

CHAPTER 6 (MONITOR YOUR READING AND READ FOR THE MAIN IDEA)

Practice Exercises:

(1) In this exercise, you will be asked to read an excerpted portion of Compuserve, Inc. v. Cyber Promotions, Inc., 962 F. Supp. 1015 (S.D. Ohio 1997). Before you begin, ask yourself how much time you have to read the portion of the case presented below. If you have time now to really give it a good shot, it would make sense to give yourself about fifteen minutes to read it. Write down your starting time and your anticipated finishing time here:

It is very hard for some students to pay attention to time when they read. The stronger their work ethic, often the harder it is to take time into account when they read. However, if they're ever going to master law-related reading (or make a living as a lawyer), they're going to have to become time aware.

All students should have a start time and a finish time written here.

(2) Assume this case is found in a Torts¹ casebook, in a section called (in the Table of Contents and the running header of the book) “Trespass to Chattels.”² Read the excerpted portion below [printed beginning on p. 85 of the main text].

(3) In order to read efficiently, law students have to learn to read selectively. In the third paragraph of the case, the court wrote, “This matter is before the Court on the application of CompuServe for a preliminary injunction which would extend the duration of the temporary restraining order issued by this Court on October 24, 1996 and which would in addition prevent defendants from sending unsolicited advertisements to CompuServe subscribers.” When you read this paragraph, was it clear to you what a “preliminary injunction” is? How about a “temporary restraining order”? If you have not been in a situation or a course where these terms were explained, there is no reason to expect yourself to know what they are. You could have looked them up in a legal dictionary (and found that both are orders issued by a court to prevent one party from taking an irreversible action until the court can resolve the situation at hand). Alternatively, you could have tried to guess from the context what those words meant. What context cues are in the sentence, or appear later in the case, that could have helped you infer the meaning of the words?

¹ A tort is a civil action brought to compensate a party for a civil (not criminal) harm done to him or her. A law school Torts class (and its accompanying casebook) would explore the various causes of action (bases for a claim) upon which someone who has been harmed could seek a remedy under a tort theory. Negligence, for example, is a tort claim. Other tort claims include actions for slander, or for civil battery, or for intentional infliction of emotional distress.

² “Chattel” is a term for personal property.

The words “restraining order,” on their face, would lead one to guess that this is an order that keeps something from happening, or keeps someone from doing something. If it’s a “temporary” restraining order, you could guess (hypothesize) that it is of limited duration. The preliminary injunction appears to be some kind of procedural device or motion that the court uses to monitor (in this case, to extend) a temporary restraining order.

Part II of the CompuServe case (on p. 90 of the main text) talks extensively about preliminary injunctions. A student who wanted to find out more about a preliminary injunction or a temporary restraining order could have skimmed ahead, looking expressly for those words in the text, and then slowed down when they found them.

(4) If this case had been assigned in a Civil Procedure³ class, rather than in a Torts class, which portions of the case would have been the most important?

If this was a Civil Procedure class, Part II of the case would have been where the student should have focused his or her reading energy.

(5) How much do you know about computers? Was there any information in the first paragraphs of Section I of the opinion that was “new” information to you? (The answer to that question would, of course, depend on how knowledgeable you are about computers). Why do you think the court felt compelled to include this information in such detail? (Hint: look at the date of the opinion. Do you think such detail is as necessary for today’s reading audience?). If you are familiar with computers and the Internet, could you have skimmed these paragraphs?

Most readers in the year 2005 and beyond are personally familiar with online computer service providers and how they operate. At the time this opinion was decided, in 1997, that was not necessarily the case. The court included all this information so that the parties and the readers would have a full picture of the facts as the court understood them. If you are well-versed in computers, you could have skimmed these facts since you already have a clear idea of what’s being described. If you chose to read quickly, you should be careful not to make assumptions about the court’s facts, paying enough attention to make sure that the court’s view of the facts matches your assumptions about the facts.

(6) Look at the footnote explaining the origins of the word “spam.” Is this new information to you? Is it information that you need to hold on to in order to get the “main idea” of this case in the context of a Torts class?

This was new information to me, although students might have already known it. It was interesting and a kind of amusing fact, but it sure wasn’t anything that I needed to hold

³ Civil Procedure is a first-year course that explores the logistics of how cases are brought to a court and is generally based on the Federal Rules of Civil Procedure, which mandate procedures attorneys and courts must follow to bring a lawsuit based on any valid claim.

on to once class was over. I expect that the opinion's author was intrigued by the fact and couldn't resist including it in a footnote.

(7) Do you personally ever feel overwhelmed by “spam” on your own email account? Have you ever been involved with a company that was trying to earn a living by advertising on the Internet? How might these two experiences influence your reading of the case?

A student who seriously dislikes “spam” might be predisposed to sympathize with CompuServe whereas someone who has tried to make a living advertising on the Internet would be more likely to see the Internet as an open forum where free enterprise should thrive.

(8) Who do you know (personally) who might find the facts of this case interesting?

Students could pick any variety of people. The point of the question is to get students to think about reading as a social activity and to consider potential “audiences” as they read.

(9) Having read this much of the opinion, what is your best guess as to the reasoning the court will adopt in the remainder of the opinion (which was not included in your reading) to support its conclusion that “plaintiff has a viable claim for trespass to personal property and is entitled to injunctive relief to protect its property”? (Hint, go back to question 2 above and look at what heading this case came under in our hypothetical casebook. If you're curious about the court's actual reasoning, and have time to read the whole opinion, ask a law librarian for help locating this opinion or check out our website at <http://www.unc.edu/~ramckinn>.)

This question is designed to encourage students to begin to develop a hypothesis about this case and to learn that their hypothesis is as important to their reasoning as the actual case outcome. Students may guess that the court will decide that CompuServe has a viable claim for trespass to chattel (personal property) because its network has sufficient characteristics of private property to give CompuServe the right to keep others from interfering with its exclusive use of that property, and has the right to establish in a court of law that the defendant (Cyber Promotions, Inc.) is, in fact, interfering. In order to grant the preliminary injunction, the court must determine that CompuServe is likely to win this issue on the merits, AND that CompuServe would be irreversibly harmed if the defendant's actions continue while litigation drags forward, AND that neither Cyber Promotions nor anyone else is going to be significantly harmed by an injunction, AND that the public's interests are best protected by the issuance of the injunction.

(10) What time did you stop reading the case? Did you stay within your time limits? Did you finish more quickly than you anticipated, or did your reading take more time than you thought it would? In retrospect, are there things you could have done that would have saved you time when you first read this excerpted portion of the case?

This question is designed to get students to continue to think about time as a significant factor in their reading equation.