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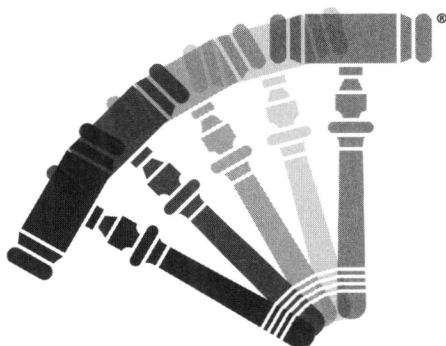
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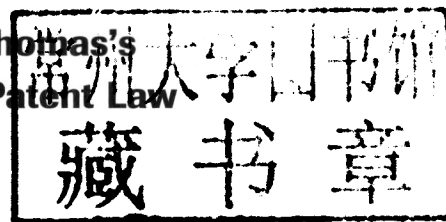
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Wolters Kluwer
Law & Business

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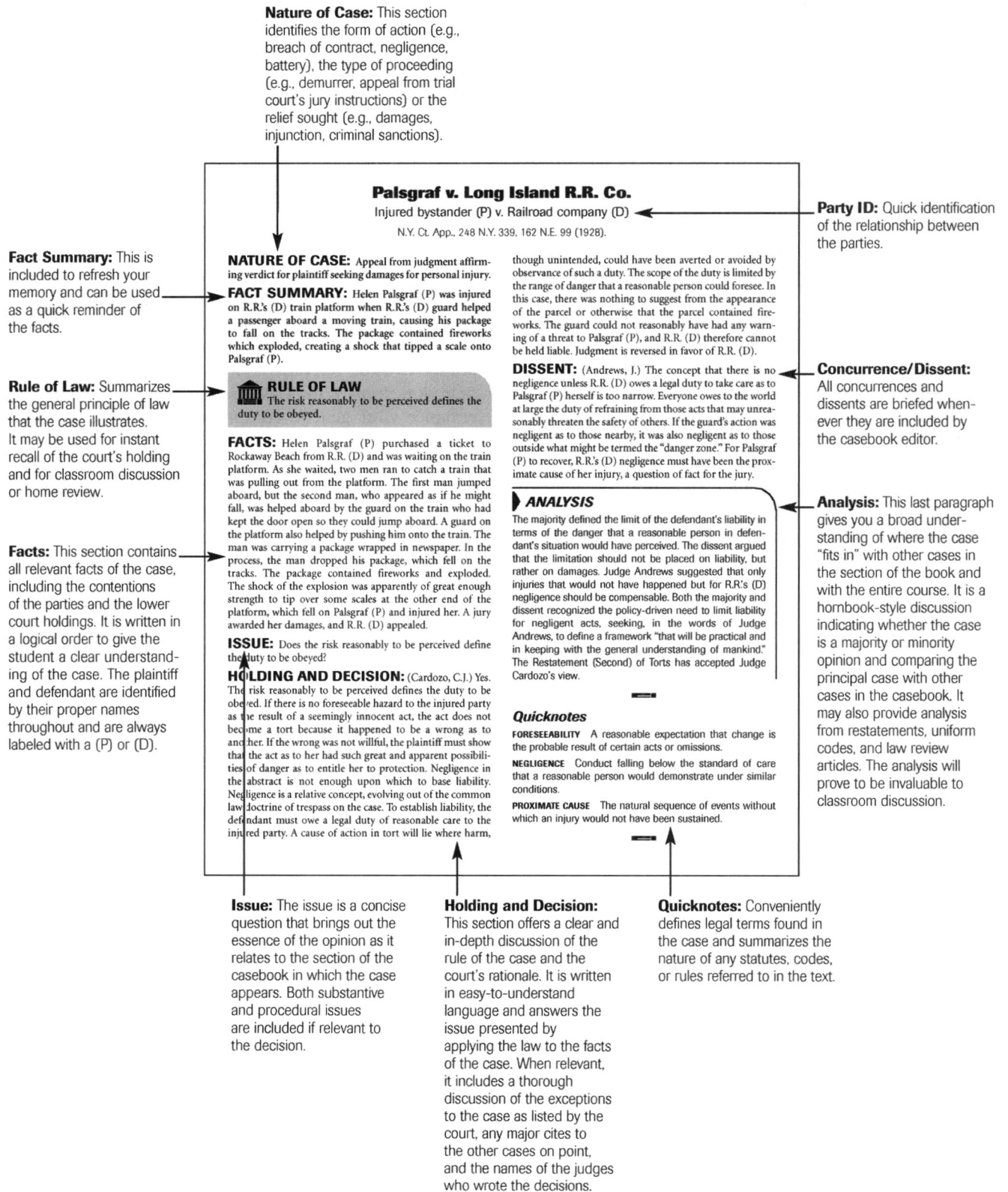
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Format for the Casenote Legal Brief



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

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Introduction

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Bonito Boats, Inc. v. Thunder Craft Boats, Inc.

Boat designer (P) v. Competitor (D)

489 U.S. 141 (1989).

NATURE OF CASE: Appeal from judgment striking down a statute prohibiting “direct molding process” in reproducing unpatented designs.

FACT SUMMARY: Bonito Boats, Inc.’s (P) fiberglass recreational hull was molded and reproduced by Thunder Craft (D), whereupon Bonito (P) sued in state court under a Florida statute prohibiting direct molding of unpatented designs.

**RULE OF LAW**

States may not offer patent-like protections to intellectual creations that would otherwise remain unprotected as a matter of federal law.

FACTS: In 1976, Bonito Boats (P) produced a popular recreational fiberglass boat design and sold it under the trade name 5VBR. There was no record of a patent application for the design. In 1983, a Florida statute was passed making it unlawful for anyone to duplicate a manufactured vessel hull using the direct molding process without permission. Bonito (P) sued Thunder Craft (D) under this statute, which granted damages, injunctive relief and attorney fees. The Florida Supreme Court struck down the law, finding that it conflicted with the balance struck by Congress in the federal patent statute between the encouragement of invention and free access to unpatented ideas. A few years earlier, a California appeals court had upheld a similar law. The Supreme Court granted certiorari to resolve the conflict.

ISSUE: May states offer patent-like protections to intellectual creations that would otherwise remain unprotected as a matter of federal law?

HOLDING AND DECISION: (O'Connor, J.) No. Article I, § 8, cl. 8 of the Constitution (The Patent and Copyright Clause) reflects a balance between the need to encourage innovation and the avoidance of monopolies that stifle competition. Imitation and refinement through imitation lead to innovation, yet there must be an incentive to disclose the innovation to the public, hence the grant of a time-constrained monopoly. The inventor could keep his invention a secret and reap its fruits indefinitely, but federal law rewards its disclosure and the benefit to the community this way. For those inventors with a nonobvious, novel, useful product or idea who opt for federal patent protection, the protection offers exclusive rights to the inventor for a period of twenty (20) years. The attractiveness of the bargain depends on a backdrop of free competition in unpatented designs and innovations. These are fostered by the nonobvious, novelty, and utility requirements of patent registry. Patent protection also requires affirmative action because a patent is not available to a person who places the

new product in public commerce prior to seeking patent protection. That person clearly did not seek exclusivity and does not deserve the protection of a federal patent. Inventors may submit the new product or idea into the public market or choose federal patent protection. The federal patent system is a careful balance between protection and disclosure.

ANALYSIS

The federal patent protection grants powers but also limits that grant so that ideas and products are not monopolized. Much of the patent system involves choices on the part of the inventor. The inventor may choose to submit the idea or product to the marketplace without the protection of a patent, keep the idea or product secret indefinitely, share the idea or product with the community at large, or seek federal patent protection to receive exclusivity for a number of years while still sharing the information with the public.

**Quicknotes**

U.S. CONSTITUTION, ART. 1, § 8 Gives Congress the authority to promote science by securing limited exclusive rights to inventors.

PATENT A limited monopoly conferred on the invention or discovery of any new or useful machine or process that is novel and non-obvious.



In re Bergy

N/A

596 F.2d 952 (C.C.P.A. 1979).

NATURE OF CASE: [Nature of case not stated in case-book excerpt.]

FACT SUMMARY: Article I, § 8, clauses 8 and 18, of the Constitution are analyzed.

**RULE OF LAW**

The purpose of granting patent rights to inventors for their discoveries is to promote progress in the useful arts or technological arts, rather than in science or knowledge in general.

FACTS: Article I, § 8, clauses 8 and 18, of the Constitution grants to Congress the power to establish both a copyright system and a patent system. It states that: (The Congress shall have Power) . . . (8) To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; . . . (And) (18) To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers . . .

ISSUE: What is the purpose of granting patent rights?

HOLDING AND DECISION: (Rich, J.) The purpose of granting patent rights to inventors for their discoveries is the promotion of progress in the useful arts or technological arts rather than in science or knowledge in general. When Congress enacted the Patent Act in 1952, it adopted this construction of the Constitution. In its report it stated that science, or knowledge in general, is to be promoted by giving authors the exclusive right to their writings, and the progress of the useful arts is to be promoted by giving inventors the exclusive right to their discoveries. The first patent law and many more that followed were thus entitled "Acts to promote the progress of useful arts." Furthermore, the Constitution did not give inventors any right to the patentability of any individual invention, but rather empowered Congress to secure to inventors an exclusive right for a limited time for the stated purpose of promoting the useful arts.

**ANALYSIS**

The inclination against national involvement in economic matters by the delegates to the Constitutional Convention is probably why the clause is limited to exclusive rights alone.



E.I. duPont deNemours & Co. v. Christopher

Chemical producer (P) v. Photographer (D)

431 F.2d 1012 (5th Cir. 1970).

NATURE OF CASE: Action for damages for and to enjoin use of appropriated trade secrets.

FACT SUMMARY: A third party hired photographer Christopher (D) to take aerial photographs of a Du Pont (P) plant under construction to uncover trade secrets.



RULE OF LAW

To obtain knowledge of a trade secret without spending the time and money to discover it independently is improper and gives rise to a cause of action unless the holder voluntarily discloses it or fails to take reasonable precautions to ensure its secrecy.

FACTS: Christopher (D), a photographer, was hired by a party whose identity he refused to disclose. His job was to take aerial pictures from a plane flying over a plant which Du Pont (P) was in the process of building. The object was to use such pictures to uncover trade secrets regarding Du Pont's (P) secret process for producing methanol. When Du Pont (P) brought an action for damages and an injunction against further use of the pictures, Christopher (D) argued that his activities were conducted in public airspace and that for an appropriation of trade secrets to be wrongful there must be a trespass, other illegal conduct, or breach of a confidential relationship, none of which existed. He appealed an adverse decision.

ISSUE: Unless the secret's holder voluntarily disclosed it or failed to take reasonable precautions to ensure its secrecy, does one act wrongfully by obtaining knowledge of a trade secret without spending the time and money to discover it independently?

HOLDING AND DECISION: (Goldberg, J.) Yes. It is improper to obtain knowledge of a trade secret without spending the time and money to discover it independently unless the holder voluntarily discloses it or fails to take reasonable precautions to ensure its secrecy. Thus, a cause of action for wrongful appropriation of trade secrets does not require that there have been a breach of confidence or some illegal conduct like trespass. In this case, Du Pont (P) took reasonable precautions (fencing the construction site, etc.) to ensure secrecy. It is not required to go so far as to put a roof over its unfinished plant to guard its secrets. Thus, a cause of action was stated in this case. Affirmed and remanded.

ANALYSIS

Although the decision represents an expansion of the concept of wrongful appropriation of trade secrets to deal with

sophisticated methods of industrial espionage not contemplated when the concept arose, the protection is not total. The court itself said it did "not mean to imply . . . that everything not in plain view is within the protected value, nor that all information obtained through every extra optical extension is forbidden."



Quicknotes

TRADE SECRET Consists of any formula, pattern, plan, process, or device known only to its owner and business which gives an advantage over competitors.

RESTATEMENT OF TORTS § 757 One who discloses or uses a trade secret is liable if the discovery of the secret was by improper means or disclosure breaches a confidence.

