following discovery, which in-

15 cluded examinations before trial of defendants and plaintiff, defendants moved pursuant to CPLR 3212 for summary judgment dismissing the complaint against them individually. The Supreme Court, reasoning that

16 it was up to a jury to determine whether, under the attendant circumstances, the bicycle was a "dangerous instrument", denied the motion. Defendants appeal.

17 [1-3] Parents are not liable for the negligent supervision of their children (*see, Holodook v. Spencer,* 36 N.Y.2d 35, 364 N.Y.S.2d 859, 824 N.E.2d 338); however, there is an exception to this rule. "[I]t is well-established law that a parent owes a duty to third parties to shield them from an infant child's improvident use of a dangerous instrument, at least, if not especially, when the parent is aware of and capable of controlling its use" (*Nolechek v. Gesuale,* 46 N.Y.2d 332, 338, 413 N.Y.S.2d 340, 385 N.E.2d 126). "Children might, at various points in their development, be permitted, and properly so, to use bicycles, lawn mowers, power tools, motorcycles, or automobiles, all of which are, in some contingencies, 'dangerous instruments'" (*id.,* at 338, 418 N.Y.S.2d 340, 385 N.E.2d 126). Thus, the determination of whether a particular instrument is dangerous "depends upon the nature and complexity of the allegedly dangerous instrument, the age, intelligence and experience of the child, and his proficiency with the instrument." (*Bottillo v. Poette,* 152 A.D.2d 840, 841, 544 N.Y.S.2d 47). Such

18 a determination may, where the record is sufficiently developed, be made as a matter of law, (*see, id.,* at 841, 544 N.Y.S.2d 47).

19 [4] Riding a bicycle has become, practically speaking, a natural stage of every child's development. It is very common to see very young children, like Aaron, riding unassisted. Although a child's bicycle is a machine, it is not complex. Here, the undisputed evidence establishes that Aaron had been riding his bicycle some two years prior to the accident, and that he possessed the basic skills to ride it and never had a prior accident with it. The record is devoid of any evidence that his parents were aware that Aaron might not be able to control his bike on the path without placing third parties at unreasonable risk. Therefore, we hold, as a matter of law, under the circumstances herein, that Aaron's bicycle was not a "dangerous instrument" within the meaning of *Nolechek v. Gesuale* (*supra*) and grant summary judgment in favor of defendants.

ORDERED that the order is reversed, on the law, with costs, motion granted, summary judgment awarded to defendants Thomas Hranek and Jan Hranek and cause of action alleging negligent entrustment of a dangerous instrument dismissed.

MIKOLL, WHITE, WEISS and PETERS, JJ., concur.

13 1. Plaintiff's husband also brought a derivative action.

2. The County is not a party to this appeal.

1. Parallel citation

Although the case reproduced here is from the *New York Supplement, Second Series*, in volume 613 on page 774 (613 N.Y.S.2d 774), this **parallel citation**—205 A.D. 2d 969—indicates a different reporter in which the same case can also be found: *New York Appellate Division Reports, Second Series*, in volume 205 on page 969. (For more information on reporters and citations, see Chapters 13 and 14.)

2. Name of the case

The name of the case, or caption, identifies the parties. The caption in this case is Josephine Santalucia *et al.* Respondents, v. County of Broome, Defendant, and Thomas Hranek *et al.*, Appellants. It also identifies the party who appealed. Here, the parties who are appealing, called the Appellants, are Thomas and Jan Hranek. (Jan Hranek is not named in the caption. You have to read the decision to learn that the "*et al.*" following Thomas Hranek's name refers to Jan Hranek.) The Respondents, who are opposing the appeal, are Josephine Santalucia and her husband. (Footnote 1 in the decision states that Santalucia's husband brought a derivative action. The "*et al.*" (an abbreviation for a Latin phrase meaning "and others") following Santalucia's name therefore refers to him. Footnote 2 states that the County of Broome, a defendant in the original action, is not party to this appeal.)

3. The court

The name of the court tells you which court decided the case. One of New York's intermediate appellate courts, the New York Supreme Court, Appellate Division, Third Department, decided this case.

4. The date

The date—June 23, 1994—is when the case was decided.

5. Editorial summary of the case

The editorial summary of the case is written by the book publisher. It is not part of the court's decision and therefore is not legal authority. You cannot rely on or cite to this summary. The summary is, however, a useful way to learn about the case and is helpful during research in determining whether a case might be relevant.

6. Headnotes

Headnotes are summaries of the law about specific issues. They are written by the book publisher. The headnotes begin with a boldfaced topic name and key number and are followed by a short summary of the issue and necessary facts. Like the editorial summary, headnotes are helpful in locating legal issues and cases, but they are not part of the court's decision and *cannot* be relied on or cited to as legal authority. For more on headnotes, see Chapter 13.

7. Names of lawyers who represented the parties

The names of the lawyers who represented the parties can be useful to a lawyer who wants to learn more about the arguments or evidence presented to the court, or who needs to refer a client to a lawyer specializing in similar cases.

8. Names of judges who decided the case

The names of the particular judges on a case can be helpful to a lawyer trying to predict how a court made up of one or more of these judges will decide a similar case because research into other opinions by those judges may help the lawyer shape the client's case.

9. Name of the judge who wrote the decision

Presiding Justice Cardona wrote this decision. Knowing the name of the judge who wrote the decision can be helpful to a lawyer trying to predict how this judge will decide a similar case.

10. Procedural posture of the case

The opinion begins here. This procedural posture statement tells you what happened in the lower court proceedings and the basis for the appeal. The trial court, the New York Supreme Court for Broome County, denied the Hraneks' motion for summary judgment to dismiss the complaint against them. The Hraneks appealed the lower court's decision to this intermediate appellate court.

11. Facts of the case

The court relates supporting facts that explain the context of the case and necessary facts that determine the outcome of the case.

Judges may provide the reader with facts in a variety of ways: they may provide a narrative summary, recite the facts as court findings, reprint the allegations of the parties, summarize the trial record, or use actual material from the record. The judge in this case related the facts in a narrative summary.

12. Commencement of the action

The court recites how the case began: the Plaintiff brought a personal injury action against the County of Broome and Thomas and Jan Hranek.

13. Footnotes

The footnotes explain that the Plaintiff's husband also brought a derivative action and that the County of Broome is not a party to this appeal.

14. Legal claims

The court identifies the legal claims alleged in the Plaintiff's complaint: (a) that the Hraneks' son negligently rode his bicycle and (b) that the Hraneks negligently supervised their son by entrusting him with a dangerous instrument, his bicycle.

15. Procedural history of the case

The court summarizes the key procedural events in the case: the parties engaged in discovery, including examinations before trial. Following discovery, the Hraneks moved for summary judgment. The trial court denied their motion. The Hraneks appealed this decision.

16. Issue

The court alludes to the issue by discussing the lower court's reasoning in denying the Defendants' motion for summary judgment. The issue is whether the parents negligently entrusted a dangerous instrument—a 16-inch bicycle—to their five-year-old son who had basic bike-riding skills and experience and no history of accidents.

17. Law

The bracketed numbers are not part of the decision. They indicate that the first three headnotes come from this paragraph. The court enunciates the law:

parents are not generally liable for the negligent supervision of their children. The exception to this rule is that a person injured by a child may have a claim for negligent entrustment of a dangerous instrument against the child's parents if the injury occurs because the parents allowed their child to improvidently use a dangerous instrument. A claim for negligent entrustment of a dangerous instrument must establish that (1) the injury resulted from the child's improvident use of the instrument, (2) the instrument was dangerous when used by the child, (3) the parents were aware that their child might not be able to control the instrument without unreasonable risk to third parties, and (4) the parents could control their child's use of the instrument. In deciding whether an instrument is dangerous, the courts consider the nature and complexity of the instrument and the age, intelligence, experience, and proficiency of the child.

18. Standard of proof

The court states the standard of proof: when the record is sufficiently developed, the court can determine whether an instrument is dangerous as a matter of law, without submitting the question to a jury. (For more on the standard of proof, see Chapter 15.)

19. Reasoning

The reasoning is the court's explanation for its holding in the case. The court explains why it found that the bicycle was not a dangerous instrument: young children ride bicycles without assistance. The child had adequate skills and experience to ride a 16-inch bike, an instrument that is not complex. Also, the parents were not aware that their son might ride his bike carelessly because he had no history of irresponsible riding.

20. Holding

The holding is the court's decision on the legal question in the case. The court held that the bicycle was not a dangerous instrument.

21. Procedural disposition of the case

The procedural disposition is the action the court takes in the case. The court *reversed* the lower court's order denying the motion for summary judgment. It granted summary judgment to the parents and dismissed the cause of action against them.

22. Concurrence

Justices Mickoll, White, Weiss, and Peters concurred with the result reached by Presiding Justice Cardona.

Do Exercises 3-A and 3-B Now, p. 58

E. Case Briefs

A **case brief** is a concise written summary of a court's decision. Lawyers and law students write case briefs for a variety of reasons, but they almost always write them as notes for their own personal use. Both lawyers and law students write case briefs to understand particular cases, the relationship between cases, and how the law created in a case or a group of cases applies to particular facts. In addition, as a law student, you will brief cases to prepare for classes, develop course outlines, study for exams, and master cases to resolve legal problems for writing assignments.

Reasons for Briefing a Case:

- to understand the court's opinion;
- to predict the outcome of a case;
- to come up with arguments for a client;
- to master new case law in a particular area of expertise;
- to show a judge how "late-breaking" law relates to the proceedings; and/or
- to respond to a specific question about a case.

Case briefs are your personal notes on a case. There are exceptions, of course: a partner in a law firm might ask an associate for a formal written case brief on a particularly important or complex case. Usually, though, you are the sole reader of your case briefs. Case briefs therefore are highly individual in content and style, and their format depends on your reason for writing them.

Case briefs should not be confused with **court briefs**. A court brief is a formal legal document submitted to a court. It persuasively presents the facts giving rise to the lawsuit and the legal arguments that support your client's position. Appellate briefs are considered at length in Part III.

F. Writing a Useful Case Brief: Finding Your Own Briefing Style

You must devise a method of briefing cases that works for you. Because each of us learns in a different way, case briefs should be unique to their authors. Your goal in briefing cases is to understand what the law is and how it applies in different factual situations.

As a beginning law student, you should write case briefs that succinctly summarize the following parts of a court's decision:

1. the facts, including important procedural facts;
2. the issues;
3. the law;
4. the holdings; and
5. the reasoning.

This format will provide you with useful notes to prepare for classes and exams. A case brief of this type generally should not exceed one page and can be much shorter.

After you have gained some experience reading cases, you may decide to use a more abbreviated format for briefing cases. Rather than writing a narrative summary using complete sentences, instead you may chose to prepare a short outline of the parts of the case.

Some lawyers and law students brief cases by jotting notes in the margins of the text. This method of case briefing is not useful for a beginning law student. Mastering cases requires active preparation. If you can identify and articulate the court's holding, for example, you have learned how to assess the court's language and determine its importance. Simply jotting notes in the margin is too passive to help you master the case. This method helps you only to identify the parts of the case, not to understand them. Therefore, prepare narrative case briefs during your first few terms in law school.

The narrative sample case brief that follows is only a starting point for case briefing. There is no *right* way to brief a case. The proper format for a case brief is whatever helps you to master the court's language.

G. A Sample Case Brief

This sample case brief summarizes, in narrative form, the facts, issue, holding, law, and reasoning in *Santalucia v. County of Broome*, the annotated case on p. 47. To maximize your understanding, reread the case before you study the sample case brief.

Santalucia v. County of Broome

Facts: Plaintiff sued parents for injuries she received when their five-year-old son struck her with his 16-inch bicycle. Plaintiff alleged that defendants negligently entrusted their son with a dangerous instrument—his bike. At the time of the accident, plaintiff was walking on a path in a park. The defendants and their son were biking on the same path. The son became distracted by dogs and collided with plaintiff. The son had been riding a bike since he was three. He had basic bike-riding skills and no history of accidents. The defendants moved for summary judgment dismissing the claim for negligent entrustment of a dangerous instrument (NEDI). The trial court denied the motion. The defendants appealed. The appellate court reversed and granted summary judgment dismissing the claim.

Issue: Did parents negligently entrust a dangerous instrument—a 16-inch bike—to their five-year-old son who had basic bike-riding skills and experience and no history of accidents?

Law: General Rule: Parents cannot be held liable for negligently supervising their children. Exception: A person injured by a child may have a claim for NEDI against the child's parents if the injury occurs because the parents allowed their child to improvidently use a dangerous instrument. A claim for NEDI must establish that

(1) the injury resulted from the child's improvident use of the instrument,
(2) the instrument was dangerous when used by the child,
(3) the parents were aware that their child might not be able to control the instrument without unreasonable risk to third parties, and
(4) the parents could control their child's use of the instrument.

In deciding whether an instrument is dangerous, the courts consider the nature and complexity of the instrument and the age, intelligence, experience, and proficiency of the child.

Holding: No. A 16-inch bike is not a dangerous instrument when operated by a five-year-old who had basic bike-riding skills and experience and no history of accidents.

Reasoning: The court found the son's bike was not a dangerous instrument as a matter of law because a child's bike is not complex. Young children ride bikes without assistance. The son had adequate skills and experience to ride a 16-inch bike. Also, the defendants were not aware that their son might ride his bike carelessly because he had basic skills and no history of irresponsible riding.

Do Exercise 3-C Now, p. 60

EXERCISES

Exercise 3-A

Read the following case. Identify:*

1. the citation;
2. the name of the case;
3. the court;
4. the date;
5. the editorial summary of the case;
6. the headnotes;
7. the names of the lawyers who represented the parties;
8. the names of the judges who decided the case;
9. the name of the judge who wrote the decision; and
10. the procedural posture of the case.

BARRETT v. STATE Ga. 845
Cite as 427 S.E.2d 845 (Ga. App. 1993)

207 Ga. App. 370

BARRETT

v.

The STATE

No. A92A2222

Court of Appeals of Georgia

Feb. 16, 1998.

Defendant appealed conviction for theft by conversion entered by the Jackson State Court, Motes, J. The Court of Appeals, Cooper, J., held that evidence that defendant rented equipment from video rental store and failed to return equipment to store on following Monday as he was required to by rental agreement was not sufficient to support defendant's conviction for theft by conversion.

Reversed.

1. Larceny ⇐ 2

Purpose of theft by conversion statute is to punish fraudulent conversion, not breach of contract. O.C.G.A. § 16-8-4.

2. Larceny ⇐ 63

Evidence that defendant rented equipment from video rental store and failed to return equipment to store on following Monday as he was required to by rental agreement was not sufficient to support defendant's conviction for theft by conversion; there was no evidence as to what happened to equipment, or that defendant knowingly and with fraudulent intent appropriated it for his own use. O.C.G.A. § 16-8-4.

Donna L. Avans, Jefferson, for appellant.

Donald E. Moore, Sol., for appellee.

COOPER, Judge.

After a bench trial, the trial court found appellant guilty of theft by conversion. In his sole enumeration of error, appellant challenges the sufficiency of the evidence to support this finding.

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Evidence presented at trial, viewed most favorably to support the verdict, showed that appellant rented equipment from a video rental store on a Friday. Pursuant to the rental agreement, he was to return it to the store the following Monday. He did not return the equipment, and the store was unable to contact him. Even after appellant was served with a criminal warrant, he did not contact the store. The store owner, the State's only witness, acknowledged that she had no idea where the equipment was at the time of trial. Appellant testified that he rented the equipment to use with a neighbor and that the neighbor said he would return it on Monday because the store was on his way to work. Appellant stated that he has not seen the neighbor since and that he was not aware the equipment had not been returned until he was served with the warrant. The trial court disbelieved appellant's testimony and found him guilty by conversion.

[1,2] "A person commits the offense of theft by conversion when, having lawfully obtained . . . property of another . . . under an agreement . . . to make . . . a specified disposition of such property, he knowingly converts the . . . property to his own use in violation of the agreement. . . ." OCGA § 16-8-4. The purpose of this statute is to punish fraudulent conversion, not breach of contract, and it is the requirement that the State prove fraudulent intent that prevents the statute from being unconstitutional. *Smith v. State,* 229 Ga. 727, 194 S.E.2d 82 (1972). "It is the presence of a fraudulent intent . . . that distinguishes theft by conversion from a simple breach of contract. [Cit.]" *Baker v. State,* 148 Ga. App. 302, 303(2), 238 S.E.2d 241 (1977). While acknowledging that he violated his agreement with the store by failing to return the equipment, appellant contends the evidence was insufficient to establish that he knowingly converted the equipment to his own use with fraudulent intent. We agree. The State established only that appellant rented equipment and failed to return it. It presented no evidence regarding what happened to the equipment and failed to show that appellant knowingly and with fraudulent intent appropriated it for his own use. The State suggests that the required scienter can be inferred from appellant's failure to return the equipment. However, to allow criminal intent to be inferred from nothing more than the fact of the breach would undermine the crucial distinction between fraudulent conversion and breach of contract made in *Smith* and *Baker,* supra, and would possibly render this criminal statute unconstitutional. See *Smith,* supra at 728-729, 194 S.E.2d 82. Because the State failed to prove an essential element of the charged crime, appellant's conviction must be reversed. See *Tchorz v. State,* 197 Ga. App. 185, 397 S.E.2d 619 (1990).

Judgment reversed.

McMURRAY, P.J., and BLACKBURN, J., concur.

Exercise 3-B

Identify the facts, issue, law, holding, and reasoning in Barrett v. State, *the case in Exercise 3-A above.*

Exercise 3-C

Read the following (edited) case. Write a case brief succinctly summarizing the facts, issue, law, holding, and reasoning. Identify the dictum.

WHELAN
v.
WHELAN
(588 A.2d 251)
Superior Court of Connecticut,
Judicial District of Waterbury.
Jan. 15, 1991.

* * *

BLUE, Judge.

* * *

. . . The facts giving rise to the plaintiff's claims must be taken from her amended complaint. *Kilbride v. Dushkin Publishing Group, Inc.*, 186 Conn. 718, 719, 443 A.2d 922 (1982). The plaintiff claims that on April 6, 1987, while she was married to and living with the defendant, he falsely told her that he had tested positive for acquired immune deficiency syndrome (AIDS). He further told her that he wanted her to take their son to her original home in Canada so that they would not see him suffer and die. She alleges that this false statement, which she relied upon by going to Canada, caused her "severe anxiety and emotional distress and worry about whether she had [contracted] the AIDS virus, about the defendant's own alleged suffering and impending death, and about what the future of her son would be if her son became an orphan." The plaintiff claims that this emotional distress was inflicted intentionally and that the defendant's conduct was "extreme and outrageous." She seeks money and punitive damages.

* * *

The tort of intentional infliction of emotional distress was recognized by the Connecticut Supreme Court in *Petyan v. Ellis*, 200 Conn. 243, 253, 510 A.2d 1337 (1986). . . . [I]n order for the plaintiff to prevail on her claim, she must establish four elements: "'(1) that the actor intended to inflict emotional distress; or that he knew or should have know that emotional distress was a likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe.'" Each of these elements is alleged in the amended complaint. . . .

The defendant was undoubtedly correct when he pointed out at oral argument that virtually all dissolutions of marriage involve the infliction of emotional distress. See *Raftery v. Scott*, 756 F.2d 335, 341 (4th Cir. 1985) (Michael, J., concurring). For the tort of intentional infliction of emotional distress to be established, however, the plaintiff must allege and prove conduct considerably more egregious than that experienced in the rough and tumble of everyday life or, for that matter, the everyday dissolution of marriage. As Prosser and Keeton explain, "[w]hen a citizen who has been called a son of a bitch testifies that the epithet has destroyed his slumber, ruined his digestion, wrecked his nervous system, and permanently impaired his health, other citizens who on occasion have been called the same thing without catastrophic harm may have legitimate doubts that he was really so upset, or that if he were his sufferings could possibly be so reasonable and justified under the circumstances as to be entitled to compensation." W. Prosser & W. Keeton, *supra*, 59. Liability exists only "for conduct exceeding all bounds usually tolerated by decent society, of a nature which is especially calculated to cause, and does cause mental distress of a very serious kind." *Id.* at 60. "[A] line can be drawn between the slight hurts which are the price of a complex society and the severe mental disturbances inflicted by intentional actions wholly lacking in social utility." *Knierim v. Izzo*, 22 Ill. 2d 73, 85, 174 N.E.2d 157 (1961). "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." 1 Restatement (Second) Torts § 46, p. 73, comment (d).

Under this standard, the court is satisfied that the plaintiff has pleaded a recognizable claim. The court does not doubt that insult, indignity and genuine distress are part and parcel of most, if not all, marital breakups, but there is an enormous difference between these unfortunately routine indignities and a false statement to one's spouse that one has AIDS. The former will doubtless cause sadness and grief, but the latter is likely to cause shock and fright of enormous proportions. The former may now be commonplace in our society, but the latter would, nevertheless, in the language of the Restatement, "be regarded as atro-

cious and utterly intolerable in a civilized community." If a third party, in an apparent position to know, had intentionally and falsely told the plaintiff that her husband had AIDS, she would undoubtedly have a cause of action against that third party for the intentional infliction of emotional distress. That much follows from the seminal case of *Wilkinson v. Downton*, [1897] 2 Q.B.D. 57, holding that a cause of action existed against a defendant who falsely represented to a married woman that her husband had been seriously injured in an accident. The fact that the false speaker is the husband himself should make no legal difference. "When the purposes of the marriage relation have wholly failed by reason of the misconduct of one or both of the parties, there is no reason why the husband or wife should not have the same remedies for injuries inflicted by the other spouse which the courts would give them against other persons." *Brown v. Brown*, 88 Conn. 42, 48-49, 89 A. 889 (1914).

In the context of the present case, the matter is, if anything, aggravated by the fact that the person making the statement is the husband since that fact would enhance the verisimilitude of the statement and intensify its likely impact. Whether the plaintiff's claim can be established in fact remains to be seen, but her claim is one that the law recognizes. The motion to strike directed at the entire complaint is, therefore, denied.

* * *

CHAPTER 4

Introduction to Legal Proofs

When you master this chapter, you will understand:

1. what a legal proof is;
2. how to structure a legal proof; and
3. why legal proofs are an effective way to organize legal analysis.