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Pitofsky, Goldschmid, and Wood's Trade Regulation: Cases and Materials

Sixth Edition

Wolters Kluwer
Law & Business

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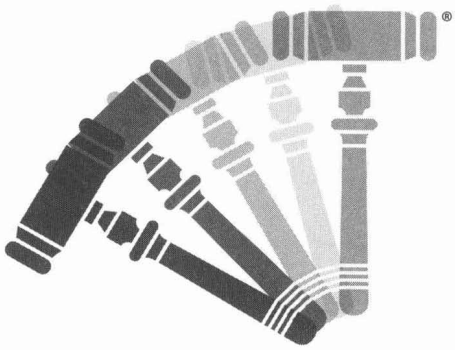

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Format for the Casenote Legal Brief

Nature of Case: This section identifies the form of action (e.g., breach of contract, negligence, battery), the type of proceeding (e.g., demurrer, appeal from trial court's jury instructions), or the relief sought (e.g., damages, injunction, criminal sanctions).

Fact Summary: This is included to refresh your memory and can be used as a quick reminder of the facts.

Rule of Law: Summarizes the general principle of law that the case illustrates. It may be used for instant recall of the court's holding and for classroom discussion or home review.

Facts: This section contains all relevant facts of the case, including the contentions of the parties and the lower court holdings. It is written in a logical order to give the student a clear understanding of the case. The plaintiff and defendant are identified by their proper names throughout and are always labeled with a (P) or (D).

Party ID: Quick identification of the relationship between the parties.

Concurrence/Dissent: All concurrences and dissents are briefed whenever they are included by the casebook editor.

Analysis: This last paragraph gives you a broad understanding of where the case "fits in" with other cases in the section of the book and with the entire course. It is a hornbook-style discussion indicating whether the case is a majority or minority opinion and comparing the principal case with other cases in the casebook. It may also provide analysis from restatements, uniform codes, and law review articles. The analysis will prove to be invaluable to classroom discussion.

Issue: The issue is a concise question that brings out the essence of the opinion as it relates to the section of the casebook in which the case appears. Both substantive and procedural issues are included if relevant to the decision.

Holding and Decision: This section offers a clear and in-depth discussion of the rule of the case and the court's rationale. It is written in easy-to-understand language and answers the issue presented by applying the law to the facts of the case. When relevant, it includes a thorough discussion of the exceptions to the case as listed by the court, any major cites to the other cases on point, and the names of the judges who wrote the decisions.

Quicknotes: Conveniently defines legal terms found in the case and summarizes the nature of any statutes, codes, or rules referred to in the text.

Palsgraf v. Long Island R.R. Co.

Injured bystander (P) v. Railroad company (D)

N.Y. Ct. App., 248 N.Y. 339, 162 N.E. 99 (1928).

NATURE OF CASE: Appeal from judgment affirming verdict for plaintiff seeking damages for personal injury.

FACT SUMMARY: Helen Palsgraf (P) was injured on R.R.'s (D) train platform when R.R.'s (D) guard helped a passenger aboard a moving train, causing his package to fall on the tracks. The package contained fireworks which exploded, creating a shock that tipped a scale onto Palsgraf (P).

RULE OF LAW

The risk reasonably to be perceived defines the duty to be obeyed.

FACTS: Helen Palsgraf (P) purchased a ticket to Rockaway Beach from R.R. (D) and was waiting on the train platform. As she waited, two men ran to catch a train that was pulling out from the platform. The first man jumped aboard, but the second man, who appeared as if he might fall, was helped aboard by the guard on the train who had kept the door open so they could jump aboard. A guard on the platform also helped by pushing him onto the train. The man was carrying a package wrapped in newspaper. In the process, the man dropped his package, which fell on the tracks. The package contained fireworks and exploded. The shock of the explosion was apparently of great enough strength to tip over some scales at the other end of the platform, which fell on Palsgraf (P) and injured her. A jury awarded her damages, and R.R. (D) appealed.

ISSUE: Does the risk reasonably to be perceived define the duty to be obeyed?

HOLDING AND DECISION: (Cardozo, C.J.) Yes. The risk reasonably to be perceived defines the duty to be obeyed. If there is no foreseeable hazard to the injured party as the result of a seemingly innocent act, the act does not become a tort because it happened to be a wrong as to another. If the wrong was not willful, the plaintiff must show that the act as to her had such great and apparent possibilities of danger as to entitle her to protection. Negligence in the abstract is not enough upon which to base liability. Negligence is a relative concept, evolving out of the common law doctrine of trespass on the case. To establish liability, the defendant must owe a legal duty of reasonable care to the injured party. A cause of action in tort will lie where harm, though unintended, could have been averted or avoided by observance of such a duty. The scope of the duty is limited by the range of danger that a reasonable person could foresee. In this case, there was nothing to suggest from the appearance of the parcel or otherwise that the parcel contained fireworks. The guard could not reasonably have had any warning of a threat to Palsgraf (P), and R.R. (D) therefore cannot be held liable. Judgment is reversed in favor of R.R. (D).

DISSENT: (Andrews, J.) The concept that there is no negligence unless R.R. (D) owes a legal duty to take care as to Palsgraf (P) herself is too narrow. Everyone owes to the world at large the duty of refraining from those acts that may unreasonably threaten the safety of others. If the guard's action was negligent as to those nearby, it was also negligent as to those outside what might be termed the "danger zone." For Palsgraf (P) to recover, R.R.'s (D) negligence must have been the proximate cause of her injury, a question of fact for the jury.

ANALYSIS

The majority defined the limit of the defendant's liability in terms of the danger that a reasonable person in defendant's situation would have perceived. The dissent argued that the limitation should not be placed on liability, but rather on damages. Judge Andrews suggested that only injuries that would not have happened but for R.R.'s (D) negligence should be compensable. Both the majority and dissent recognized the policy-driven need to limit liability for negligent acts, seeking, in the words of Judge Andrews, to define a framework "that will be practical and in keeping with the general understanding of mankind." The Restatement (Second) of Torts has accepted Judge Cardozo's view.

Quicknotes

FORESEEABILITY A reasonable expectation that change is the probable result of certain acts or omissions.

NEGLIGENCE Conduct falling below the standard of care that a reasonable person would demonstrate under similar conditions.

PROXIMATE CAUSE The natural sequence of events without which an injury would not have been sustained.

Note to Students

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Casenote Legal Briefs are designed to help you save time when briefing assigned cases. Organized under convenient headings, they show you how to abstract the basic facts and holdings from the text of the actual opinions handed down by the courts. Used as part of a rigorous study regimen, they can help you spend more time analyzing and critiquing points of law than on copying bits and pieces of judicial opinions into your notebook or outline.

Casenote Legal Briefs should never be used as a substitute for assigned casebook readings. They work best when read as a follow-up to reviewing the underlying opinions themselves. Students who try to avoid reading and digesting the judicial opinions in their casebooks or online sources will end up shortchanging themselves in the long run. The ability to absorb, critique, and restate the dynamic and complex elements of case law decisions is crucial to your success in law school and beyond. It cannot be developed vicariously.

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How to Brief a Case

A. Decide on a Format and Stick to It

Structure is essential to a good brief. It enables you to arrange systematically the related parts that are scattered throughout most cases, thus making manageable and understandable what might otherwise seem to be an endless and unfathomable sea of information. There are, of course, an unlimited number of formats that can be utilized. However, it is best to find one that suits your needs and stick to it. Consistency breeds both efficiency and the security that when called upon you will know where to look in your brief for the information you are asked to give.

Any format, as long as it presents the essential elements of a case in an organized fashion, can be used. Experience, however, has led *Casenotes* to develop and utilize the following format because of its logical flow and universal applicability.

NATURE OF CASE: This is a brief statement of the legal character and procedural status of the case (e.g., "Appeal of a burglary conviction").

There are many different alternatives open to a litigant dissatisfied with a court ruling. The key to determining which one has been used is to discover *who is asking this court for what.*

This first entry in the brief should be kept as *short as possible.* Use the court's terminology if you understand it. But since jurisdictions vary as to the titles of pleadings, the best entry is the one that addresses who wants what in this proceeding, not the one that sounds most like the court's language.

RULE OF LAW: A statement of the general principle of law that the case illustrates (e.g., "An acceptance that varies any term of the offer is considered a rejection and counteroffer").

Determining the rule of law of a case is a procedure similar to determining the issue of the case. Avoid being fooled by red herrings; there may be a few rules of law mentioned in the case excerpt, but usually only one is *the* rule with which the casebook editor is concerned. The techniques used to locate the issue, described below, may also be utilized to find the rule of law. Generally, your best guide is simply the chapter heading. It is a clue to the point the casebook editor seeks to make and should be kept in mind when reading every case in the respective section.

FACTS: A synopsis of only the essential facts of the case, i.e., those bearing upon or leading up to the issue.

The facts entry should be a short statement of the events and transactions that led one party to initiate legal proceedings against another in the first place. While some cases conveniently state the salient facts at the beginning of the decision, in other instances they will have to be culled from hiding places throughout the text, even from concurring and dissenting opinions. Some of the "facts" will often be in dispute and should be so noted. Conflicting evidence may be briefly pointed up. "Hard" facts must be included. Both must be *relevant* in order to be listed in the facts entry. It is impossible to tell what is relevant until the entire case is read, as the ultimate determination of the rights and liabilities of the parties may turn on something buried deep in the opinion.

Generally, the facts entry should not be longer than three to five *short* sentences.

It is often helpful to identify the role played by a party in a given context. For example, in a construction contract case the identification of a party as the "contractor" or "builder" alleviates the need to tell that that party was the one who was supposed to have built the house.

It is always helpful, and a good general practice, to identify the "plaintiff" and the "defendant." This may seem elementary and uncomplicated, but, especially in view of the creative editing practiced by some casebook editors, it is sometimes a difficult or even impossible task. Bear in mind that the *party presently* seeking something from this court may not be the plaintiff, and that sometimes only the cross-claim of a defendant is treated in the excerpt. Confusing or misaligning the parties can ruin your analysis and understanding of the case.

ISSUE: A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a "yes" or "no" answer. In reality, the issue is simply the Rule of Law put in the form of a question (e.g., "May an offer be accepted by performance?").

The major problem presented in discerning what is *the* issue in the case is that an opinion usually purports to raise and answer several questions. However, except for rare cases, only one such question is really the issue in the case. Collateral issues not necessary to the resolution of the matter in controversy are handled by the court by language known as *"obiter dictum"* or merely *"dictum."* While dicta may be included later in the brief, they have no place under the issue heading.

To find the issue, ask *who wants what* and then go on to ask *why did that party succeed or fail in getting it.* Once this is determined, the "why" should be turned into a question.

The complexity of the issues in the cases will vary, but in all cases a single-sentence question should sum up the issue. *In a few cases,* there will be two, or even more rarely, three issues of equal importance to the resolution of the case. Each should be expressed in a single-sentence question.

Since many issues are resolved by a court in coming to a final disposition of a case, the casebook editor will reproduce the portion of the opinion containing the issue or issues most relevant to the area of law under scrutiny. A noted law professor gave this advice: "Close the book; look at the title on the cover." Chances are, if it is Property, you need not concern yourself with whether, for example, the federal government's treatment of the plaintiff's land really raises a federal question sufficient to support jurisdiction on this ground in federal court.

The same rule applies to chapter headings designating sub-areas within the subjects. They tip you off as to what the text is designed to teach. The cases are arranged in a casebook to show a progression or development of the law, so that the preceding cases may also help.

It is also most important to remember to *read the notes and questions* at the end of a case to determine what the editors wanted you to have gleaned from it.

HOLDING AND DECISION: This section should succinctly explain the rationale of the court in arriving at its decision. In capsulizing the "reasoning" of the court, it should always include an application of the general rule or rules of law to the specific facts of the case. Hidden justifications come to light in this entry: the reasons for the state of the law, the public policies, the biases and prejudices, those considerations that influence the justices' thinking and, ultimately, the outcome of the case. At the end, there should be a short indication of the disposition or procedural resolution of the case (e.g., "Decision of the trial court for Mr. Smith (P) reversed").

The foregoing format is designed to help you "digest" the reams of case material with which you will be faced in your law school career. Once mastered by practice, it will place at your fingertips the information the authors of your casebooks have sought to impart to you in case-by-case illustration and analysis.

B. Be as Economical as Possible in Briefing Cases

Once armed with a format that encourages succinctness, it is as important to be economical with regard to the time spent on the actual reading of the case as it is to be economical in the writing of the brief itself. This does not mean "skimming" a case. Rather, it means reading the case with an "eye" trained to recognize into which "section" of your brief a particular passage or line fits and having a system for quickly and precisely marking the case so that the passages fitting any one particular part of the brief can be easily identified and brought together in a concise and accurate manner when the brief is actually written.

It is of no use to simply repeat everything in the opinion of the court; record only enough information to trigger your recollection of what the court said. Nevertheless, an accurate statement of the "law of the case," i.e., the legal principle applied to the facts, is absolutely essential to class preparation and to learning the law under the case method.

To that end, it is important to develop a "shorthand" that you can use to make marginal notations. These notations will tell you at a glance in which section of the brief you will be placing that particular passage or portion of the opinion.

Some students prefer to underline all the salient portions of the opinion (with a pencil or colored underliner marker), making marginal notations as they go along. Others prefer the color-coded method of underlining, utilizing different colors of markers to underline the salient portions of the case, each separate color being used to represent a different section of the brief. For example, blue underlining could be used for passages relating to the rule of law, yellow for those relating to the issue, and green for those relating to the holding and decision, etc. While it has its advocates, the color-coded method can be confusing and time-consuming (all that time spent on changing colored markers). Furthermore, it can interfere with the continuity and concentration many students deem essential to the reading of a case for maximum comprehension. In the end, however, it is a matter of personal preference and style. Just remember, whatever method you use, underlining must be used sparingly or its value is lost.

If you take the marginal notation route, an efficient and easy method is to go along underlining the key portions of the case and placing in the margin alongside them the following "markers" to indicate where a particular passage or line "belongs" in the brief you will write:

N (NATURE OF CASE)
RL (RULE OF LAW)
I (ISSUE)
HL (HOLDING AND DECISION, relates to the RULE OF LAW behind the decision)
HR (HOLDING AND DECISION, gives the RATIONALE or reasoning behind the decision)
HA (HOLDING AND DECISION, APPLIES the general principle(s) of law to the facts of the case to arrive at the decision)

Remember that a particular passage may well contain information necessary to more than one part of your brief, in which case you simply note that in the margin. If you are using the color-coded underlining method instead of marginal notation, simply make asterisks or

checks in the margin next to the passage in question in the colors that indicate the additional sections of the brief where it might be utilized.

The economy of utilizing "shorthand" in marking cases for briefing can be maintained in the actual brief writing process itself by utilizing "law student shorthand" within the brief. There are many commonly used words and phrases for which abbreviations can be substituted in your briefs (and in your class notes also). You can develop abbreviations that are personal to you and which will save you a lot of time. A reference list of briefing abbreviations can be found on page xii of this book.

C. Use Both the Briefing Process and the Brief as a Learning Tool

Now that you have a format and the tools for briefing cases efficiently, the most important thing is to make the time spent in briefing profitable to you and to make the most advantageous use of the briefs you create. Of course, the briefs are invaluable for classroom reference when you are called upon to explain or analyze a particular case. However, they are also useful in reviewing for exams. A quick glance at the fact summary should bring the case to mind, and a rereading of the rule of law should enable you to go over the underlying legal concept in your mind, how it was applied in that particular case, and how it might apply in other factual settings.

As to the value to be derived from engaging in the briefing process itself, there is an immediate benefit that arises from being forced to sift through the essential facts and reasoning from the court's opinion and to succinctly express them in your own words in your brief. The process ensures that you understand the case and the point that it illustrates, and that means you will be ready to absorb further analysis and information brought forth in class. It also ensures you will have something to say when called upon in class. The briefing process helps develop a mental agility for getting to the *gist* of a case and for identifying, expounding on, and applying the legal concepts and issues found there. The briefing process is the mental process on which you must rely in taking law school examinations; it is also the mental process upon which a lawyer relies in serving his clients and in making his living.

Abbreviations for Briefs

acceptance	acp
affirmed	aff
answer	ans
assumption of risk	a/r
attorney	atty
beyond a reasonable doubt	b/r/d
bona fide purchaser	BFP
breach of contract	br/k
cause of action	c/a
common law	c/l
Constitution	Con
constitutional	con
contract	K
contributory negligence	c/n
cross	x
cross-complaint	x/c
cross-examination	x/ex
cruel and unusual punishment	c/u/p
defendant	D
dismissed	dis
double jeopardy	d/j
due process	d/p
equal protection	e/p
equity	eq
evidence	ev
exclude	exc
exclusionary rule	exc/r
felony	f/n
freedom of speech	f/s
good faith	g/f
habeas corpus	h/c
hearsay	hr
husband	H
injunction	inj
in loco parentis	ILP
inter vivos	I/v
joint tenancy	j/t
judgment	judgt
jurisdiction	jur
last clear chance	LCC
long-arm statute	LAS
majority view	maj
meeting of minds	MOM
minority view	min
Miranda rule	Mir/r
Miranda warnings	Mir/w
negligence	neg
notice	ntc
nuisance	nus
obligation	ob
obscene	obs
offer	O
offeree	OE
offeror	OR
ordinance	ord
pain and suffering	p/s
parol evidence	p/e
plaintiff	P
prima facie	p/f
probable cause	p/c
proximate cause	px/c
real property	r/p
reasonable doubt	r/d
reasonable man	r/m
rebuttable presumption	rb/p
remanded	rem
res ipsa loquitur	RIL
respondeat superior	r/s
Restatement	RS
reversed	rev
Rule Against Perpetuities	RAP
search and seizure	s/s
search warrant	s/w
self-defense	s/d
specific performance	s/p
statute	S
statute of frauds	S/F
statute of limitations	S/L
summary judgment	s/j
tenancy at will	t/w
tenancy in common	t/c
tenant	t
third party	TP
third party beneficiary	TPB
transferred intent	TI
unconscionable	uncon
unconstitutional	unconst
undue influence	u/e
Uniform Commercial Code	UCC
unilateral	uni
vendee	VE
vendor	VR
versus	v
void for vagueness	VFV
weight of authority	w/a
weight of the evidence	w/e
wife	W
with	w/
within	w/i
without	w/o
without prejudice	w/o/p
wrongful death	wr/d

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CHAPTER 1

The Objectives and Origins of Antitrust Law

Quick Reference Rules of Law

PAGE

1. **The Early Law.** An individual cannot be required to refrain from practicing his craft for a period of time in order to satisfy a debt or obligation. (Anonymous—"Dyer's Case") *2*
2. **The Early Law.** An action in trespass will not lie when a competing enterprise is opened that reduces the profits of the original business. (Anonymous—"The Schoolmaster Case") *3*
3. **The Early Law.** Patents that create monopolies and restrict freedom of trade are invalid. (The Case of Monopolies) *4*
4. **The Early Law.** While a bare restraint of trade, without more, is void (including one arising from an agreement not to practice one's trade in a particular place), where special matter appears so as to make it a reasonable and useful contract under the circumstances, it ought to be enforced. (Mitchel v. Reynolds) *5*
5. **The First Cartel Cases.** Every contract or combination in restraint of trade or commerce is unlawful even if previously allowed at common law. (United States v. Trans-Missouri Freight Association) *6*
6. **The First Cartel Cases.** A combination affecting interstate commerce, the sole purpose of which is to regulate price, is in restraint of trade in violation of the Sherman Act. (United States v. Addyston Pipe & Steel Co.) *7*

Anonymous—"Dyer's Case"

Creditor (P) v. Craftsman (D)

Y.B., 2 Hen. V, vol. 5, pl. 26 (1415).

NATURE OF CASE: Writ of debt on an obligation.

FACT SUMMARY: Dyer (D) was to refrain from practicing his craft within a town for six months as a condition of an indenture.

RULE OF LAW

An individual cannot be required to refrain from practicing his craft for a period of time in order to satisfy a debt or obligation.

FACTS: A creditor (P) exacted an indenture from John Dyer (D) that required Dyer (D) to refrain from exercising his craft for six months in order to satisfy the obligation. A writ of debt was brought on the obligation by John Dyer (D), who offered to prove that he had not practiced his craft in the time specified and should therefore be discharged from the debt.

ISSUE: Can an individual be required to refrain from practicing his craft for a period of time in order to satisfy a debt or obligation?

HOLDING AND DECISION: (Hull, J.) No. An individual cannot be required to refrain from practicing his craft for a period of time in order to satisfy a debt or obligation. It is in violation of the common law to require an individual to refrain from the practice of his craft so as to satisfy a debt. In this case, the obligation was void due to the invalid condition exacted by the creditor (P).

ANALYSIS

After the Black Plague decimated the population of England in the mid-fourteenth century, the working class used the scarcity of labor to its advantage by demanding higher wages. Legislation was enacted to maximize the size of the labor force at the wages that had prevailed prior to the plague. Examined in that light, it is clear why restraints on the practice of trade such as Dyer's (D) agreement not to compete were not viewed so unfavorably.

Quicknotes

RESTRAINT OF TRADE Agreements between entities for the purpose of impeding free trade that results in a monopoly, suppression of competition, or affecting prices.

Anonymous—"The Schoolmaster Case"

Schoolmasters (P) v. Schoolmaster (D)

Y.B., 11 Hen. IV, f. 47, pl. 21 (1410).

NATURE OF CASE: Writ of trespass.

FACT SUMMARY: Two schoolmasters (P) brought a writ of trespass against another schoolmaster (D) who had opened a competing school.

RULE OF LAW

An action in trespass will not lie when a competing enterprise is opened that reduces the profits of the original business.

FACTS: Two masters (P) ran a grammar school in Gloucester. Another master (D) started a school in the same town. The new school resulted in a 70% reduction in tuition fees that the original school could charge. The two masters (P) brought a writ of trespass against the new school master (D).

ISSUE: Will an action in trespass lie when a competing enterprise is opened that reduces the profits of the original business?

HOLDING AND DECISION: (Per curiam) No. An action in trespass will not lie when a competing enterprise is opened that reduces the profits of the original business. While a new business may cause an economic injury to the original business, this does not mean that an action lies against the new business owner. Under the logic of the masters (P), there can be only one operator of each trade in a town, since each new tradesman would injure the original business by its competition. Dismissed.

CONCURRENCE: (Hankford, J.) Diminished profits are a damage, but still there is no action for such damage.

CONCURRENCE: (Hill, J.) It is an ease to the people to have lower fees for instruction as a result of the new school. Such a benefit cannot be punished by the law.

DISSENT: (Skrene, J.) The masters have shown well enough how they were damaged. In a nuisance or tort case alleging damages, they would prevail and should do so in this case.

ANALYSIS

This may be one of the earliest cases standing for the proposition that free market competition is a benefit to society. Trade was widely restrained in England prior to the first anti-monopoly decisions in the seventeenth century. Since the notion of free-market economics had not yet been developed, the observation by J. Hill that competition was an "ease to the people" is more impressive than it first appears.

Quicknotes

TRESPASS Unlawful interference with, or damage to, the real or personal property of another.

The Case of Monopolies

Royal groom (P) v. Cardmaker (D)

Court of King's Bench, 77 Eng. Rep. 1260 (1602).

NATURE OF CASE: Action for patent violation.

FACT SUMMARY: Darcy (P), a groom to the Queen, claimed that Allein (D) violated a royal patent by making and selling playing cards.

RULE OF LAW

Patents that create monopolies and restrict freedom of trade are invalid.

FACTS: Queen Elizabeth granted a patent to Bowes, giving him the sole right to buy playing cards overseas and import them for thirty-three years. Allein (D), a member of the Haberdashers of London, made and sold playing cards despite knowing of the patent. Darcy (P) charged Allein (D) with violating the Queen's patent. Allein (D) maintained that members of the society of Haberdashers of London have customarily been allowed to freely sell all types of goods and that a patent that restricted their trade was invalid.

ISSUE: Are patents that create monopolies and restrict freedom of trade invalid?

HOLDING AND DECISION: [No judge stated in casebook excerpt.] Yes. Patents that create monopolies and restrict freedom of trade are invalid. It is unprecedented for a patent to take men's trades and skills away. Selling goods at a lower price does not cause damage to those selling goods at a higher price. The Queen's grant of patent to Bowes is invalid for two reasons: it violates the common law as a monopoly and it is against the acts of Parliament. Monopolies are disfavored in the common law because they cause the price of goods to rise and the quality to decrease. Parliament has passed laws that seek to ensure freedom of trade and avoid monopolies. The Queen's patent allowing Bowes the sole right to import and sell playing cards is clearly an invalid grant of monopoly. Judgment for Allein (D).

ANALYSIS

Queen Elizabeth was well known for attempting to grant special monopoly privileges. She did so to produce revenue for the crown or as a reward for services. Prior to 1601, grants of monopoly were allowed as a valid royal prerogative.

Quicknotes

MONOPOLY A privilege or right conferred upon an individual or entity granting it the exclusive power to manufacture, sell and distribute a particular service or commodity; a market condition in which one or a few companies control the sale of a product or service thereby restraining competition in respect to that article or service.