

INTRODUCTION TO BRIEFING A CASE

The study of law in the United States is based on the “case method,” which is quite *different* from the method used *in* civil-law *countries* where there *is* code law. For example, if a law student in the U.S. needs information about the concept of negligence in tort law, the student will read the reports of appellate cases in which judges have written about and applied the rules of negligence to a specific set of facts presented in the case. In order to help the law student understand the most important points of a case report, law schools teach first-year law students how to *write* a summary of a case, which is called “briefing the case”. This technique is most helpful in *guiding* the students to recognize and understand the most important points of a case. Following is an example of a law student’s brief of a case.

Marsalis v. La Salle

94 So. 2d 120 (La. App 1957)

McBride, J.

Plaintiffs bring this suit for damages against Shelby P. LaSalle, the defendant, as a result of Mrs. Marsalis' having been bitten or scratched by a Siamese cat on January 12, 1953, in a store in Jefferson Parish, of which the defendant is proprietor, the occurrence having taken place while Mrs. Marsalis, who was accompanied by her husband, was shopping. The cat is the pet of defendant's minor son. Mrs. Marsalis is asserting her claim for personal injuries and her husband is seeking reimbursement of the costs of the medical treatment of his wife. From a judgment in favor of plaintiffs, defendant appeals.

While the testimony on that point is in conflict, we believe that it preponderates to the effect that after Mrs. Marsalis sustained her injury, Marsalis requested defendant to keep the cat under observation for fourteen days until it could be determined whether the animal was rabid and what medical precautions Mrs. Marsalis should take against being infected by rabies. We quote Marsalis' words: "Then I asked Mr. LaSalle to lock the cat up for 14 days, and we had a little discussion about the time element relative to keeping a cat up that had bitten someone to note its condition after that period of time, and I asked him to be sure and lock it up, because I didn't want my wife to take rabies treatment because there were numerous cats in the neighborhood that were reported rebid in the **Jefferson Herald and Times**, and a number of the papers, and there was quite an incident...."

"I asked him to keep the cat up, to lock it up, and he said he would...."

The defendant denies there had been any such conversation regarding the restraining of the cat for the purpose of observation, and his testimony is that neither Mr. nor Mrs. Marsalis considered the injury dangerous. He quoted Mrs. Marsalis as having said: "Oh, it is nothing; don't worry about it." We do not doubt that the defendant and his wife, she having been present in the store when the incident occurred, well knew of the serious consequences that could arise from the bite of an animal, nor do we doubt that they agreed to be cooperative in the matter by observing the state of health of the cat during the period of **incubation** of rabies. At one point we find Mrs. LaSalle let slip this significant statement: "Well, I think my husband notified me not to let it out and I have got that much sense to know that if a cat ever scratches anybody-."

According to her statement the cat stayed "...indoors where we always kept it on the opposite side of the grocery, it's a basement house, and part of the basement is the store and the opposite side is our domicile and that's where he was. He was supposed to be at all times."

At any rate, on the evening of the fourth or fifth day after the episode in the grocery store the cat escaped and the only explanation given is by Mrs. LaSalle, who testified that this occurred as she and some friends were making their exit via the basement door. The cat was gone for about a month, and in the meantime its whereabouts was not known. Upon returning home the animal gave no evidence whatever of being infected.

Two days after she had sustained the injuries, Mrs. Marsalis sought advice from her friend and neighbor, Dr. Homer Kirgis, whose specialty is in the medical field of neurosurgery. He thought Mrs. Marsalis should first determine whether the cat had been inoculated and then consult her family physician. When it was learned a few days later that the animal had strayed from defendant's premises, Dr. Kirgis urged Mrs. Marsalis to see her family doctor and admonished her to contact the Pasteur Treatment Ward of the Charity Hospital in New Orleans. However, Dr. Kirgis subsequently undertook to administer the Pasteur treatment himself at his home, the first injection being made about January 23, 1953. This treatment consists of a number of injections of a prophylactic vaccine for rabies and we are informed that some persons are extremely allergic to the serum. Mrs. Marsalis was evidently in this category as she suffered a noxious reaction to the serum which brought about some ill effects....

It is uncontroverted that there is no liability in defendant merely because the cat bit or scratched Mrs. Marsalis. Never before had the animal exhibited any vicious traits or tendencies and it had been, as the court found, a gentle and well-behaved pet and defendant was guilty of no negligence in allowing it to frequent his premises.....'

..Perhaps the defendant, LaSalle, initially owed no duty whatever to Mrs. Marsalis, but when he once agreed to restrain and keep the cat under observation, he was bound to use reasonable care and prudence in doing so and to assume and exercise reasonable care and common humanity. It may be that Mrs. Marsalis had open to her some other course by which she could have had the cat incarcerated and examined in order to determine if it was rabid, but she unquestionably and in good faith relied upon defendant to carry out the agreement which he voluntarily made, thus foregoing such other possible available protection. It was of extreme importance to know if the cat had rabies so she could regulate her course of conduct with reference to the injury. We do not doubt for one moment that both defendant and his wife were fully cognizant that such injuries could be quite serious and exceedingly dangerous in the event the offending animal was infected with rabies. In fact we feel sure of our ground in saying this because of the statement of Mrs. LaSalle: "I have got that much sense to know that if a cat ever scratches anybody-."

LaSalle's liability would then depend on whether he used reasonable care with reference to keeping the cat, for as it developed later the Pasteur treatment was entirely unnecessary and the escape of the cat was the direct and proximate cause of the necessity for the injections and the ill effects which Mrs. Marsalis suffered as a result thereof.

Neither defendant nor his wife took any especial steps or means to prevent the cat from straying from their premises. The cat, which was three years old, had always been kept in the basement and was allowed access to the yard from time to time. No change whatever in the animal's usual routine was undertaken and we must hold that defendant failed to use ordinary or reasonable care to see to it that the animal was kept secure, and, hence, defendant is liable unto plaintiffs for whatever damages they sustained as a result of such lack of care.....

SAMPLE BRIEF: 1

FACTS: Plaintiff was injured when Defendant's cat bit and scratched her. After the injury P. asked D to keep the cat locked up for 14 days in order to see if the cat had rabies or not. If the cat did have rabies, P. would be required to take a series of painful injections. D. failed to keep the cat locked up, the cat escaped and did not return for one month. After the cat's escape. P. decided to have the shots and suffered a severe reaction to the medicine. P. sues D. for personal injuries and her husband wants D. to pay medical costs for his wife.

PROCEDURAL HISTORY: Defendant appeals from a judgement in favor of P. in the trial court.

LEGAL ISSUE: Did D. use ordinary care or reasonable care in keeping the cat secure for 14 days after agreeing to such action?

HOLDING: The court held that defendant failed to use ordinary or reasonable care to keep the animal locked up for observation, and is liable to P. for damages.

REASONING: The Court first says that there is no liability on the part of P. because of the bite from the cat because the cat had never bitten anyone else, and was generally a gentle and well-behaved cat. But, after D. agreed to keep the cat locked up for observation for 14 days, D. then owed a duty to P. to exercise ordinary or reasonable care in keeping the cat locked up. The court, from the evidence, found D. breached that duty when they did nothing special to stop the cat from leaving the house. The Court also noted P. reliance on D.'s actions to keep the cat locked up which stopped her from taking other measures to make sure the cat was locked up for observation. Therefore D. was liable for P. damages resulting from the bite.

Sample Brief: Vocabulary -Find the meaning of these words using a legal dictionary

1. holding

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2. damages

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3. liability

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4. breach

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5. duty

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Sample Brief: Analysis

After reading this case and the brief that follows it, it may be helpful to analyse the different parts of the brief. First, every brief will begin with a short description of the most important facts in the case. Note that **not all** the facts written by the court must be included, only the most important. After reading many cases the student will be able to judge which facts are the most important.

The second part of the brief usually contains the **procedural history** of the case. In this part of the brief the student can explain the decision of the lower court and who is appealing that decision. If the case to be briefed is a decision of the Supreme Court, the procedural history must include the decisions of both the trial court and the lower appeals court.

The next part is the most important part of the brief. Here the student must state as clear as possible the main legal issue of the case. What legal point is in the dispute? In order to clearly and briefly state the main legal issue, the student may have to read the case many times. In the sample brief at first reading the issue may seem to be liability of the owner for the cat bite, but after another careful reading, we can see that the main issue is whether or not the owner used reasonable care in keeping the cat locked up for observation after the cat bite. It is very important that the student be able to recognize the main legal issue of a case. Sometimes cases have more than one important legal issue the court must decide, and the student must be able to recognize them.

The **holding** of a case is the decision of the court about the legal issue. In order to find the holding the student can look for the word "held" as in "the Court held . . ."

The next part of a student's brief contains the court's explanation of its decision. This will often be the longest part of the brief. It requires the student to state briefly and accurately why the court reached its decision. The student must be able to recognize the previous decisions, the statute law, legal statement, or other legal authority the court used in reaching its decision.

To be able to successfully brief a case, the student must practice both reading the case and writing the brief. Read the following cases and write a brief for each following the brief form given to you. After briefing the cases discuss the briefs with your teacher.

CASE REPORT 1: Marvin v. Marvin

MARVIN v. MARVIN

134 Cal. Rptr. 815,557 P.2d 106

Supreme Court of California

December 27, 1976

TOBRINER, JUSTICE. During the past 15 years, there has been a substantial increase in the number of couples living together without marrying. Such nonmarital relationships lead to legal controversy when one partner dies or the couple separates. We take this opportunity to declare the principles which should govern distribution of property acquired in a nonmarital relationship.

We conclude that the courts should enforce express contracts between **nonmarital partners** except to the extent that the contract is explicitly founded on the consideration of meretricious sexual services.

In the instant case plaintiff, Michelle Marvin, and defendant, Lee Marvin, lived together for seven years without marrying; all property acquired during this period was taken in defendant's name. When plaintiff sued to enforce a contract under which she was entitled to half the property and to support payments, the trial court granted judgment on the pleadings for defendant, thus leaving him with all property accumulated by the couple during their relationship.

Plaintiff avers that in October of 1964 she and defendant "entered into an oral agreement" that while "the parties lived together they would combine their efforts and earnings and would share equally any and all property accumulated as a result of their efforts whether individual or combined." Furthermore, they agreed to "hold themselves out to the general public as husband and wife" and that "plaintiff would further render her services as a companion, homemaker, housekeeper and cook to ... defendant."

Shortly thereafter plaintiff agreed to "give up her lucrative career as an entertainer and singer" in order to "devote her full time to defendant as a companion, homemaker, housekeeper and cook;" in return defendant agreed to "provide for all of plaintiff's financial support and needs for the rest of her life."

Plaintiff alleges that she lived with defendant from October of 1964 through May of 1970 and fulfilled her obligations under the agreement. During this period the parties as a result of their efforts and earnings acquired in defendant's name substantial real and personal property, including motion picture rights worth over \$1 million. In May of 1970, however, defendant compelled plaintiff to leave his household. He continued to support plaintiff until November of 1971, but thereafter refused to provide further support.

On the basis of these allegations plaintiff asserts two causes of action. The first, for declaratory relief, asks the court to determine her contract and property rights; the second seeks to impose a constructive trust upon one half of the property acquired during the course of the relationship.

In **Trutalli v. Meraviglia** (1932) 215 Cal. 698, 12 P.2d 430 we established the principle that nonmarital partners may lawfully contract concerning the ownership of property acquired during the relationship. We reaffirmed this principle in **Vallera v. Vallera** (1943) 21 Cal. 1.2d 681, 685, 134 P.2d 761, 763, stating that "If a man and woman [who are not married] live together as husband and wife under an agreement to pool their earnings and share equally in their joint accumulations, equity will protect the interests of each in such property."

In the case before us *plaintiff, basing* her cause of action in contract upon these precedents, maintains that the trial court erred in denying her a trial on the merits of her contention. Although that court did not specify the ground for its conclusion that plaintiff's contractual allegations stated no cause of action, defendant offers some four theories to sustain the ruling; we proceed to examine them.

Defendant first and principally relies on the contention that the alleged contract is so closely related to the supposed "immoral" character of the relationship between plaintiff and himself that the enforcement of the contract would violate public policy. He points to cases asserting that a contract between nonmarital partners is unenforceable if it is "involved in" an illicit relationship. A review of the numerous California decisions concerning contracts between nonmarital partners, however, reveals that the courts have not employed such broad and uncertain standards to strike down contracts. The decisions instead disclose a narrower and more precise standard: a contract between nonmarital partners is unenforceable only to the extent that it explicitly rests upon the immoral and illicit consideration of meretricious sexual services.

Although the past decisions hover over the issue in the somewhat wispy form of the figures of a Chagall painting, we can abstract from those decisions a clear and simple rule. The fact that a man and woman live together without marriage, and engage in a sexual relationship, does not in itself invalidate agreements between them relating to their earnings, property, or expenses. Neither is such an agreement invalid merely because the parties may have contemplated the creation or continuation of a nonmarital relationship when they entered into it. Agreements between nonmarital partners fail only to the extent that they rest upon a consideration of meretricious sexual services. Thus the rule asserted by defendant, that a contract fails if it is "Involved in" or made "in contemplation" of a nonmarital relationship, cannot be reconciled with the decisions.

Defendant secondly relies upon the ground suggested by the trial court : that the 1964 contract violated public policy because it impaired the community property rights of Betty Marvin, defendant's lawful wife. Defendant points out that his earnings while living apart from his wife before rendition of the interlocutory decree were community property under 1964 statutory law and that defendant's agreement with plaintiff purported to transfer to her a half interest in that community property. But whether or not defendant's contract with plaintiff exceeded his authority as manager of the community property defendant's argument fails for the reason that an improper transfer of community property is not void *ab initio*, but merely voidable at the instance of the aggrieved spouse.

In the present case Betty Marvin, the aggrieved spouse, had the opportunity to assert her community property rights in the divorce action. The interlocutory and final decrees in that action fix

and limit her interest. Enforcement of the contract between plaintiff and defendant against property awarded to defendant by the divorce decree will not impair any right of Betty's, and thus is not on that account violative of public policy.

Defendant's third contention is noteworthy for the lack of authority advanced in its support. He contends that enforcement of the oral agreement between plaintiff and himself is barred by Civil Code section 5134, which provides that "All contracts for marriage settlements must be in writing...." A marriage settlement, however, is an agreement in contemplation of marriage in which each party agrees to release or modify the property rights which would otherwise arise from the marriage. The contract at issue here does not conceivably fall within that definition, and thus is beyond the compass of section 5134.

Defendant finally argues that enforcement of the contract is barred by Civil Code section 43.5, subdivision (d), which provides that "No cause of action arises for [b] reach of a promise of marriage." This rather strained contention proceeds from the premise that a promise of marriage impliedly includes a promise to support and to pool property acquired after marriage to the conclusion that pooling and support agreements not part of or accompanied by promise of marriage are barred by the section. We conclude that section 43.5 is not reasonably susceptible to the interpretation advanced by defendant, a conclusion demonstrated by the fact that since section 43.5 was enacted in 1939, numerous cases have enforced pooling agreements between nonmarital partners, and in none did court or counsel refer to section 43.5.

In summary, we base our opinion on the principle that adults who voluntarily live together and engage in sexual relations are nonetheless as competent as any other persons to contract respecting their earnings and property rights. Of course, they cannot lawfully contract to pay for the performance of sexual services, for such a contract is, in essence, an agreement for prostitution and unlawful for that reason. But they may agree to pool their earnings and to hold all property acquired during the relationship in accord with the law governing community property; conversely they may agree that each partner's earnings and the property acquired from those earnings remain the separate property of the earning partner. So long as the agreement does not rest upon illicit meretricious consideration, the parties may order their economic affairs as they choose, and no policy precludes the courts from enforcing such agreements.

In the present instance, plaintiff alleges that the parties agreed to pool their earnings, that they contracted to share equally in all property acquired, and that defendant agreed to support plaintiff. The terms of the contract as alleged do not rest upon any unlawful consideration. We therefore conclude that the complaint furnishes a suitable basis upon which the trial court can render declaratory relief. The trial court consequently erred in granting defendant's motion for judgment on the pleadings.

BRIEF FORM

Case Name and Citation :.....
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FACTS:

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PROCEDURAL HISTORY:

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LEGAL ISSUE(S):

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Criminal Law — Jury Trial — Initial Waiver — Denial of Subsequent Motion to Withdraw — When Abuse of Discretion.

The principle here applied for determining whether a defendant should be permitted to withdraw a jury waiver is that if such a motion is made sufficiently in advance of trial so as not to interfere with the orderly administration of court business or to result in unnecessary delay, inconvenience to the witnesses or prejudice to the state, the court should exercise its discretion to allow the defendant to have a jury trial.

Defendant in this case sought reversal of his conviction of one count of kidnapping and four counts of first-degree sexual assault, party to a crime. Initially, following his arrest, defendant was represented by retained counsel. At that time he waived his right to a jury trial. Plea negotiations were anticipated by both sides because of defendant's cooperation in locating an additional suspect but no agreement was ever reached.

Several months thereafter, defendant's retained counsel asked to withdraw because he believed defendant's only defense "would not wash." He was thereafter allowed to withdraw from the case and the case was continued to a day certain for status.

On that date defendant appeared with his newly appointed counsel who asked the court to allow defendant to withdraw his jury waiver. The trial court refused. The trial thereafter proceeded and defendant, as indicated, was found guilty and his post-conviction motions were denied.

On this appeal defendant asserted he was entitled to a new trial on various grounds, one of which was that the trial court had abused its discretion in not allowing him to withdraw his jury waiver.

Ruling on this issue and applying the prefatory principle, the court finds the trial court abused its discretion and, hence, remands the case to the trial court so the defendant may have a jury trial.

Initially, the court explains, in exercising its discretion the trial court must balance the legitimate interests of the court and prosecutor with the defendant's fundamental interest in the right to a trial by jury. This, the court states, is because the defendant's right to a trial by jury is fundamental and should remain inviolate.

Hence, the court states, *the trial court should deny the defendant's withdrawal motion only when some adverse consequences would flow from the defendant's change of mind. Thus, it holds, it is an abuse of discretion for a trial court to deny a motion of a defendant in a criminal case to withdraw a jury waiver if there is no showing that granting withdrawal would have substantially delayed or impeded the cause of justice.*

Applying these rules hereto, the court notes that the trial court based its denial of defendant's motion solely on the fact that his waiver was valid. Then, no date had been set for trial when defendant brought his first written motion and the trial court stated that its calendar was probably unaffected by defendant's waiver.

Thus, the court concludes that allowing defendant to withdraw his waiver would not have delayed trial or inconvenienced the trial court. Furthermore, the court finds no indication that defendant's motion was brought in bad faith. *State v. Cloud, No. 85-2229-CR (July 22, 1986)*.

Wisconsin Bar Bulletin November 1986

EXERCISE 1: Before briefing this case, use your legal dictionary to find the meaning of the following terms:

1. jury waiver
2. retained counsel
3. plea

BRIEF FORM

Case Name and Citation

Louie v. Bamboo Gardens et al.

67 Ida. 469,185 P.2d 712 (1947)

MILLER, Justice.

This case was submitted to the Industrial Accident Board on a stipulation of the facts as agreed to between the parties, and from which, among other things, it is made to appear:

That Tom Louie, claimant and appellant, about 45 years of age, on the 18th day of October, 1946, and for more than three months prior thereto, was in the employ of the Bamboo Gardens, a **restau-**rant in Boise, Idaho, as a dishwasher therein; that he was casually acquainted with one Fook Lee Hong, another Chinaman, but that said Hong was not a patron of the Bamboo Gardens, nor a customer thereof in that he had never taken his meals **thereat** and was in **nowise** interested therein. September **21, 1946**, Fook Lee Hong and three other Chinese were arrested on a narcotic charge by officials of the United States; that during the latter part of September 1946, Hong was fined \$50 by the **U. S.** District Judge, at Boise, Idaho, on account of his plea to said charge and thereupon discharged from further custody. Hong was a discharged veteran of World War II. After his discharge for the violation of the Narcotic Act, 26 U.S.C.A. Int. Rev. Code, §§ 2550 et seq., 3220 et seq., he seems to have labored under the delusion that it was thought that he had turned "State's evidence," and that someone was going to kill him. **After his said** discharge and prior to October 18, 1946, he stated to an Assistant United States District Attorney that members of a tong society to which Tom Louie belonged, and to which **Hong** did not belong were going to import "hatchet men" from **Walla Walla**, Washington to Boise, Idaho to kill him because members of such tong thought he had turned State's evidence against his former companions on the narcotic charge; that for several days before October 18, 1946, he was more or less in hiding at the **american** Legion Building in Boise, Idaho, asserting that someone was going to kill him. **The Prosecuting** Attorney of Ada County, Idaho, made an investigation and found there were no reasonable grounds for his suspicions that someone was going to kill him, but in his own mind he suffered the delusion that an attempt would be made upon his life.

October 18, 1946, at about **5:45 P.M** Tom Louie, claimant and appellant, received an injury, during his regular hours, and in the course of his employment, and while he was on duty performing the tasks for which he was employed at his employer's place of business, at 107 South 7th Street, Boise, Idaho, in that **while** taking water glasses from the kitchen to the serving table in the dining room, Fook Lea Hong entered the restawrant by the front door on 7th Street, carrying a loaded 38 caliber revolver, which

he brandished in a threatening manner, and then shot the same within the restaurant three times, one of which shots struck Tom Louie, claimant and appellant, in the upper back region, piercing his chest cavity and his lungs. The employer was notified of such accident and injury sustained by said claimant and appellant, during the evening of October 18, 1946, and that a claim in writing, stating the name and address of the employer, the time, place, nature and cause of the injury, signed by claimant and appellant, was filed with the industrial Accident Board on October 30, 1946; that as the result of the injury sustained, Claimant and appellant was hospitalized at St. Luke's Hospital at Boise, Idaho, for a period commencing the evening of October 18, 1946, and until and including November 9, 1946, and that the hospital and medical charges in the sum of \$475.55 were paid by claimant and appellant; that claimant and appellant was under medical care at the time of filing the stipulation of facts with the Industrial Accident Board and that at the time he was totally disabled for work and would continue to be so totally disabled for a period of time subsequently to be determined; that he was not then surgically healed and whether or not he will sustain a permanent injury is yet to be determined as well as the degree thereof, if permanent injury results therefrom.

On or about October 21, 1946, a criminal complaint was filed against Fook Lee Hong by the Prosecuting Attorney of Boise, Idaho, and on October 31, 1946, Hong was held by the Committing Magistrate to answer to the District Court for the crime of assaulting Tom Louie with a deadly weapon with intent to commit murder. An Information was filed in said District Court, November 1, 1946, charging Hong with an assault to commit murder. A plea was interposed under I.C.A. Sec. 19.3202, that Fook Lee Hong was insane. The issue was tried to a jury, which returned a verdict of insanity and which was duly filed and entered in said District Court on November 18, 1946. November 20, 1946, the said District Court made and entered its commitment, committing Hong to the State Hospital South at Blackfoot, Idaho, by virtue of his having been found insane as aforesaid.

The Industrial Accident Board considered the stipulated facts and on January 6, 1947, made and entered its findings of fact, rules of law and order dismissing appellant's claim. The findings of fact follow very closely the stipulation. Finding No. 7, among other things, recites as follows: "The sole issue presented is one of law. It is conceded that the accidental injury to claimant Tom Louie arose in the course of his employment by the Bamboo Gardens. The precise issue is whether said accidental injury arose out of such employment." There is no dispute as to the facts.

We fail to find any evidence that would indicate that Fook Lee Hong, at the time he entered the restaurant at which Tom Louie was employed, or at the time he fired the shot resulting in the accidental injury of said Tom Louie, was looking for the appellant and had a real or imaginary grievance against him. There is no evidence to the effect that at the time Hong entered the restaurant that he knew that Tom

Louie was employed there or that he would find him therein. In the conversation he had with various officials, no mention was ever made of Tom Louie and the only manner in which Tom Louie **seems** to have been connected with his delusion, is that Louie was a member of a tong that Hong asserted was going to bring in hatchet men from **Walla Walla** to kill him.

It may, however, be of no significance as to whether or not said Hong was looking for Tom Louie at the time he shot him and had either a real or imaginary grievance against him. The fact remains that it **was an** accidental injury and under the Workmen's Compensation Law, claimant and appellant is entitled to receive compensation as a result of said injury.

..The modern tendency of the decisions, in keeping with the spirit of the law, is to award **compensation** in all cases where a liberal construction of the statute would justify it. Even in view of this liberal construction, it is not enough for the applicant to say that the accident would not have happened if he had not been engaged in the particular employment or if he had not been at the particular place. He must go further and say that the accident arose because of something he was doing in the course of his employment and because he was exposed by the nature of his employment to some particular danger.

It would seem that the evidence in this case is such as justifies the conclusion that the injury was the result of a risk to which appellant was subjected in the course of his employment, and to which he would not have been subjected had he not been so employed. Appellant was injured not merely because he was a dishwasher in the Bamboo Gardens' restaurant, but because he was an employee within the Bamboo Gardens restaurant, and engaged in the performance of duties which his employment imposed upon him. It was his employment that **placed** him in the position and environment wherein he was **assault-** 'ted and sustained the accidental injury. Appellant did not in any manner provoke the assault and attending accidental injury. At the precise time of the injury he was placed and engaged in the business of his employer. There is nothing to show that the **brandishing of** the pistol and the firing thereof was a deliberate intention to injure appellant. The intention of the assailant from the record may have been limited to "shooting up the place," and that it was a random shot that struck appellant.

The order of the board denying compensation constitutes a clear error of law. The order is, therefore, vacated and set aside, with directions to conduct such proceedings as may be necessary in a further consideration of appellant's claim and to make such findings and award as the evidence and law require consistent with the views herein expressed. Costs to appellant.

EXERCISE 1: Consult a legal encyclopedia such as American Jurisprudence or West's American Law Encyclopedia to get some general information about "workers' compensation" laws in the United States

BRIEF FORM

Case Name and Citation

FACTS:

PROCEDURAL HISTORY:

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Action — Abatement and Survival — Husband and Wife — Divorce — Death of a Party Before Judgment Pronounced.

The common law rule that a non-adjudicated divorce action does not survive the death of one of the parties is here applied in sustaining an order vacating an oral divorce judgment rendered one hour after the death of one of the parties.

The record disclosed that following a marriage of less than two years, the husband commenced the instant divorce action. Although during the **pendency** of the action he testified in person at an adverse deposition, he was subsequently hospitalized with terminal cancer. His daughter, petitioner herein, was appointed his guardian and at the divorce hearing during the morning testified as to her father's physical condition. She then opined it was doubtful that he would live through the day.

Although counsel for her father then requested the divorce be immediately granted, the wife objected arguing that certain property issues were unresolved and asked for a continuance. The trial court declined to separate the pronouncement of divorce from the property settlement. Instead, it determined to hear all the issues that day.

Accordingly, the trial court recessed the case until that afternoon to read a deposition and prepare findings. When it reconvened at **3:10** p.m., it pronounced the divorce judgment. Fortuitously, the husband had died at **2:05** p.m.

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The wife thereafter moved the trial court to vacate the judgment, which the latter granted, ruling that neither the common law nor statutes provides for survival of a divorce action where one party dies before the divorce decree is granted.

Affirming the order vacating the judgment, the court explains that had the trial court pronounced judgment before the hour of the husband's death, the decree would have been valid. In such situations, it notes, the authorities hold that the court may enter the decree *nunc pro tunc* to take effect at a time prior to the party's death.

*However, as indicated, that was not the situation here. It notes it was **uncontroverted** that the trial court did not render a judgment of divorce until one hour after the husband died.*

The court **holds** unpersuasive the daughter's contention that the divorce cause of action had not abated when judgment was pronounced. In this regard, she argued that inasmuch as marriage is a civil contract, as such, it survived the death of her father. *The court's response is that divorce in Wis-*

consin is governed by ch. 767, Stats.; jurisdiction of divorce actions is purely statutory and there is no provision in ch. 767 which indicates a cause of action for divorce survives the death of one of the parties.

The daughter had also argued that as guardian she was empowered to continue to act as her father's agent after his death. That this argument was meritless the court finds evidenced in section 880.34(1), Stats. It provides in part that "any guardianship of an individual found to be incompetent . . . shall continue during the life of the incompetent, or until terminated by the court." (Emphasis supplied.)

The daughter further contended the divorce pronouncement was effective because fractions of the day are not considered in the legal computation of time. Rejecting this argument, the court points out that the central issue was whether the divorce action abated prior to the rendition of judgment.

In light of this, it holds, because a determination of the exact time of the husband's death and of the precise moment of the judgment of divorce fundamentally affected the rights of the parties, the trial court properly inquired into those matters. *Pettygrove v. Pettygrove*, No. 850414 (July 22, 1986).

EXERCISE 1: Before briefing this case, use your legal dictionary to find the meaning of the following terms:

1. adjudication
2. vacate
3. nunc pro tunc
4. guardian

BRIEF FORM

Case Name and Citation

FACTS:

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PROCEDURAL HISTORY:

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ANSWER KEY

PASSAGE 1: Areas of Civil Law -Tort Law

Exercise 2: Reading Comprehension

1. a. (3)
 - b. (4)
 - c. Slander and libel, trespass, personal injury, automobile accident
 - d. paragraph 2
 - e. (1), (2), (3), (4), (6)

2. a. (2)
 - b. fellow-servant rule
 - c. (2)
 - d. auto accidents increased, workmen's compensation laws
 - e. (1), (3), (4)
 - f. There is too much publicity about medical malpractice cases when in fact the increase in the number of cases is small

3. a. (2)
 - b. (3)
 - c. (1), (3), (4)

Exercise 3: Functions of Words

1. **commitment** (NOUN): committed (ADJECTIVE)
2. to **contract** (VERB); contracted (ADJECTIVE)
3. publication (NOUN): published or publishable (ADJECTIVE)
4. protection (NOUN); protective or protected (ADJECTIVE)
5. liable (ADJECTIVE)

ANSWER KEY

PASSAGE 2: The United States Court System

Exercise 1: Reading Comprehension

1. (a) 89
2. (d) U.S. Court of Appeal for the Federal Circuit
3. (c) federal and local jurisdiction
4. (a) U.S. Supreme Court
5. (a) U.S. Supreme Court
6. (c) 3
7. (c) 13

Exercise 2: Verb Forms

1. IS
 2. are
 3. has, has
 4. have
 5. has
-

Passage 3: Family Law

Exercise 2: Read comprehension

1. (a), (b), (d), (e), (f)
2. (a), (b), (c), (e)
3. (c)
4. (d)
5. (a)

ANSWER KEY

PASSAGE 3: Family Law (con't)

Exercise 3 : Functions of Words

1. . .to divorce (VERB), divorce (NOUN)
 2. to desert (VERB), deserted (ADJECTIVE)
 3. adoption (NOUN), adoptive or adopted (ADJECTIVE)
 4. to interest (VERB), interesting or interested (ADJECTIVE)
 5. assumption (NOUN), assumed (ADJECTIVE)
-

PASSAGE 4: Business Associations

Exercise 2: Reading Comprehension

1. (c), (d)
 2. (c)
 3. (b)
 4. (c)
 5. (b)
-

PASSAGE 5: Judges in the United States

Exercise 2: Reading Comprehension

1. (a), (c), (d)
2. (b), (d)
3. (a)

ANSWER KEY

PASSAGE 5: Judges in the United States (con't)

4. (b)
5. (b)
6. (c)
7. (c)
8. (a), (b)
9. (d)
10. (d)

Exercise 3: Functions of Words

1. election (NOUN), elective or elected (ADJECTIVE)
 2. response (NOUN), responsive (ADJECTIVE)
 3. to appoint (VERB), appointment (NOUN)
 4. Impeachment (NOUN), impeached (ADJECTIVE)
 5. acquittal (NOUN), acquitted (ADJECTIVE)
 6. independence (NOUN)
-

PASSAGE 6: Criminal Law

Exercise 2: Reading Comprehension

1. (c)
2. (b)
3. (d)
4. (a), (c), (d)

ANSWER KEY

PASSAGE 6: Criminal Law-Reading Comprehension Exercise

5. (d)
6. (c)
7. (b), (c), (d)
8. (b)
9. (c)
10. (a), (b), (d)

Exercise 3 : Guessing the Meaning of Words from Context

Discuss the guesses with your teacher, then look at the following hints or clues.

1. hint: the punctuation in the sentence after the words "the crime **itself**" -a burglary which indicates a definition will follow
2. hint: again the punctuation after the words "the suspect" there is a dash (-) which **indicates** a definition is to follow
3. hint: The words "that is " indicate an meaning of the word is coming
4. hint: if you continue reading the sentence the meaning of magistrate is given following the comma.
5. hint: look at the words in the sentences surrounding this word such as "prosecutor", "grand jury", and then read to the end of the paragraph.

ANSWER KEY

PASSAGE 6: Criminal Law — Guessing the Meaning of Words

6. hint: The words “That is” in the next sentence signal that a definition is coming
7. hint: The word “that is” and the punctuation of the dash (—) signal a definition is coming

Exercise 4: Verb Forms

1. instructs
 2. go
 3. has
 4. question
 5. finds
 6. is
 7. file
 8. dismiss
 9. goes
 10. is
-

ANSWER KEY

PASSAGE 7: Legal Form Contract-Consumer Loan Note

Exercise 1: Reading Comprehension

1. Consumer Loan Note

Date _____ 19 _____

(In this note, the words I, me, mine and my mean each and of those who signed it. The words you, your and yours mean First National City Bank.)

Terms of Repayment

To repay my loan, I promise to pay you 5520.00 (i) (written) Dollars

(\$5520.00). I'll pay this sum at one of your branches in 24 (f) uninterrupted monthly (f)

installments of \$230.00 (h) each. Payments will be due the 10th day(g), starting from the date the loan is made.

Here's the break down of my payments:

1. Amount of the Loan	\$5,000(c)
2. Property Insurance Premium	\$200(d)
3. Filing Fee for	
Security Interest	\$20.00(e)
4. Amount Financed (1 + 2 + 3)	\$5220(j)
5. Finance Charge	\$300(b)
6. Total of Payments (4 + 5)	\$5520(k)
Annual Percentage Rate 12% (a)	

2. (a), (c), (e)

3. (b), (c), (d), (e)

4. (c)

5. (a), (c), (d)

6. (d)

7. (d)

8. (a)

9. (b)

10. (a), (b)

PASSAGE 8: Real Estate Sales Contract-Cooperative Apartment

Exercise 2: Reading Comprehension

1. (a) stock in the corporation owing the building of the apartment

(b) a lease giving Buyer right to occupy Apartment

(c) some property in Apartment

ANSWER KEY

PASSAGE 8: Real Estate Sales Contract – Reading Comprehension (con't)

2. (b) or (c)
 3. (a), (b), (c)
 4. (a)
 5. (b)
 6. (d)
 7. (a) and (c)
 8. (c) and (d)
 9. (a) and (d)
 10. (a)
 11. (b)
 12. (b) or (c)
 13. (a)
 14. (b)
 15. (c)
-

PASSAGE 9: Administrative Regulation—Equal Employment Opportunity Commission Regulations

Exercise 2: Reading Comprehension

1. s. 1604.5, s. 1604.2
2. s. 1604.11
3. s. 1604.2
4. s. 1604.4
5. s. 1604.10

ANSWER KEY

PASSAGE Q: Administrative Regulation (con't)

Exercise 3: Rule Comprehension

1. (c)
 2. (b) and (d)
 3. (b)
 4. (a), (b), (c), (d)
 5. (c)
 6. (b)
-

PASSAGE 10: Workmen's Compensation Law (Idaho)

Exercise 2: Reading Comprehension

1. 72-437and72-438
2. 72-212
3. 72-428, Schedule of Benefits
4. 72-102
5. 72-209

Exercise 3: Legal Comprehension

1. (b), (c), (d), (e), (g), (h)
 2. (a), (b), (e)
 3. (c)
 4. (d)
 5. (b)
-

