## Wednesday, August 13, 2014

### Campus Open House
8:30am – 5:30pm

### New Student Check In
9:00am – 11:00am | Admissions
- Class schedule and section assignment
- ID card
- Parking pass
- And more

### Financial Aid & Debt Management Session with Joe Pinkas, Director of Financial Aid
11:00am – 11:45am | Classroom C

### Law School Administrative Nuts & Bolts, with Mary McGuire, ’83’, Dean of Students (lunch provided)
12:00pm – 1:00pm | Classroom C
Meet Admissions, Student Affairs, Registrar, Academic Affairs, Public Safety, receive your “Black Book,” learn about your student health insurance, on-campus health services, CAPS, and more.

### Campus Tours Available
1:00pm – 4:00pm (or by appointment) | Meet at the Gazebo
Current students will be on hand to show you the ropes, including where to find the FSO/first class assignments.

### Dean’s Welcome & Oath of Professionalism, immediately followed by a Reception with the Faculty (Professional Attire)
6:00pm – 7:30pm | Lecture Hall/Quad
Join Dean Mootz, your SBA President, and the faculty for a special welcome event and reception. Federal Judge Morrison England, ’83, will administer the Oath of Professionalism. Family is welcome. Professional attire is recommended (please no jeans, shorts, or flip-flops; suits are not required).

## Thursday, August 14, 2014

### Continental Breakfast Available
Starting at 8:30am | Admissions Breezeway

### Legal Skills Morning (bring your laptop)
9:00am – 11:30am
Classroom A - A1 & A2
Classroom B - B1 & B2
Classroom G - A3
Classroom H - LL.M.
- Reading and briefing cases in preparation for class
- The classroom experience
- Accessing and using electronic resources, including LexisNexis, Westlaw, and Bloomberg

### What I Wish I Had Known In Law School: Young Alumni Panel (lunch provided)
11:45am – 1:00pm | Classroom C

### Unscheduled Time
1:00pm – 3:00pm
Time for visiting the bookstore, picking up first assignments from the FSO, preparing for class, and socializing.

### All New Student Scavenger Hunt, hosted by the Student Bar Association
3:00pm – 3:30pm: Check In at the Student Center
3:30pm – 5:00pm: Hunt
5:00pm – 5:45pm: Awards & Refreshments by the Pool

## Friday, August 15, 2014

### Continental Breakfast Available
Admissions Breezeway | Starting at 8:30am

### Stress Relief Interlude
9:00am – 9:45am
Yoga with Prof. Davies - Student Center
Curtis Park Walk with Dean Landsberg & Prof. Bricker - Meet at Admissions
Croquet with Prof. Sprankling - Quad
Pick-Up Basketball with Current Students refereed by Prof. Moylan - Basketball Courts outside of Rec Center
Jam Session with Faculty - Piano Lounge, 2nd Floor of Northwest Hall
Morning in the Garden with Prof. Brungess and Adam Borchard 3D - Community Garden

### Balancing Life & Law: Stress Management in Law School featuring Dr. Rob Durr
10:00am – 11:00am (presentation in Classroom C)
11:00am – 11:45 (small group discussion led by faculty members)

### Boxed Lunch (Free Time)
12:00pm – 1:30pm | Student Center

### How to Succeed In Law School
1:30pm – 2:15pm | Classroom C

### Helping the Community: Pro Bono Opportunities
2:15pm – 2:45pm | Classroom C

### Get your Advocacy On: Introduction to McGeorge’s 1L Advocacy Competitions & Journal Opportunities
2:45pm – 3:30pm | Classroom C

### Student Activities Fair, hosted by the Office of Student Affairs
3:30pm – 5:45pm | Quad
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**Key**
- Evening Division
- Both Day & Evening Division
Dear McGeorge Student:

Welcome to the University of the Pacific, McGeorge School of Law. Recently I was in your shoes: having just been appointed as Dean of the Law School, I was embarking on a new and challenging adventure. Based on my experience over the past two years, I know that you will find your time here richly rewarding, especially if you approach your legal studies with enthusiasm. As you begin the hard work of being a law student, keep in mind that you are joining a profession of vital importance to our society. Our goal is to help you acquire not only the cognitive skills and knowledge of the rules of law, but also professional habits of diligence and responsibility to others. When mixed with your intelligence, imagination, and the skills you will develop during your years at Pacific McGeorge, these habits will ensure that you represent your clients and serve the profession ethically, creatively, and successfully. This Orientation is the first important step in your journey toward the goal of becoming an excellent lawyer.

I can remember my law school Orientation, and so I know that you have a mixture of excitement, concern, and even trepidation. You are not sure exactly what legal education involves, and so we want to get you off on the right foot. Your Orientation has been planned to help prepare you for the full range of the law school experience. This Booklet contains information about the new skills you will need to acquire to facilitate your study of law. It also provides you with case law and sample briefs to help you get started on your law school path. Keep this Booklet handy and look at it occasionally throughout the year. As the year progresses, and your skills and knowledge increase, the content in the Booklet will become more and more meaningful to you. Even better, you will be surprised how quickly this information seems intuitive to you.

Again, welcome to Pacific McGeorge and to the beginning of your journey to becoming an excellent, ethical attorney. I am very excited about the upcoming academic year and to being a part of your journey.

Francis J. Mootz III
Dean and Professor of Law
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I. HOW TO READ AND BRIEF CASES IN LAW SCHOOL

A. THE IMPORTANCE OF BRIEFING CASES

What is a case brief? A case brief is your written summary of the facts, issue, rule, analysis/reasoning, holding, and the conclusion/result of the case that you have read. When you brief a case, you need to read the case several times. Every reading brings new insight and understanding. As you read, take notes. Organize your notes into a case brief.

Why brief cases? Briefing allows students to participate fully in the classroom experience, to navigate through the class discussion, and to be prepared to discuss the particulars of an assigned case in detail. Specifically, briefing helps you in at least five ways. First, briefing clarifies your understanding of the case by breaking the case into its component parts. Second, briefs are indispensable in class for answering questions and tracking discussion. Professors often call on students to recite part or all of their briefs. Even if the professor does not ask you to “brief” the case, having a brief at your fingertips gives you the information you need to answer questions and follow the discussion. Third, the briefs you create over the course of the semester contribute to your global understanding of the course – the “big picture.” Fourth, your briefs become vital components of the course outline you will compile as you study for final examinations. Fifth, briefing cases will help you develop critical reading, legal analysis, and writing skills: skills you will use throughout your legal career.

Briefing is quite difficult at first. Over time, it becomes easier. As it becomes easier, you will know that you are developing your legal skills. These skills are essential to realizing your potential as a law student and a lawyer. Thus, preparing untold numbers of written briefs can be the single most important learning tool available to you.
B. A SAMPLE CASE

Read the following case carefully.

THE PEOPLE, Plaintiff and Respondent,

v.

WILLIAM MARTIN RAVENSCROFT, Defendant and Appellant

Court of Appeals of California, Second Appellate District

198 Cal. App. 3d 639, 243 Cal. Rptr. 827

February 16, 1988

Overruled in part by People v. Davis, 18 Cal. 4th 712, 75 Cal. Rptr. 2d 77 (1998).

STONE, Presiding Justice.

[T]he court below convicted William Martin Ravenscroft of three counts of second degree burglary, among other crimes. Ravenscroft committed the burglaries by surreptitiously stealing and inserting the automatic teller machine (ATM) card of his traveling companion, Barbara Ann Lewis, in two ATM's and punching in her personal identification number, which he had previously noted, on the ATM keypads in order to withdraw funds from her account.

The sole issue on appeal is whether his insertion of Lewis's ATM card in the ATM's, mounted inside the banks and secured flush with the exterior walls of those banks, constitutes a sufficient entry of a building to support a conviction for burglary. We hold that it does and affirm the conviction.

DISCUSSION

It appears that this is a case of first impression. We are called upon to examine the scope of the terms "building" and "entry," for the purpose of California Penal Code section 459, which defines the crime of burglary in this state. Penal Code section 459 states that "[e]very person who enters any . . . shop, . . . store, . . . or other building, . . . with intent to commit grand or petit larceny or any felony is guilty of burglary."

The enactment of Penal Code section 459 in 1872 marked the beginning of the liberalization of proof required to obtain a conviction for burglary. At common law, before 1850, conviction for burglary required proof of the breaking and entering of a dwelling house of another in the nighttime with the intent to commit a felony therein. (See Comment, Criminal Law -- Development of the Law of Burglary in California (1951) 25 So. Cal. L. Rev. 75 (hereafter Law of Burglary).) The enactment of Penal Code section 459, and subsequent amendments thereto, eliminated the need to prove all of the common law elements except entry into a building or other structure with larcenous intent. (See Law of Burglary, supra, at pp. 75-76.) Today, the essential definition of this crime in California
is an unlawful entry into a building or other structure. (Id., at p. 76.) The meaning of these remaining elements has been broadly construed by the courts.

The requirement of entry into a building or structure

Ravenscroft contends the ATM's he used are not buildings and therefore cannot be the subject of a burglary. He argues they are merely machines which are not enclosed on all four sides and which do not have a roof. He points to People v. Gibbons, (1928) 206 Cal. 112 [273 P. 32], as authority for this argument. Gibbons is not persuasive.

In Gibbons, the defendant took some aluminum from a storage bin which was completely open on one side. The open side faced a fenced yard. (People v. Gibbons, supra, 206 Cal. at p. 113.) Even though "... in this state the statutory definition of burglary is much more comprehensive than ... at common law ...," the majority held that this bin did not come within the purview of Penal Code section 459. (Id., at pp. 113-114.)

The Gibbons court contrasted that open storage bin with the burglary of a shoe store showcase in People v. Franco, (1926) 79 Cal. App. 682 [250 P. 698]. In Franco, the defendant broke into a shoe store showcase which lined the walls and sides of an open staircase which led from the sidewalk towards the store entrance. This showcase was outside the store proper and one could not enter it from inside the store. (Id., at p. 684.) The court deemed the entry into the showcase sufficient to support the burglary conviction since the showcase was under the roof of the shoe store and was therefore, in legal effect, a part of the store. (Ibid.; see also People v. Jackson, (1933) 131 Cal. App. 605, 606-607 [21 P.2d 968], in accord, involving a showcase inside of and attached to the building in which it was housed.)

These ATM's are analogous to the showcases in Franco and Jackson. They are firmly affixed and attached to the inside of the bank and are covered by the roofs of the banks. The fact that ATM panels contain slots for ATM cards does not render them completely open on one side, like an open storage bin. (See People v. Gibbons, supra, 206 Cal. 112.) This ATM panel constitutes a part of the wall of the bank, forming an enclosure far more impervious to entry than structures like telephone booths, which also may be the subject of a burglary. (See People v. Miller, (1950) 95 Cal. App.2d 631, 634 [213 P.2d 534]; People v. Brooks, (1982) 133 Cal. App. 3d 200, 204-206 [183 Cal. Rptr. 773], and cases listed therein.)

The requirement of an entry

Ravenscroft further contends that although his insertion of an ATM card into these ATM's activated the process of obtaining money, it does not constitute an entry under Penal Code section 459 since he did not violate the air space of the bank buildings and because he had no control over the card while it was in the machines. We disagree.

The insertion of an ATM card to effectuate larcenous intent is no less an entry into the air space of a bank as would be the use of any other tool or instrument. Although the California Penal Code does not define "entry" for the purpose of burglary, the California courts have found that a burglary is complete upon the slightest partial entry of any kind, with the requisite intent, even if the intended larceny is neither committed nor even attempted. (People v. Walters, (1967) 249 Cal. App. 2d 547, 550-551, [57 Cal. Rptr. 484]; People v. Oseguera, (1984) 163 Cal. App. 3d Supp. 25, 31-32 [210 Cal. Rptr. 182]; also see 3 Wharton's Criminal Law (14th ed. 1980) * 334, p. 205.) By pushing Lewis's card into an ATM's slot, the defendant completed the crime. Further control of the card is unnecessary.
Ravenscroft argues that Walters and Osegueda, supra, should not apply to this case since they involve more traditional violations of air space with more traditional burglars' tools. In Walters, the police caught the defendants perched on the roof of a market next to a vent shaft whose lid had been pried off. The vent covered a shaft leading to a grille which was flush with the ceiling of the market's restroom. Various paraphernalia such as pliers, screwdrivers, a crowbar and rope were strewn about. (People v. Walters, supra, 249 Cal. App. 2d at p. 550.)

Similarly, in Osegueda, the police interrupted the defendants' efforts to bore a hole in the wall of an electronics store after they had removed a section of an outer wall to a café bathroom. A hole saw, hacksaw and a crowbar were nearby (People v. Osegueda, supra, 163 Cal. App. 3d at Supp. p. 31.)

The fact that both Walters and Osegueda involve more traditional methods of burglary is of no moment. The gravamen of burglary is an act of entry, no matter how partial or slight it may be, with an instrument or tool which is appropriate for the particular instance, accompanied by the proper intent. (People v. Walters, supra, 249 Cal. App. 2d at pp. 550-551; People v. Osegueda, supra, 163 Cal. App. 3d at Supp. pp. 31-32.) One can commit burglary even though the instrument in question is used merely to facilitate entry rather than to complete the larceny. (Ibid.) The insertion of a fraudulently obtained ATM card effectuates an entry into a bank's ATM for larceny just as surely as does a crowbar when applied to a vent.

As there is a paucity of California cases which involve an entry analogous to the instant case, we turn to a federal case, United States v. Gaudy, (7th Cir. 1986) 792 F.2d 664, whose facts are sufficiently similar so as to be instructive here. In Gaudy, the defendant attempted to withdraw money from the account of another at a walk-up window facility located a block away from the main bank building by placing a check into the window of the remote facility. As here, Gaudy contended he did not enter the building within the meaning of the statute. The court rejected Gaudy's claim, holding that the statute's language reflected legislative intent to make it a crime to enter any part of a bank building with the intent to steal. (United States v. Gaudy, supra, 792 F.2d at p. 674.) That statute states, in pertinent part: "Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank . . . , with intent to commit in such bank . . . or building, or part thereof, so used, any felony affecting such bank . . . or any larceny - [P] Shall be fined not more than $ 5,000 or imprisoned not more than twenty years, or both." (18 U.S.C. * 2113(a).) Ravenscroft asserts that although placing a check into a drive-up window violates the air space of a bank, the insertion of an ATM card into an ATM does not. We disagree. An ATM housed within a bank is, even more than a drive-up facility located a block from a bank, an arm of that bank building. The judgment is affirmed.

GILBERT and ABBE, JJ., concur.
C. PREPARING A CASE BRIEF

The following discussion of case briefing describes the process of creating a case brief using the Ravenscroft case you just read.

There are no hard and fast rules about the components of a case brief. Experience indicates, however, that most briefs contain the components discussed below. If your brief lacks one or more of these components, ask yourself why.

There is no "one and only one right way" to organize your brief. Some students put their conclusion first, and follow with the remaining components. Other students — probably the majority — organize their brief into seven major sections in the following order: (1) citation, (2) the procedural history of the case, (3) statement of relevant facts, (4) the issue or issues, (5) the court's holding or holdings, (6) the court's analysis or reasoning, and (7) the take away rule.

You are a newcomer to the language of the law. As you read cases, you will constantly encounter words you do not know. Don't worry; that's normal. In a year's time these words will be familiar old friends. For the time being, however, they are complete strangers. Purchase a legal dictionary and keep it handy. Legal dictionaries are also available online. In Ravenscroft, for example, the court discusses the crime of burglary and states, "The gravamen of burglary is . . . " Gravamen? What's that? Don't guess. Look it up. Learning the language of the law is an important part of your first year.

Facts:
Ravenscroft uses traveling companion's ATM card to withdraw money from her account. He had previously noted her PIN.

Procedural History:
Trial court convicted D of 3 counts of 2nd degree burglary

Holding #1:
Where D accesses money in bank via ATM machine, which was attached to the building and shared a common roof, the ATM machine was sufficiently attached to the bank to constitute a part of the "building" for purposes of the code.

Analysis:
Court analogizes ATM to showcases in Franco & Jackson because ATM is, like showcases, firmly attached to inside of bank and it shares the same roof as bank. Contrasts with open storage bin in Gibbons; ATM card slot does not constitute opening on one side. ATM machine more a part of the enclosed structure than telephone booths, which may be the subject of burglary.

Holding #2:
Where D used an ATM card to fraudulently access money of his traveling companion, such use constituted entry for purposes of the penal code because it violated the airspace of the bank and D had no control over card once it was inserted into slot.

Analysis:
Case law holds that even the slightest partial entry constitutes entry, regardless of whether act completed; placing the card into the ATM is sufficient to complete crime. Ct. rejects D's argument that use of card is not "traditional burglar's tool"; as long as tool appropriate for crime and facilitates entry, burglary has occurred. Ct. cites Gaudy, a federal case in which ct. held that D guilty of burglary where he attempted to withdraw $ from victim's account at a walk-up window one block from bank.
SAMPLE B

People v. Ravenscroft

198 Cal. App. 3d 639; 243 Cal. Rptr. 827
(2d Dist. Ct. App. 1988)

Procedural History:  Convicted of second degree burglary.

Significant Facts:  Inserted stolen ATM card into two ATM machines to withdraw funds from account. ATM mounted inside the bank and secured flush with the exterior walls of the bank.

Issue:  Whether inserting an ATM card into the ATM constitutes 1) a sufficient entry and whether 2) an ATM is a building or portion thereof sufficient to support a conviction for burglary, where entry into a building is a required element of the crime.

Holding:  Inserting an ATM card into an ATM which is mounted inside a bank and secured flush with the exterior walls of the bank is a sufficient entry of a building to support a conviction for burglary.

Statute/Law:  CA Penal Code 459 – "every person who enters any . . . shop, . . . store, . . . or other building, . . . with intent to commit grand or petit larceny or any felony is guilty of burglary."

Rule(s):

Building:  People v. Franco - Since showcase was under roof of shoe store it was, in legal effect, a part of the store. People v. Gibbons: Storage bin which is completely open on one side does not constitute a building for purposes of section 459.

Entry:  People v. Walters, People v. Osegueda: Burglary is complete upon the slightest partial entry of any kind, with an appropriate tool or instrument, and with the requisite intent. Once that is accomplished, the intended crime need not be committed nor even attempted. US v. Gaudy: Actual physical entry into the bank is unnecessary to constitute a burglary, insertion of a check into a remote window is sufficient.

Analysis:

Building:  Analogizes ATMs to showcases and distinguishes them from open storage bins. Firmly affixed and attached to insides of banks and covered by their roofs. Part of the bank's wall, thus part of structure. A slot for insertion of cards does not render it open.

Entry:  Analogizes insertion of ATM card to use of tools, checks and other instruments. Insertion of any instrument which is appropriate to aid in either the entry, the commission of the intended crime, or both, is sufficient to constitute an entry.
SAMPLE C

**People v. Ravenscroft**, Cal. App., 1988, p. _____ (fill in casebook page) (Use of stolen ATM card leads to burglary charge.

**Facts:** D Ravenscroft stole friend's ATM card and used it to w/draw $ on two occasions at ATM machine on banks' exterior wall.

**Issues:** Whether the insertion of a stolen ATM card in an ATM, mounted inside the banks and secured flush w/ the exterior walls of those banks, constitutes a sufficient entry of a building to support a burglary conviction.

1) Whether ATM attached to bank's wall is building

2) Whether placing ATM card into ATM slot constitutes entry

**Rules:** Building under burglary statute includes anything firmly affixed and attached to a building that is under the building's roof. The slightest partial entry of any kind by anything designed to facilitate entry is enough.

**Analysis:** California statute defines burglary broadly -- requiring intent, entry, and building. Legislative intent for broad definition of the crime.

**Building:** D argued no building because a ATM open on one side. Relied on **Gibbons** where storage bin open on one side was determined not to be a building. Ct. relies on **Franco & Jackson** for proposition that where under a building's roof and affixed to the building, you have a structure that constitutes a building.

**Entry:** D contended no entry because only had ATM card go into machine -- did not violate bank's airspace and wasn't under D's control while in ATM. Court rejects noting entry committed by partial entry of any kind. Relies on **Walters** and **Osegueda** where D's use of burglar tools enough for entry. Court states that anything used to facilitate entry is enough to be partial entry. Analogizes to fed. case - - **Gaudy** (D places check into drive-up window = entry) -- for broad definition of entry.

**Conclusion/Holding:** D properly convicted of burglary as there was both a building and an entry.
E. DISCUSSION OF CASE BRIEFS

Examples A, B, and C are all good student briefs. None of them is perfect, but each is a good basis for both class discussion and outlining, and each shows the writer understands the reasoning of the court. Example A is an example of one format for writing a case brief. Leaving space in one column for class notes is an easy way to make sure that you benefit from class discussion. Often, students find that, although they thought they understood the case while reading it, the class discussion increases their understanding or shows them where they misinterpreted the case. Having a space in which to include class notes immediately next to the pertinent part of the brief encourages you to take good notes in class and to think after class about how your understanding of the case has changed and grown because of that discussion.

As for the substance of A, one weakness is that the brief does not contain a statement of the issues in the case. Being able to spot an issue and phrase it is a vital skill that you will be developing this year, so be sure to include an issue statement in each brief you write. On the other hand, notice that the writer includes not just the names of the cases that the court cited in the analysis of the "building" element of the statute, but also the reason why the "buildings" in those cases are like the ATM in this case. The writer will understand the analysis in this case whenever he or she comes back to review the brief and will not have to consult the case again for that purpose. In fact, the brief could omit the names of the cases cited without any loss of clarity. You will rarely, if ever, need to know the name of a case cited in a case in your text; indeed, you will rarely, if ever, need to remember the name of the case in your text itself, so long as you remember the analysis of those facts and can apply that analysis to a completely different set of facts.

In both examples B and C, the writers do a good job of recognizing in the Issue section that there were two elements of the crime at issue, not just one. The court needed to find that both elements of the statute had been met in order to affirm the decision of the trial court; had the court held that the ATM was not a building or inserting the card was not an entry, it would have had to reverse the decision below. Therefore, these two briefs are very useful because they incorporate the two elements as separate elements, both of which needed to be met.

Example B is superior to example C because B quotes the statute; however, C is superior to B because, alone of all the briefs, C includes the court's opening analysis that the statute is meant to be construed broadly. As we noted above, this belief that the statute was to be construed broadly was not shared by the later Davis court, which led to the partial overruling of Ravenscroft. Both B and C include enough of the court's reasoning for the writer to be able to apply that reasoning to a new set of facts. The fact that example B includes the names of the cases cited in Ravenscroft and example C does not include them makes no difference; each of the briefs includes the analogous facts and the reasoning of the Ravenscroft court. Therefore, if including the names of cases cited in the case you are briefing helps you remember the facts and reasoning, by all means include those names. On the other hand, if you can remember the facts of the cited cases without the case names, don't take the time to include them.

Compare the holdings given in both B and C. Here is one place where B is superior to C. The holding stated in B relates the law to the specific facts of the case, which is what a holding should do. In contrast, the holding stated in C is less complete and concentrates more on the bottom-line question of burglary, which is not useful. The writer of B can take this statement of the holdings in the case and can use that statement as the basis for the principles of law for which Ravenscroft stands. Being able to derive a principle of law from a case is one of the primary skills that lawyers must possess, so it pays to begin developing that skill with your very first briefs and to continue to develop it throughout the year in all of your briefs.

One final word about these briefs: an element of a good brief that is missing from all of them is the grounds on which the loser in the court below appealed that decision. This element is missing because the judge who wrote Ravenscroft did not include the grounds for appeal in the opinion. You should always look carefully to find the
grounds for the appellant's appeal because the grounds for appeal affect the court's analysis and, ultimately, the principle of law for which that case stands. Almost all the cases you will read this year are appellate cases in which appellate courts have reviewed the actions of trial courts. All appeals are based on arguments that the trial court judge committed some error of law. Perhaps the judge admitted evidence that the defendant believes should not have been admitted. The analysis of the case will revolve around that one piece of evidence, not about the verdict against the defendant, and the principle for which the case will stand will be a principle of evidence. Perhaps the judge granted a motion for summary judgment, but the losing party believes there were unresolved questions of fact that should have prevented the judge from granting the motion. The analysis of the case will revolve around those specific questions of fact, not about whether the plaintiff or the defendant should win the case. The principle of law for which the case stands will tell you something about what facts do or do not satisfy a particular element of the law. Thus, knowing the grounds for the appeal is vital to understanding how and why the court reasoned as it did and to determining the precise principle of law for which a case stands.

Remember, these cases (and briefs) will become your tools, your arguments, to analyze future cases and hypothetical situations. You will be expected to be able to analyze future issues, both on law school exams and in practice, using the same legal principles used and developed in the cases. This kind of analysis is very technical, so do not make the mistake of reading these cases as though they were simply literature.
II. ASSIGNMENT FOR ORIENTATION CLASS

The only Orientation session you need to prepare for in advance is the Legal Skills session on August 14, 2014.

For this class, please review the materials on pages 03-13. Please also read the case *Conti v. ASPCA*, which is reproduced on the next page. After reading the *Conti* case please try to formulate a case brief by referring to the instructions and samples provided on pages 09-11.

Additional handouts will be provided in class.
Animals

lost parrot--based upon its unique characteristics, parrot found by plaintiff held to be one that defendant ASPCA lost--as parrot was domesticated, true owner entitled to its return from any person who found it.

((1)) A parrot, used by defendant ASPCA in various educational exhibitions presented to groups of children, escaped. Plaintiff found the parrot, took it into his home and called the ASPCA for advice as to care, whereupon the ASPCA came and removed it. In an action in replevin, the complaint is dismissed. Based upon the bird’s unique size, color and habits, the parrot is found to be the one that escaped from the ASPCA.

((2)) The parrot was a domesticated animal, subject to training and discipline and the true owner is entitled to its return as against any person who finds it. The rule for wild animals, that its owner has only a qualified right of property which is wholly lost when it escapes from its captor with no intention of returning, is inapplicable.

APPEARANCES OF COUNSEL

John J. Howley for plaintiff
Thacher, Profitt & Wood (Raymond Hughes of counsel), for defendant

OPINION OF THE COURT

Martin Rodell, J.

Chester is a parrot. He is fourteen inches tall, with a green coat, yellow head and an orange streak on his wings. Red splashes cover his left shoulder. Chester is a show parrot, used by the defendant ASPCA in various educational exhibitions presented to groups of children.

On June 28, 1973, during an exhibition in Kings Point, New York, Chester flew the coop and found refuge in the tallest tree he could find. For seven hours the defendant sought to retrieve Chester. Ladders proved to be too short. Offers of food were steadfastly ignored. With the approach of darkness, search efforts were discontinued. A return to the area on the next morning revealed that Chester was gone.

On July 5, 1973 the plaintiff, who resides in Belle Harbor, Queens County, had occasion to see a green-hued parrot with a yellow head and red splashes seated in his backyard. His offer of food was eagerly accepted by the bird. This was repeated on three occasions each day for a period of two weeks. This display of human kindness was rewarded by the parrot’s finally entering the plaintiff’s home, where he was placed in a cage.

The next day, the plaintiff phoned the defendant ASPCA and requested advice as to the care of a parrot he had found. Thereupon the defendant sent two representatives to the plaintiff’s home. Upon examination, they claimed that it was the missing parrot, Chester, and removed it from the plaintiff’s home. *62

Upon refusal of the defendant ASPCA to return the bird, the plaintiff now brings this action in replevin.

The issues presented to the court are twofold: One, is the parrot in question truly Chester, the missing bird? Two, if it is in fact Chester, who is entitled to its ownership?

The plaintiff presented witnesses who testified that a parrot similar to the one in question was seen in the neighborhood prior to
July 5, 1973. He further contended that a parrot could not fly the distance between Kings Point and Belle Harbor in so short a period of time, and therefore the bird in question was not in fact Chester.

The representatives of the defendant ASPCA were categorical in their testimony that the parrot was indeed Chester, that he was unique because of his size, color and habits. They claimed that Chester said “hello” and could dangle by his legs. During the entire trial the court had the parrot under close scrutiny, but at no time did it exhibit any of these characteristics. The court called upon the parrot to indicate by name or other mannerism an affinity to either of the claimed owners. Alas, the parrot stood mute.

Upon all the credible evidence the court does find as a fact that the parrot in question is indeed Chester and is the same parrot which escaped from the possession of the ASPCA on June 28, 1973.

The court must now deal with the plaintiff’s position, that the ownership of the defendant was a qualified one and upon the parrot’s escape, ownership passed to the first individual who captured it and placed it under his control.

The law is well settled that the true owner of lost property is entitled to the return thereof as against any person finding same. (Matter of Wright, 15 Misc 2d 225; 36A C. J. S., Finding Lost Goods, § 3.)

This general rule is not applicable when the property lost is an animal. In such cases the court must inquire as to whether the animal was domesticated or ferae naturae (wild).

Where an animal is wild, its owner can only acquire a qualified right of property which is wholly lost when it escapes from its captor with no intention of returning.

Thus in Mullett v. Bradley (24 Misc. 695) an untrained and undomesticated sea lion escaped after being shipped from the west to the east coast. The sea lion escaped and was again captured in a fish pond off the New Jersey coast. The original owner sued the finder for its return. The court held that the sea lion was a wild animal (ferae naturae), and when it returned *63 to its wild state, the original owner’s property rights were extinguished.

In Amory v. Flyn (10 Johns. 102) plaintiff sought to recover geese of the wild variety which had strayed from the owner. In granting judgment to the plaintiff, the court pointed out that the geese had been tamed by the plaintiff and therefore were unable to regain their natural liberty.

This important distinction was also demonstrated in Manning v. Mitcherson (69 Ga. 447, 450-451; Ann. 52 A. L. R. 1063) where the plaintiff sought the return of a pet canary. In holding for the plaintiff the court stated “To say that if one has a canary bird, mocking bird, parrot, or any other bird so kept, and it should accidentally escape from its cage to the street, or to a neighboring house, that the first person who caught it would be its owner, is wholly at variance with our views of right and justice.”

The court finds that Chester was a domesticated animal, subject to training and discipline. Thus the rule of ferae naturae does not prevail and the defendant as true owner is entitled to regain possession.

The court wishes to commend the plaintiff for his acts of kindness and compassion to the parrot during the period that it was lost and was gratified to receive the defendant’s assurance that the first parrot available would be offered to the plaintiff for adoption.

Judgment for defendant dismissing the complaint without costs.

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MEMORANDUM

To: All Entering First-Year Students

From: The First-Year Faculty

Re: Our Basic Expectations

1. **Introduction:** Welcome to law school! You will find legal education quite different from your undergraduate experience in terms of teaching methods, study materials, pre-class preparation, class attendance and class participation. All of this will become apparent to you as your first year experience unfolds. Why is law school different? It is different because the goals of legal education are different from those of most undergraduate studies.

   Perhaps the most basic difference between law school and undergraduate school is that in law school you are being prepared for a specific task: legal representation of clients. In three or four years you will be called upon to use the knowledge and skills you have developed in law school to protect your clients’ rights. Clients will entrust you with the task of protecting their lives, liberty, families and property. It will be your responsibility to do so as well as you can. In undergraduate school you could be concerned only with your own needs. In law school you must be concerned not only with your own needs, but with your future clients' needs. You and your clients both will benefit from you getting the most out of law school.

   As faculty members who have taught first year courses for years, we share a joint understanding of the basic expectations for student performance which are discussed below. We want you to get the most out of your investment in a legal education by helping you maximize your performance as a law student. Our expectations are based on what we have learned by experience as to how that can be done.

2. **Attendance:** Regular attendance in classes is **mandatory**; it is also **crucial** to success in law school. Regular attendance means attending **every class session.** The only exception to this rule of regular attendance is illness or an unforeseen emergency that makes attendance impossible. Under rules and regulations adopted by the Faculty, we are required to consider your class attendance record in assigning grades. In addition, a record of poor attendance may be a basis for denying a student the right to take examinations in the course, leading to a failing grade. We have attached a copy of the relevant rules for your review. Experience teaches us that there is no substitute for class attendance. Your attendance and active involvement in class discussion form a central part of the learning process in law school for you and your classmates. Most first year classes are taught largely by use of the "Socratic" method, which involves a dialogue between the professor and a student or students based on the materials assigned for class. This process is essential to both understanding substantive legal principles and developing your skills in critical analysis and argument.

3. **Punctuality:** The first few minutes of class are often the most important. You owe it to yourself to be on time. And you owe it to your professors and classmates not to create a disturbance by arriving late. Regular attendance means punctual attendance.

4. **Class Preparation:** In law school, class preparation is **essential** to learning. You cannot understand what is going on in class if you are not fully prepared. Preparation requires careful reading of the assigned materials (often several times) and reflective thinking about the meaning and significance of those materials. First year classes are taught primarily by the case method. Appellate decisions in actual cases are considered and discussed. To understand that discussion, you must have a firm grasp of the decision under consideration. How? You must "brief" the case. Briefing will be explained to you during the orientation sessions for first year students. Briefing takes time and it will...
be tempting to discontinue briefing at some point. **DON'T.** It is through briefing cases that you will be able to understand and participate in class discussion.

5. **Class Participation:** We expect that you will be fully prepared to participate actively in class and will actively participate in class when called on. You will be called upon! This experience is important to your development as a lawyer and to your grade. We also expect that you will closely follow the class discussion at all times. Much of the learning process depends on your engagement in the dialogue between the professor and other students. When your professor asks a question of another student, we expect that you will ask yourself how you would answer that question and compare the answer given with your own.

Each professor has his or her own opinion regarding the advantages and disadvantages of using laptops in the classroom as well as his or her own policy allowing or disallowing laptops in class. All professors agree, however, that if you choose to use a laptop during class, you use it only for class purposes and not to engage in any activity (internet, e-mail, solitaire, etc.) that would divert your attention and/or distract the other students in class.

6. **Questions and Comments:** Questions and comments by students can be very helpful to class discussions. In law school there are rarely "stupid questions." If you don't understand, there is a good chance the other students in the class also don't understand. If you have a question or a comment which you believe will improve the discussion or make it more understandable, we encourage you to volunteer.

7. **Faculty Office Hours:** All of us have regular office hours posted outside our offices. We will make every effort to honor these hours by being available at the times indicated. **Take advantage of this opportunity.** If you are confused by what has gone on in class or just unable to understand a particular area after carefully reviewing the assigned materials and your class notes, visit your professor. Don't wait until the end of the semester. On the other hand, don't seek help before the subject is considered in class.

8. **Policies of Individual Professors:** You may be given further information from some of us about how we interpret the rules concerning attendance, class preparation, class participation and other subjects, and what consequences will flow from violations of those rules. Do not make the mistake of assuming, however, that a professor's failure to provide further enlightenment about how he or she administers the rules indicates any disregard for those rules. All of us honor and enforce these rules, as we must. **Failure to attend class regularly, prepare adequately for class, or participate satisfactorily in class discussions when called on will affect your grade.**

9. **Respect:** We expect our students to respect each other and their professors sufficiently to be civil to them, to listen attentively to them and respond appropriately, and to be sensitive and accommodating to the wide range of feelings and perspectives that result from the diversities in our faculty and student body. We also expect respect for principles of honesty and academic freedom, many of which are embodied in the student honor code with which you should become familiar.

We sincerely hope that you enjoy your law school experience and derive great benefit from it. We look forward to getting to know you all over the year.
301: McGeorge School of Law subscribes to the policy of the American Bar Association's Section on Legal Education which considers student preparation and attendance essential for a legal education.

302: Each professor shall consider a student's class attendance in assigning the student's final grade in a course. In flagrant instances of repeated absences, a professor may notify the Associate Dean for Academic Affairs that, by reason thereof, the professor is considering denying the student the right to take the final or other examination in a course; thereupon the Associate Dean shall notify the student in writing that unless the student's attendance after receipt of the notice is deemed satisfactory, he/she may be denied the right to take the final or other examination in the course; if the student's attendance following receipt of the notice is deemed unsatisfactory by the professor, the professor may with the concurrence of the Associate Dean deny the student the right to take the final or other examination in the course.

303: A professor may consider a student's preparation, participation and performance in assigning his/her final grade.
A 1L’s Glossary of Useful Terms

**BRIEFING A CASE** (BREEF-ing UH KĀS) v. Preparing an analytical summary of a judicial opinion, usually in preparation for class discussion or in preparation for law school exams. Formats for case briefs vary significantly and can be quite idiosyncratic. Typically, however, the format will follow the IRAC method. (See IRAC, infra. See also INFRA, infra.)

**CASE METHOD** (KĀS MIH-thud) n. The primary method of teaching law in law schools in the United States. Pioneered at Harvard Law School by Christopher Columbus Langdell, it is based on the idea that the best way to learn U.S. law is to read the actual judicial opinions that become the law under the rule of stare decisis (see STARE DECISIS, infra), a principle of Anglo-American common law origin. (See COMMON LAW, infra.) Especially in first-year courses, U.S. law professors typically use assigned cases from published casebooks (see CASEBOOK, infra), or from their own materials, often coupled with a Socratic method of teaching (see SOCRATIC METHOD, infra), to teach the law. The case method was later adapted by Harvard Business School and other business schools. In most other countries, law school still involves lecture-style study and analysis of abstract legal rules.

**CASEBOOK** (KĀS-boohk) n. A bound collection of highly edited, illustrative case decisions in a particular area of law, together with brief notes that summarize the holdings of other cases further refining the rule, raise problems with the reasoning of the illustrative case, or provide other useful information. A CASEBOOK should not be confused with a TREATISE, which is a scholarly textbook discussing and analyzing a particular area of the law, or a STUDY AID, which is a brief book or pamphlet that offers simplified explanation of a particular area.

**CAUSE OF ACTION** (CAYZ O V AK-shun) n. Sometimes called a claim, a cause of action is a set of facts sufficient to justify a court in awarding a “plaintiff” money, property, or the enforcement of a right against a “defendant.” (See also REMEDY, infra.) The name given to some typical causes of action may be a phrase referring to the legal theory on the basis of which the plaintiff brings suit (e.g., “breach of contract,” “battery,” “false imprisonment”).

**COMMON LAW** (CĀ-min LAW) n. Law developed by individual judges or panels of judges through decisions in cases before them, called “case law,” rather than through legislation (statutes) or administrative regulations. (See COMMON LAW SYSTEM, infra; OPINION, COMMON LAW, infra)

**COMMON LAW SYSTEM** (CĀ-min LAW SIS-tum) n. A legal system that treats case decisions by individual judges or panels of judges as binding on future cases with similar facts and legal issues. The system exists in countries with an Anglo-American legal history and tradition (e.g., Australia, England, Ireland, New Zealand, the United States of America). (See COMMON LAW, supra; OPINION, COMMON LAW, infra; SUPRA, infra.)

**DAMAGES** (DAM-i-jiz) n. A type of legal relief in the form of a monetary award, as compensation for a loss or injury, against a defendant for liability under various claims or causes of action. (See CAUSE OF ACTION, supra.) Different areas of law provide for various types of available damages including, e.g., compensatory damages, exemplary damages, punitive damages, etc.

**DICTA** (DIK-tah; Latin, pl. of dictum; from dicere, to speak) n. A statement in a court opinion that extends beyond the issue raised by the case before the court. As such, dicta are not binding under the principle of stare decisis. (See STARE DECISIS, infra; OBITER DICTA, infra.)

**EQUITY** (EK-wi-tee) n. The application of general principles of justice and fairness to relieve, correct, or supplement remedies available in a court of law. (See, e.g., ESTOPPEL, infra.) The Chancery Court in England developed a separate system of equitable principles and procedure, alongside the common law system. The typical remedy in equity is the injunction. (See INJUNCTION, infra; REMEDY, infra.) The Federal Rules of Civil Procedure merged the separate systems of law and equity into one form of action, the civil action. FRCP 2. A few states still retain the separate law and equity systems, as well as separate law and equity courts.

**ESTOPPEL** (eh-STOP-ul; fr. OF estoupail, “stopper plug;” also estopper, “stop up,” “impede”) n. Term referring to one of a series of legal and equitable doctrines. The historical example was estoppel in pais, a doctrine of equity (see EQUITY, supra) that precluded a person from denying or asserting anything to the contrary of what he or she had asserted to be true by his/her own deed, acts, or representations to another person, either express or implied. By extension, courts have also developed distinct doctrines, for example, promissory estoppel, an alternative to contract as a basis for enforcing a promise. (See PROMISSORY ESTOPPEL, infra.)

**HOLDING** (HÔL-ding) n. The determination of or answer to a question of law by a judge or panel of judges, based on the issue presented in a particular case. More familiarly known as the ratio decidendi. (See RATIO DECIDENDI, infra.)

**INFRA** (IN-frã; Latin infra, below) adv. Referring to something discussed later. (See also SUPRA, infra.)

**INJUNCTION** (in-JUNK-shun) n. Equitable remedy in the form of a court order requiring a party to do, or to refrain from doing, certain acts. A party subject to an injunction who fails to adhere to the injunction faces civil or criminal penalties and may have to pay damages or accept sanctions for failing to follow the court’s order. (See EQUITY, supra.)

**IRAC** (EYE-rak) An acronym that stands for: Issue, Rule, Application, and Conclusion. It is a methodology or checklist for organizing legal analysis, especially in answering complex hypothetical questions on law school exams. Proponents of IRAC methodology argue that it reduces legal reasoning to the application of a formula that helps organize your legal analysis so that it is clear and easy to follow. Opponents of IRAC methodology argue that it reduces legal reasoning to the application of a formula that tends to oversimplify your legal analysis so that it is dull and lacking in important detail. Both views are correct; IRAC is a useful tool for organization—if you don’t use it as a substitute for thinking. (Not to be confused with the Insecticide Resistance Action Committee (IRAC), formed in 1984 as a specialist technical group to prevent or delay the development of resistance in insect and mite pests.)

**IRAQ** (ee-ROK; eye-RAK; Arabic: Jt) J Al-Iraq,) n. Garden spot of Western Asia, home to continuous successive civilizations since the 6th millennium BC. (Not to be confused with IRAC, supra.)
**Jurisdiction** (joor-iss-DIK-shun) n. From the Latin words iuris meaning "of law" and dicere meaning "to speak." Speaking of law, jurisdiction is the authority that a legal body or a political leader has to deal with all or specified legal questions or to create new laws or legal rules (legislative jurisdiction), to issue rulings and opinions, and make pronouncements on legal matters (judicial jurisdiction), or to administer and enforce laws (executive or administrative jurisdiction). The term may also be used to refer to a specific geographical area or subject matter to which such authority applies.

**Obiter dicta** (OH-bit-ter DIK-tah; Latin, pl. of obiter dictum; from dicere, to speak or say, "said by the way") n. Statement made in a judicial opinion that does not form a necessary part of the court's decision, but is introduced into the opinion by way of illustration, analogy or argument. As compared with the expression dicta (see DICTA, supra), obiter dicta is really, really beyond the issue raised by the case before the court.

**Opinion, common law** n. Written decision of a judge or panel of judges in a case, typically with reasons for the decision and legal analysis of past cases raising similar issues or facts. In a country with an Anglo-American legal history and tradition ("common law tradition"), such opinions are considered "precedents" that bind all future judges presiding over similar cases or issues. (See CASEBOOK, supra; COMMON LAW, supra. See also SUPRA, infra.)

**Promissory estoppel** (PRÄ-miz-sor-ree eh-STOP-uhl) n. A doctrine of contract law that provides an alternative to an exchange of promises or "consideration" as a basis for enforcing a promise. The doctrine is sometimes referred to as detrimental reliance. In 1932, the American Law Institute memorialized the doctrine in § 90 of the Restatement of Contracts, which states that "[a] promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." The doctrine was continued in Restatement (Second), but without the requirement that the detriment be "substantial." (See also ESTOPPEL, supra.)

**Ratio decidendi** (RAH-tee-oh DEK-ee-DEN-dee) n. Latin phrase meaning "the reason for the decision." It is the legal explanation given by a judge or panel of judges in an opinion for the decision that the court has made in a case. (See HOLDING, supra; see also SUPRA, infra.)

**Remedy** (REM-ee-dee) n. Relief sought from a court by someone (the "plaintiff") claiming an injury by another person (the "defendant"). Typical remedies in U.S. law are damages (see DAMAGES, supra) and injunctive relief (see INJUNCTION, supra).

**Stare decisis** (STAR-ay duh-SESS; STAR-ee-dee-SYE-siss; from Latin maxim Stare decisis et non quieta movere ("stand by decisions and do not disturb the undisturbed")) Legal principle under which judges are obliged to respect the precedents established by prior decisions. The principle is considered a defining characteristic of the common law system. (See COMMON LAW, supra. See also SUPRA, infra.)

**Tort** (tort; French, tort, "mischief," "injury," "wrong;" Latin, tortus "twisted") n. The area of common law dealing with civil wrongdoings, as distinct from a crime. A person injured by another's wrongful act may be able to use tort law to receive damages (i.e., monetary compensation) from the person responsible or "liable" for the injury. Major categories of torts are intentional torts (where the wrongdoer must be shown to have acted with some intention to act), negligent torts (where the wrongdoer must only be shown to have acted without the carelessness ordinarily expected in the circumstances), and strict liability torts (where the wrongdoer must only be shown to have done the injurious act). Not to be confused with torte. (See TORTE, infra.)

**Torte** (TORT-uh; German, Torte; Italian, torta) n. Cake, Central European in origin, made primarily with eggs, sugar, and ground nuts instead of flour, although some variants include bread crumbs or some flour. The best known tortes include the Austrian Sachertorte and Linzertorte, the German Schwarzwälder Kirschtorte and the Hungarian Dobostorte. Other well-known European confections referred to as tortes include the French Gâteau St. Honoré. A common element in most tortes is sweet icing, but exceptions include French tortes such as Gâteau Mercédès and Gâteau Alcazar. If you have occasion to participate in the McGeorge Summer Program in Salzburg, Austria, you may sample most of these tortes at one of the many Konditoreien and Café (or Kaffeehäuser) throughout the city.