

# Briefing and Synthesizing Cases

To understand case law, a lawyer must read and interpret the written decisions of judges. The lawyer looks for cues from the language of the opinion, evaluating the meaning and significance of each cue and synthesizing the results. Thus, the lawyer creates an interpretation that synthesizes the facts, the result, and the judge's explanation of that result. One can even say that a lawyer "constructs" the law through this interpretive process. The starting point for learning this interpretive process is the case brief.<sup>1</sup>

## I. INTRODUCTION TO CASE BRIEFING

A case brief is a method for reading, analyzing, and making notes about a case. Formats and preferred methods for case briefing vary widely, partly because case briefs are personal study tools. People process information differently, so they develop personalized study methods that best accommodate their own learning styles.

Briefing formats differ also according to the legal task to be performed. When you brief a case for your torts class, your most immediate goal is to be ready to answer classroom questions about the case. Your torts professor might have given you a format to use, or you might be able to devise your own format based on your observations of the kinds of questions your professor tends to ask.

When you brief cases for a legal writing assignment, however, your purpose is different in several ways. First, you have a hypothetical client with a set of facts and a specific legal question to answer. Having a discrete task means you can focus your case brief on the aspects of the case most applicable to your client's facts. Second, you will be reading many cases on a particular legal point, not just one or two. Your assignment will require you not only to understand the case you are reading, but also to understand how it relates

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1. The term "brief" is also used to refer to a formal court document a lawyer submits to a judge to advocate for a favorable ruling in a case. A case brief often is called simply a "brief," so some confusion of terminology is possible. Usually, though, the context will clarify the meaning.

to a number of other cases on the same point. This broader task requires you to notice additional features about the case. Third, you will be writing a document (perhaps an office memo or a memorandum of law) describing the case and referring to its language. Therefore, you will need to be able to find the case again, and you will need to take more careful notes about the parts you anticipate describing in your office memo or memorandum of law. These notes will save you time when you are writing, and they will save you from committing plagiarism.<sup>2</sup>

The following section sets out a suggested format for briefing the cases you read as part of your legal writing assignment. You might find that much of this format also works well in your other courses. The key is to remember that case briefing is a personal study tool, so adapt the format freely to fit your own learning style and your particular analytical task.

## II. A FORMAT FOR CASE BRIEFING

Read the case through once before you start to write, perhaps underlining or highlighting a bit. Then read the case again, this time making the following notations:

### CASE BRIEF

1. Case Name, Court, Citation, Date
2. Facts
3. Procedural History
4. Issue(s)
5. Applicable Rule(s) of Law
6. Holding(s)
7. The Court's Order
8. Reasoning
9. New Information
10. Questions, Comments, and Speculations

**Case Name, Court, Citation, Date.** You will need to know the name of the court and the date so you can examine how this case fits with other cases and gauge its precedential value for your assignment. Also, correctly recording these pieces of information during your research stage will save you time and frustration when you start to write.

**Facts.** Describe in your own words the facts of the case. You need include only the facts that pertain to the legal issues relevant to your assignment. For example, if the case concerns a dispute over whether a person revoked her will

2. See Chapter 1, section IV.

before she died, normally you will not need to include facts about what property she owned or about the cause of her death. You would include those facts only if they should pertain to the question of whether she had revoked her will.

**Procedural History.** The procedural history is the story of the case's progress through the litigation process. If the case is on appeal, include the procedural posture of the trial court decision being appealed, such as a decision on a motion to dismiss, a motion for summary judgment, some other kind of motion, a jury verdict, or a judgment after a bench trial.

**Issue(s).** The issue is the legal question the opinion resolves. Usually, the opinion tells you how the court thought the governing rule of law applied to the facts of that case, so you can state the issue in those terms. You can use either a question or a phrase beginning with "whether." Here is an example of an issue statement:

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Can a testator effectively revoke a will by marking a large "X" across only the first page of a five-page will and not signing or initialing the "X"?

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Focus on the part of the governing rule that actually was at issue in the case. For instance, assume the case concerns a dispute over whether a testator had revoked her will before she died, as in the issue statement above. The parties were before the court to find out whether there is a valid will, but an issue statement that broad would not help you isolate the precise point on which this larger question turned: whether the existing will had been revoked.

Some opinions decide only pure questions of law<sup>3</sup> and do not apply law to facts. In such a case, the issue statement simply poses the legal question the court answered, for example:

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Whether Illinois law allows recovery for the wrongful death of a fetus.

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If the issue relates to how a term in a statute will be defined or applied, your brief should identify the statutory language at issue. A good place to do that is here in the issue statement, for example:

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Whether the "nighttime" element of the burglary statute is satisfied if the entry occurred 20 minutes before sunrise.

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**Applicable Rule(s) of Law.** This section will help you begin to understand the legal principles (rules of law) governing your issue. A rule of law is a

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3. See Chapter 2, section II.

statement of the legal test the court will apply to resolve a legal issue. Here is an example of a governing rule of law for deciding the will revocation issue:

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To revoke a will, a testator must have the intention to revoke and must take some action that demonstrates that intent.

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The court may state some other legal rules to provide context for the issue it actually will decide. Feel free to note these also. That legal context will help you understand the law governing your assignment, and when you begin to write your memo or brief, you might need to provide the same kind of context for your reader. If so, that information will be readily available in your case briefs.

**Holding(s).** As we saw in Chapter 2, the holding is the court's decision on the particular legal issue plus the important facts—the facts that seem to make the most difference for the result. If your issue statement included a sufficient description of the key facts, you need not repeat those facts in the holding statement. If not, include facts in the statement of the holding. The combination of your issue statement and your holding statement should include the key facts and the court's decision on the legal issue. For example:

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A testator can effectively revoke a will by marking a large "X" across only the first page of a five-page will and not signing or initialing the "X" if the other evidence of the testator's intent is sufficiently strong.

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Notice the difference between a holding and the governing rule of law. The rule sets out the legal test the court will use to decide the case. The holding states the court's conclusion about whether the facts of the case meet that legal test.

If the issue is a pure question of law, you need not include the facts unless the answer to the question depends on a certain set of facts. For instance, if the issue is "Does State X allow recovery for the wrongful death of a fetus?" (a pure question of law), the answer (holding) might include facts: "Recovery for the wrongful death of a fetus is permitted if the fetus was medically viable at the time of the injury."

**The Court's Order.** After deciding the legal issue, the court either will take some action itself or will order that a person or another court take some action. For instance, a trial court might grant or deny a motion or might order the clerk to enter a judgment. An appellate court might affirm or reverse the lower court's ruling and might remand the case to the lower court for further proceedings. Note the legal result of the court's decision under this category of your brief.

**Reasoning.** Usually, a court uses its written opinion to explain the reasons for its decision. These reasons will be important to you as you work on

your assignment. They will give you important clues about how the court might decide future cases, and they can provide you with effective arguments for your client. Chapter 11 identifies the major forms of legal reasoning, but whether you use those names or not, note in your case brief the court's reasons for its decision.

Pay particular attention to the court's *policy* rationales. Policy rationales justify a decision based on what result will be best for society at large. Courts realize that their rulings will affect the way people act in the future. They want to apply the law in ways that will encourage desirable societal results or discourage undesirable results. For instance, a court might adopt a particular legal rule because that rule will reduce the number of disputes resulting in litigation or because it will encourage people to think more carefully before entering into a contract. Including policy statements in your brief will help you understand whether and how the court's decision might apply to future cases. The opinion is likely to apply to future cases that raise these same policy concerns.

**New Information.** This category is optional, but it can be especially helpful when you are working on a legal writing assignment. It provides a place to record what you learned about the rule or its application that you did not know before you read this case. Notice especially anything about this case that could apply in some way to your assignment. Perhaps this opinion modified or expanded the rule. Perhaps the court discussed a part of the rule you have not seen discussed so thoroughly before. Perhaps the court phrased the governing rule in a way particularly helpful to your client's facts. Perhaps the opinion explains the historical developments in this area of the law. You will notice more information in the opinion if you consciously look for new information, and you will be better able to use that information in your assignment if you have made note of it in your case brief. Here are some tools that will help you find new information about a rule:

1. *Notice what the court said about the rule.* In most opinions, the author gives the reader some explanation of the rule before applying it to the facts of that particular case. Here, the author's primary goal is to tell the reader about the rule. Begin with this part of the opinion. The court's explicit explanation of the rule gives you the most basic new information from the case.

2. *Notice how the court applied the rule.* After you have examined carefully what the court *said* about the rule, look at how the court *applied* the rule to the facts before it. You might expect an opinion to state and explain a rule of law and then to apply that rule of law exactly as the opinion just explained it. Often, that is exactly what happens. But sometimes the court's *application* of the rule differs from the court's explanation of it. One of the best ways to understand the rule is to observe how the court applied it. A court "holds" what it *does*, not what it *says*.

3. *Notice how the court did not apply the rule.* After you have observed how the court applied the rule, ask yourself how the court did *not* apply it. A court's unexplained silence rarely can be characterized as a binding rule of law. However, judicial silence can have persuasive value if the most likely reason for the silence is that the ignored topic is not a part of the relevant legal analysis. For instance, in a child custody case, if the facts state that one spouse is Christian and one spouse is Moslem but the opinion does not mention

religious differences, you might be able to infer that religious differences will not be relevant to custody decisions.

After all, your goal here is to figure out what rule was governing the judge when deciding the case and how that rule would apply to your client's facts. If you are wondering whether a certain fact true of your client's situation would affect the outcome, ask yourself whether that kind of fact seemed to affect the judge's ruling in the earlier case.

4. *Notice any facts the court emphasized.* When a court sets out the facts or applies the law, it sometimes will emphasize a particular fact. Usually, the court's explanation of the law will tell you why the court found that fact important. However, sometimes a court will emphasize a fact without explicitly explaining the fact's significance. Even if the court did not directly explain whether or why that fact was important, the opinion's emphasis on it implies that the judge found it legally significant.

5. *Find out what leading commentators have said about the case.* Case opinions actually make law, but a wealth of secondary authorities exist. As we saw in Chapter 2, secondary authorities are explanations of the law written by legal commentators. Secondary authorities have persuasive value, depending on factors such as the reputation of the author, the level of detail of the discussion, and the recency of the writing. If you are working with a well-known and influential case, commentators might have discussed it. Finding secondary authority can help you understand the case and its significance for your assignment.

**Questions, Comments, and Speculations.** Finally, note any questions, speculations, or thoughts of your own about the case and how it might apply to your assignment. It is common to have passing thoughts and questions as you read a case. These thoughts, speculations, and questions are the first steps toward a clearer understanding of the applicable law and how it might apply to your client. If you do not record them, you are likely to forget them.

## A Sample Case Brief

A sample case brief appears in Appendix E, along with the case itself. Read the case and the case brief.

### EXERCISE 3- 1

Prepare a case brief for a case your professor has selected. Bring your brief to class, and be prepared to discuss it. If your professor has not assigned a case, brief *Lucy v. Zehmer*, found in Appendix E.

## III. SYNTHESIZING CASES

Case briefing will help you understand a single case, but a lawyer faced with multiple authorities must do more than analyze each authority separately.

Such a discussion would be little more than reading a series of case briefs. Instead, she must explain how the cases fit together to create the law governing her client's issue. She must compare the authorities to find and reconcile any seeming inconsistencies and to combine the content of the authorities so she can present a unified statement of the governing rule of law. Therefore, after you have identified the cases that will be important to your analysis, you must consider how they fit together. This process is called "synthesizing" cases.

### A. Using Consistent Cases

Sometimes the cases will use similar language to state the governing rule and will apply that rule consistently. Or perhaps some jurisdictions follow one rule and others follow a different rule. However, the cases within each jurisdiction are consistent with each other. In either of these situations, it will not be difficult to combine the language of the cases into one explanation of the law with a consistent explanation of how the courts have applied it. Simply identify the points you want to make about the law and its application, and select and discuss the cases that best illustrate each point. Usually those points will include each element or factor and may include other observations about how the rule is usually applied. For example, recall our rule on whether a person had effectively revoked her will:

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To revoke a will, a testator must have the intention to revoke and must take some action that demonstrates that intent.

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Your written analysis would discuss each element (intention and action) separately. For each element you would identify several cases that best explain that element and discuss them in your description of that element.

Similarly, if jurisdictions are split between two different approaches, your written analysis would discuss each approach separately. For each approach, you would identify several cases that best explain that approach and discuss them in your description of that element. For instance, assume you are writing an office memo on the question of whether parents can recover for the wrongful death of a fetus. You might find that some jurisdictions do not permit recovery at all, whereas others permit recovery if the fetus was medically viable at the time of the injury. You would explain to your reader that jurisdictions disagree and then discuss separately each of the two approaches. For each approach, you would select and discuss the several cases that best illustrate that approach.

### B. Reconciling Seemingly Inconsistent Cases

Cases in the same jurisdiction are not always consistent, however. If you find seemingly inconsistent cases in the same jurisdiction, and if these cases be

important for your analysis, you must try to reconcile them. Reread carefully all of the language in both opinions, and also look for later cases that might resolve the inconsistency. Even if the later cases do not mention the inconsistency, these later cases will probably articulate and apply a rule. As you study the way these later cases articulate and apply the law, you will probably find clues about how to reconcile the cases.

One possibility is that the later case implicitly overruled the earlier case. As we saw in Chapter 2, a court can overrule an earlier opinion implicitly by ignoring the earlier opinion and reaching a result inconsistent with the earlier opinion. Another possibility is that the seemingly inconsistent legal rules are meant to apply to different situations. Perhaps one rule is meant to be an exception to the other. In either case, the rule in one of the cases will apply to your client's situation and the other will not. This explanation handily resolves the inconsistency. Analysis that leads to a conclusion that the two opinions apply to different situations is called "distinguishing" cases.

Finally, you might be able to study the language of each opinion and find meanings in the text that will allow you to read the two cases consistently. Identify the seemingly inconsistent aspects of the opinions. Then reread the opinions carefully, exploring whether you can imagine a possible explanation that would reconcile the statements.

***Inconsistencies in Rule Statements.*** Cases can seem inconsistent because they appear to state two different legal rules. For instance, assume that a lawyer is representing Sharon Watson, a sales employee of Carrolton Company, headquartered in Atlanta, Georgia. Watson had sold Carrolton to its present owners. She remained employed by Carrolton and signed a covenant not to compete, an agreement promising not to compete with Carrolton in certain ways for a certain period of time after the termination of her employment. Watson is considering leaving Carrolton to form a new business that would compete with Carrolton. She needs to know whether Carrolton would be able to enforce the covenant against her.

The lawyer researches the issue and finds *Coffee System of Atlanta v. Fox*<sup>4</sup> and *Clein v. Kapiloff*<sup>5</sup>, two Georgia cases dealing with enforcement of covenants not to compete. In *Fox*, the court uses the following language to articulate the rule governing when a covenant is enforceable:

A covenant not to compete is enforceable if all of the following elements are reasonable: the kind of activity restrained; the geographical area in which it is restrained; and the time period of the restraint.

If *Fox* were the only authority, the lawyer would use this rule to analyze Watson's question. He would analyze the reasonableness of each of the identified characteristics of the Watson covenant. But *Fox* is not the only

4. 176 S.E.2d 71 (Ga. 1970).

5. 98 S.E.2d 897 (Ga. 1957).

authority. The lawyer also found *Clein*, and there the court seems to articulate the governing rule differently. In *Clein*, the court stated:

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A covenant not to compete is enforceable if it is reasonable. The test for determining reasonableness is whether the covenant is reasonably necessary to protect the interests of the party who benefits by it; whether it unduly prejudices the interests of the public; and whether it imposes greater restrictions than are necessary.

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*Fox* and *Clein* seem to lay out different rules. There seem to be two different legal standards governing the enforceability of covenants not to compete. Novice legal writers might be tempted to analyze the Watson issue by describing and applying, one at a time, the “rules” set out in *Fox* and in *Clein*. The discussion would first give a sort of “case brief” of *Fox*, describing the facts, the “rule” language that court used, and the result. The discussion would then apply the “rule” from *Fox* to the Watson facts. Then the discussion would do the same thing with *Clein*, setting out the “rule” language from that case and applying that “rule” to the Watson facts. The organizational structure would look something like this:

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Is the Watson covenant not to compete enforceable?

1. The rule in the *Fox* case: The covenant is enforceable if
    - a. the kind of activity restrained is reasonable;
    - b. the geographical area of restraint is reasonable;
    - c. the duration of the restraint is reasonable.
  2. The rule in the *Clein* case: The covenant is enforceable if
    - a. it is reasonably necessary to protect the employer’s interests;
    - b. it does not unduly prejudice the interests of the public; and
    - c. it does not impose greater restrictions than are necessary.
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This approach is problematic, however. The lawyer needs to know *Georgia’s* rule of law on enforcing covenants not to compete. Determining Georgia’s rule is the most important analytical task. Organizing by the separate cases here would give the client two possible rules and two possible outcomes. Yet our legal system contemplates that a jurisdiction ordinarily will have only one rule of law on a particular issue so people can know what the law is and how it will apply to their conduct.

The lawyer must try to reconcile these seemingly inconsistent statements in *Fox* and *Clein*. After rereading the cases several times and carefully considering the court’s possible meanings, the lawyer might conclude that the language in *Fox* identifies the particular terms that must be reasonable while the language in *Clein* identifies the criteria the court will use to judge whether those terms are reasonable. In other words, each contract term (kind of restraint, area of restraint, and duration of restraint) must meet the three criteria identified in *Clein*. This reconciliation salvages precedential value for each case and

combines them into one unified statement of the jurisdiction's legal rule. Here is a rule statement that reconciles *Fox* and *Clein*:

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A covenant not to compete is enforceable if the kind of activity restrained, the geographical area of the restraint, and the duration of the restraint are reasonable. Reasonableness is judged according to whether the restraint is necessary to protect the employer's interests, does not unduly prejudice the interests of the public, and does not impose greater restrictions than are necessary.

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This reconciled rule statement might produce an analysis organized like this:

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Is the Watson covenant not to compete enforceable?

The covenant is enforceable if its terms are reasonable according to the following criteria:

- A.** Are its terms necessary to protect the employer's interests?
    - 1. The kind of activity;
    - 2. the geographical area;
    - 3. the duration.
  - B.** Do its terms unduly prejudice the interests of the public?
    - 1. The kind of activity;
    - 2. the geographical area;
    - 3. the duration.
  - C.** Do its terms impose greater restrictions than necessary?
    - 1. The kind of activity;
    - 2. the geographical area;
    - 3. the duration.
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**Inconsistencies in Results.** You might find cases that seem to apply the same governing rule to seemingly similar sets of facts but reach puzzlingly different results. To reconcile them, search for factual differences that might adequately explain these results.

Consider this example: To establish adverse possession of land, a claimant must prove several things, one of which is "possession." The kind of possession that will ripen into title is gauged by the kind and degree of the claimant's use of the land. Here are summaries of two hypothetical cases dealing with the issue of whether the kind and degree of use was sufficient. Do they seem inconsistent? If so, can you reconcile them?

*Allen v. Baxter:* Fifteen years ago, Anne Allen bought Lot A in a suburban neighborhood. Lot B, the vacant and overgrown lot next door, was owned by Jacob Baxter. Allen built a house on lot A and moved in. In 1981, Allen began gardening on Lot B. During the eight-month growing season, she worked in the garden nearly every day, growing vegetables for herself and her neighbors. During the four remaining months, she seldom went on the lot. The court held that this use did not establish a sufficient degree of "possession" for the purposes of adverse possession.

*Clay v. Davidson*: Fifteen years ago, Charles Clay bought a lakeside lot in a resort area. The lot already contained a cabin, and Clay built a dock. Every year since then, he has spent about six weekends a year and two weeks during the summer at the cabin. He has now discovered that the legal description of the lot was incorrect in that it actually describes the lot next door. Darlene Davidson is the actual record title-holder of the lot Clay thought to be his. The court held that Clay's facts established a sufficient degree of "possession" for the purposes of adverse possession.

The results in these two cases seem inconsistent. The degree of possession in *Allen* seems much greater than the degree of possession in *Clay*. Allen was physically present on the land for many more days of the year than was Clay, and Allen did more to the land than did Clay. Yet the court held that Clay possessed the land to a sufficient degree, and Allen did not. Reconciling these cases requires you to search for differences that could explain this seeming inconsistency. Perhaps the court will be satisfied with a lesser degree of possession in the case of vacation property, where an owner would not be expected to be in possession year round. Perhaps the court counted the continuous presence of Clay's improvements as part of Clay's possession. Or perhaps the court will require a greater degree of possession in the case of a possessor who knows she does not have record title. Any of these explanations could reconcile *Allen* and *Clay*.<sup>6</sup>

### EXERCISE 3-2

#### Synthesizing and Reconciling Rule Statements

Synthesize (and reconcile where necessary) the following four summaries of case opinions setting out the requirements for recovery under the attractive nuisance doctrine. Use the cases to formulate one rule of law. For each part of the rule you formulate, identify the case(s) you would cite for support of that part of the rule. Remember that often you can formulate different rules from the same set of authorities.

*Bell v. Grackin* (state's highest appellate court, 1959)

**Facts.** A piece of wire was lying in a neighbor's yard. A child walking by saw the wire and went into the yard to get it. As he was playing with the wire, the child bent it and then let it go. The wire recoiled, hitting the child in the eye. The child sought recovery from the neighbor based on the doctrine of attractive nuisance. The court denied recovery, stating:

The doctrine underlying the attractive nuisance cases applies only where the instrument or artificial condition is within itself inherently dangerous even while being used properly, such as weapons, explosives, or power tools. It would be extending the doctrine entirely too far to apply it to such commonplace objects as a piece of wire, a pencil, a coat hanger, or a hammer, all objects so commonplace as to be found around any house or yard, but not

<sup>6</sup> If you study adverse possession in your property class, you might learn more about how to reconcile these two cases. The purpose of this exercise is simply to give you some practice in *imagining possible reconciliations*.

dangerous in themselves, although they might be attractive to children and capable of inflicting injury if misused.

*Andersonville v. Goodden* (state's intermediate-level appellate court, 1961)

**Facts.** A neighbor's pickup truck was parked unattended in the neighbor's yard. A child came into the yard to sell the neighbor candy bars for a school fundraising project. The child saw the truck, climbed on it, fell, and impaled himself on a hook on the end of a chain dangling from the rear of the truck. The child sought recovery from the neighbor based on the doctrine of attractive nuisance. The court denied recovery, stating:

The attractive nuisance doctrine was developed for the benefit of children coming upon property even though trespassing. However, the courts of this state have been reluctant to extend the doctrine beyond its restricted application to situations in which the dangerous instrument is found to be one of actual and compelling attraction for children. The courts have not expanded the doctrine to cases where the instrument or artificial condition did not actually draw the children onto the property.

*Newcomb v. Roberts* (state's highest appellate court, 1982)

**Facts.** A swimming pool was located in a backyard with no fence, unshielded from view. A child visiting next door and playing hide-and-seek came into the backyard seeking a hiding place. She hid behind a utility shack for a while. Then she began to wonder whether her friends were still looking for her. She decided to go investigate the status of the game. As she was leaving the backyard, walking alongside the pool, she accidentally fell into the pool and suffered serious injury. She brought suit against the property owner under the doctrine of attractive nuisance. The court allowed recovery, stating:

A landowner is liable for physical harm to trespassing children by an artificial condition if the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass; if the risk posed by the condition is one that children, because of their youth, will not realize; and if the landowner fails to exercise reasonable care to eliminate the danger or otherwise to protect the children. This landowner should have known that neighborhood children were likely to trespass and that such children would not appreciate the risks posed by a swimming pool. The landowner did not enclose the pool in a fence or take any steps to shield the pool from view. Thus, the landowner is liable for the injuries to the child.

*McDaniels v. Lanier* (state's highest appellate court, 1987)

**Facts.** A natural pond lay behind a house located on two acres of property. The pond was visible to passersby, and no fence prevented access. A child saw the pond and decided to swim in the pond. The child suffered abdominal cramps and drowned. The court denied recovery, stating:

An owner who has reason to know that children are likely to trespass is liable, under the doctrine of attractive nuisance, for injuries sustained by a child if the risk is one that children will not appreciate and if the owner has failed to exercise reasonable care to protect the child [cite to *Newcomb*].

However, here the condition that caused the injury was a naturally occurring condition rather than an artificial condition. While landowners have a duty to protect trespassing children from artificially created conditions on their property, they do not have the duty to protect trespassing children from naturally occurring conditions. Such a duty would often require landowners to take unreasonable or impossible actions such as fencing off huge tracts of land. Thus, the owner is not liable for the injuries to the trespassing child.

### EXERCISE 3-3 Reconciling Facts

You are researching an issue dealing with the requirements for making a valid gift. The cases explain that to make a gift, the donor must physically deliver possession of the item to the donee if possible. All of the cases you first find are similar to *Elder v. Fisher* below. Then, you find *Galloway v. Harris*. Does *Galloway* seem inconsistent with *Elder* and the cases like it? If so, how? Can you imagine how you might reconcile *Elder* and *Galloway*?

***Elder v. Fisher.*** Janice Elder had a ruby ring, which she kept in her safe deposit box at a local bank. She wanted to give it to her sister, Darlene, for her birthday. Janice took Darlene to lunch and gave her a birthday card. The card read, "You're the best sister anyone could have. From this moment on, my ruby ring is yours. Meet me at the bank Wednesday at noon, and I'll get it out of the safe deposit box." Janice died on Tuesday, and her executor, Fisher, refused to turn over the ring to Darlene, claiming that no valid gift had been made because the ring was in the same town as the donor and donee but had not been physically handed over. The court held that actual physical delivery was required and that no valid gift had been made.

***Galloway v. Harris.*** Chester Galloway wanted to give his daughter Jane an oil painting that was hanging over his mantel. He gave Jane a birthday party, and in the presence of the guests, he gave Jane a birthday card. Inside the card was a note declaring that the painting was her gift. Chester said that he wanted to keep the painting in place until his house sold and then he would bring it to her. Before Chester's house sold, he died. Jane claimed that the painting was hers, and Chester's executor (Harris) claimed that no valid gift had been made because the painting was in the same room with the donor and donee and had not been physically handed over. The court held that actual physical delivery was not required and that the painting was Jane's.