

Things To Consider when Reading a Criminal Case

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When reading a criminal case, students should make an effort to consider the following matters:

(1) *What law is the defendant accused of breaking?* The government must think the defendant is guilty of something, or there wouldn't be a case to read. If you don't know what specific law is at issue, you cannot begin to understand the court's result or its justification. Similarly, before you can evaluate whether the defendant committed each element of an offense, you must determine what the elements are.

(2) *Why does the defendant think he shouldn't go to jail?* Absent some colorable argument undermining the government's case, the defendant's complaining wouldn't get much attention. Popular arguments include (a) there is at least one element of the offense that the government cannot prove I did ("I'm totally innocent" is a subset of this class but usually doesn't make the casebook because factfinding is generally left to the jury), (b) this law is bogus and should be stricken from the statute book, (c) the law is okay but should not apply to me, (d) I did it but have a justification or excuse, and (e) I did it and the government can prove it, but the evidence they need to do so should be inadmissible, meaning I walk (this comes up more in Criminal Procedure). The defendant's argument can be complicated, and it is important to know the specifics. For example, it's not enough to say that the defendant thinks his prosecution "violates the Constitution."

(3) *What is the government's response to the defendant's argument?* Surely the government has something to offer, or the case would be boring indeed. Consider in particular whether the government (or the defendant) is arguing that another case we have read (or the principles therein) support its argument here. If someone invokes another case, decide whether it truly applies. Can it be distinguished? Is the party relying on the case accurately stating its holding and underlying reasoning?

In addition to the "black-letter law" issues listed above, other factors help us understand why a court has acted the way it did in a particular case.

(4) *The forum and year.* The forum is important because different courts operate under different constraints. An intermediate appellate court cannot change state law in the way that a state supreme court can. And the Supreme Court of the United States, which is not final because it's always right but is always right because it's final, has the most flexibility of all, although even it operates under constraints such as fear of public outrage and the theoretical possibility of impeachment. As for the date, it helps place a case in context. Chances are, *Lawrence v. Texas* was decided differently from *Bowers v. Hardwick* largely because it came later.

(5) *Who wins the sympathy contest?* The nature of the defendant and the government actors can affect the court's disposition of the case. For example, the Supreme Court struggled mightily to strike prosecutions of peaceful civil rights protesters. In addition, consider the nature of persons like the defendant generally (*e.g.*, if a court says public drunkenness cannot be prosecuted, what will happen, and what does the average person think about public drunks?).

(6) *What important facts do you not know?* Often, facts left out of opinions would make a big difference in evaluating the court's reasoning. If there's something important that the court has omitted, think about how it might change the result.

I certainly do not mean to suggest that you must brief all of the above matters when reading a case, much less that you should memorize them for class or in preparation for the exam. That said, the more of these questions that you tackle when reading class assignments, the better you will understand the material.