Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we're excited to share the second episode of our new "Start Law School Right" series. In this episode, we will be discussing reading law school cases and preparing for class. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Welcome back to the Law School Toolbox podcast. Today's episode is called "Class Prep 101" and is part of our "Start Law School Right" series. So first, do you really need to do the reading in law school? Um, yes. But you might be thinking, "There's so much!" Okay, you'll be assigned a lot of reading, but it's important to do as much of it as you possibly can. Why? Because the cases you read are your "raw materials" for understanding the law. Remember the first step to law school learning? You have to absorb the information. If you don't do the reading, you won't have very much to work with.

Lee Burgess: Now, with that in mind, let's go through the basics of reading a case and talk about ways to take helpful notes to refresh your memory later. To the casual observer, law school seems extremely inefficient. Why do students spend most of their time reading long, drawn-out cases that barely touch on "the legal rules"? Why do professors spend hours in class dissecting these same cases? Wouldn't it be a lot easier to just read a book that tells you what the rules are? Arguably, but there are some good reasons to actually read the cases.

Lee Burgess: 1. Case law makes "the rules". In a common law system, you can't just go look up the law – it doesn't exist in a standardized written format. For better or worse, the law is created piece by piece as individual courts weigh in on what they think the law is – taking into account everything that has been decided earlier, which is judicial precedent or stare decisis.

Lee Burgess: 2. Reading cases teaches you how judges and lawyers think. You can learn a lot by osmosis, without really realizing it. Reading cases gives you a sense of the rhythms of legal thought and language. What do judges focus on? What do they gloss over? This intuitive sense of what matters comes in handy later, when you're trying to fit your best arguments into a 20-page brief to the court, or trying to ace your three-hour law school exam.

Lee Burgess: 3. Learning the law from cases is hard. Admittedly, it's easier to pick up a commercial outline and get an overview of Tort law, or whatever you're studying. But because it's easy, you're not learning as much. Reading cases and extracting the law, instead of skimming a commercial outline and getting the highlights, is comparable to the difference between reading a book and writing a book, or listening to a lecture and delivering the lecture. Writing a book or presenting a lecture is difficult, but after you've done it, you really know what you're talking about. Similarly, figuring out the law from cases is hard, but once you've done it, you'll really know what you're talking about.

Lee Burgess: So, what are you looking for when you read a case? Several things:
1. What black letter law does the case discuss? Presumably your professor, and the casebook author, have selected this case for a reason. That reason is almost certainly because the case involves the application of relevant black letter law to the facts at hand. Your goal is to extract that law and save it for future use. We'll discuss this in much more detail later, with examples. Another way to think about "black letter law" is "settled law". Contrast the settled law, which everyone agrees on, with any disputed legal issues in the case.

Lee Burgess: 2. How does the court interpret a statute? If you're taking a course that focuses on statutes, such as Civil Procedure or Evidence, the cases typically don't give you the black letter law, because the black letter law comes from the code itself. Instead, the cases explain a nuance or an application of the statute. Is this as important as the statutory black letter law? You bet! On the exam, you'll have to know both.

Lee Burgess: 3. What questions were up for debate? In many cases, it's not as simple as saying, "The elements of assault are X, Y, and Z." Hint: That's the black letter law! There's usually some disputed question, or the case wouldn't have gone to trial to begin with. So, what is being disputed? Is it a factual dispute or a legal dispute? Why is this a close case? These are the situations that professors love to use on their exams. Always pay attention to areas of ambiguity.

Lee Burgess: 4. How did the court reach this decision? It's too simple just to think about what law applied. You also need to understand how the court applied that law and how it reached its conclusion. Were certain factors dispositive? For example, did they determine which way a question came out? Did one decision preclude consideration of other questions? This analysis is critical when you're trying to understand the order in which specific questions have to be asked. Which was most important: the facts, the law, or the policy? Understanding all of these factors allows you to later analyze a related but slightly tweaked set of facts, with confidence. On a law school exam, for example.

Lee Burgess: 5. Why was this case included? Finally, perhaps the most important question of all. Why was this case included in your syllabus? Asking yourself this question, with every case that you read, will drastically enhance your understanding of the subject matter, because it forces you to think about all the other cases you've already read. How is this one different? How does it fit into the topic area? What is it designed to teach you? If you can figure out specifically why each individual case was included, you'll be a model student in no time.

Lee Burgess: Keep these questions in mind when you read a case, and you'll be well on your way to law school success!

Lee Burgess: Now let's get into the nitty-gritty. It's important to understand the structure of a typical opinion, so you'll know what to look for, and record for later use. We'll be talking about a famous opinion, *United States v. Carroll Towing*, which we will link to in the show notes if you want to pause and review that. First things first – let's talk about the components of a typical opinion.

Lee Burgess: The Citation: Each case has at least one citation. This is a unique identifier that distinguishes this case from all others. The citation consists of several parts: the names of the parties, the year it was decided, and a reference to a particular volume and page of a specific "reporter" (the books where opinions are collected). Even though most cases are retrieved electronically these days, the citation is still to the book version. It will make more sense if you envision a lawyer going to a bookshelf to look for a specific book, then turning to a particular page.

Lee Burgess: So, here are a few examples:

- *Brown v. Board of Education*, 347 U.S. 483 (1954)
- *Glassroth v. Moore*, 229 F. Supp. 2d 1290 (M.D. Ala. 2002)
- *Geary v. Visitation of the Blessed Virgin Mary Parish Sch.*, 7 F.3d 324 (3d Cir. 1993)
- *Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339 (1928)
- *Jackson v. Commonwealth*, 583 S.E.2d 780 (Va. Ct. App. 2003)

Lee Burgess: Don't worry about the details of how to cite a case now. You'll learn about it when you take Legal Writing and study the Bluebook. But I do want you to notice a few things in the citations that I just read to you:

1. The first part identifies the parties (Brown v. Board of Education). The plaintiff generally comes first, then the "v." for "versus", then the defendant, but sometimes the order switches on appeal, so watch out for that.
2. If you see something like "347 U.S. 483," the "U.S." tells you this is a federal Supreme Court decision.

3. If you see something like "229 F. Supp. 2d 1290," the "F." tells you that this is a federal case, from one of the lower courts. The options are the Federal Reporter (F., F.2d, or F.3d) for federal appellate courts, and the Federal Supplement (F. Supp. or F. Supp. 2d) for federal district courts, or the trial courts. Notice in the second citation, you're told exactly which court issued this opinion: M.D. Ala., otherwise known as the Middle District of Alabama. Ditto for the third one – it came from the 3rd Circuit Court of Appeals.
4. The final two cases are from state courts. The first is from New York – we know this because of the "N.Y.", and the second is from Virginia – we know that because of the "Va." In general, if you see a citation without a location in the date parenthetical, it's a decision of the highest court in the system. So "248 N.Y. 339" is from the highest court in the state of New York, which is confusingly called the "New York Court of Appeals", rather than the "New York Supreme Court". And because we get a location in the final citation, we know that's not the highest court in Virginia, but one of the appellate courts.

Lee Burgess: So, I know that's a little hard to do on a podcast, but I wanted to give you a really quick introduction to citations. They're easy to gloss over, but they actually give you a ton of useful information, so it's good to pay attention to them.

Lee Burgess: Next up is the Judge: Close to the top of every case, you'll see a very important piece of information – the name of the judge who authored the opinion. Sometimes these will be people you've heard of – famous Supreme Court justices, for example, and sometimes it'll be a judge on a state court in the middle of nowhere. Regardless, don't ignore this information. Particularly for better-known judges, it helps situate the case in a larger cultural and political context.

Lee Burgess: For reference, here are a few famous and prolific judges you'll see over and over again:

- Learned Hand
- Benjamin Cardozo
- Richard Posner

Lee Burgess: The case we're going to talk about is a very famous opinion from Learned Hand: *United States v. Carroll Towing Co.*, 159 F.2d 169 (2d Cir. 1947). First, the procedural history: As a general rule, the cases you read in law school will be appellate opinions, not trial court opinions. In a nutshell, the trial court hears the case and decides what the facts are. When the case goes up on appeal – meaning at least one party objected to some aspect of the lower court's ruling – the appellate judges, in theory, defer to the trial court's findings of fact and focus on applying the law. As a result, decisions from the courts of appeal, and

the highest court, contain a lot more legal analysis than trial court decisions, so they're more useful in illustrating legal principles. The downside is that it's often challenging to figure out exactly what went on in real life, which can make things confusing.

Lee Burgess: So, what's the procedural history of *Carroll Towing*? Well, it's pretty sparse. All we know from this version is that it's an appeal in the 2nd Circuit. Knowing something about the federal courts in the state of New York, my guess is it's an appeal from the SDNY (or Southern District of New York), because that's the trial court for New York City, where this incident occurred. But the opinion itself doesn't actually reveal this – at least not as it's edited.

Lee Burgess: Next, the facts: At the beginning of every case, you'll get a brief recitation of the facts. You'll want to read these carefully, and your professor might ask about them if you get called on, but they're essentially background information. Don't try to memorize every single fact in every single case. It's impossible, and it's pointless. No exam is going to ask you "What happened in *Carroll Towing*?" You will, however, often need to compare a new factual scenario to one in a case you read, so pay close attention to the hypothetical factual situations your professor discusses in class, and take notes on the probable outcomes if the facts are changed slightly. Also, pay close attention to any facts that the court, or your professor, spend a lot of time and energy on. Often, it's said that the decision "turns on" certain facts. These are the important ones to remember!

Lee Burgess: Notice in this case that the factual summary is surrounded by brackets. That tells you this a paraphrase by the casebook author, and not something that's actually in the opinion word-for-word.

Lee Burgess: Next, the main issues: Quite often, the opinion will lay out the main issues for you. This is very valuable information. In this case, after learning that a barge sank in New York harbor, we're told that "The question concerns the allocation of liability for the resulting loss." Good to know. Although, notice that this is the perspective of the casebook author, not the Court, since it's bracketed.

Lee Burgess: Next, the reasoning of the court: Everything so far has essentially been introduction, but now we're getting to the real heart of the matter – the reasoning of the court. To parse out what's going on, you need to understand two difficult concepts: holding and dicta.

Lee Burgess: Holding: The "holding" of the court is what was actually decided, including any legal rules which were necessary for the decision. All of this becomes "binding" on the lower courts, meaning they have to follow it in their own decisions. In general, the trial courts in a given jurisdiction have to follow the rules set by the

appellate courts in that jurisdiction, and everyone has to follow the rules from the highest court of the system.

Lee Burgess: Dicta: The rest of the discussion, interesting though it may be, is "dicta". That means it's not strictly necessary to the decision and is more just the musings of the judge on the topic. It's not binding on anyone, although it can be very influential.

Lee Burgess: As you might suspect, reasonable people sometimes disagree over exactly what the holding of a case is, and what's dicta. If it's beneficial to your client, you might argue for a very "narrow" holding – this means a holding that's closely tied to the exact facts in the underlying case. Opposing counsel, on the other hand, would argue for a "broad" holding – meaning it should be extended beyond the exact facts in the underlying case to apply to your case. Arguing about the holding and how it applies to a new set of facts, is an essential skill for lawyers, and one you'll want to develop from the early days of law school. It's also a very common area of dispute!

Lee Burgess: So, what's the holding in *Carroll Towing*? I'd argue it's actually extremely narrow: Whether, in this circumstance, the Connors Company should have had a barge aboard.

Lee Burgess: Next, the implications of the ruling: Well, okay, you might be thinking, "Why is this case famous if it only applies to this single incident more than 60 years ago?" Well, that's an excellent question! This case is important because of the reasoning. Even though it's not necessarily binding on lower courts – they're not required to evaluate whether BPL applies in every Negligence case – Learned Hand's discussion of when, economically, someone should be held liable for negligence was hugely influential. It's now known as the "Hand Formula" and it would be a rare Torts exam that didn't cover this in some way. Hooray, you've got a leg up!

Lee Burgess: Note that Hand himself says that the holding is very narrow ("In such circumstances we hold – and it is all that we hold – that…"), but it doesn't matter. He wrote the rest of the opinion for a reason, and the law developed according to his viewpoint, as a result.

Lee Burgess: So, the end result: One final thing to pay attention to is the end result. What actually happened as a result of this opinion? Well, it's weird – it's not so clear here. If we look at the facts carefully, it seems like the result is that the owner of the barge that sank (the Connors Company) had to bear the loss, even though their barge was just moored at a dock, minding its own business.

Lee Burgess: One other oddity of this case is why the United States is involved as a plaintiff. Why is that? These are the sort of questions that arise reading edited appellate cases, where we don't have all of the relevant background information. If you're really curious, you can generally check the full opinion, or the published trial court opinion, for more details.

Lee Burgess: Next up, we will talk about case briefing. Reasonable people disagree about whether you need to "brief" every case before class. Since this is one of the places where Alison and I disagree with each other (see – there are different ways to approach law school!), I will present both of our views. But first, what is briefing? In short, it's a way to summarize a case in your notes before you head to class, so you'll be prepared for the class discussion.

Lee Burgess: An argument for briefing: Most of us don't read cases immediately before walking into class. Therefore, we need notes to remember what happened in each case so we can participate in class. A brief is like an investment in the class time you are going to sit through. Is there any other benefit to briefing? Yes, you might know the answer to something when the professor calls on you. And that is always a good feeling.

Lee Burgess: So, what should be in a good brief?

1. The facts: These are just so you can remember what happened in the case. They don't need to be long; just enough to remind you what happened. Which facts should you include? The facts that are important to the outcome of the case.
2. Procedural history: You should know where the case has been, or where it is going.
3. The issue: What is the legal issue?
4. The holding: What did the court decide?
5. The black letter law: Sometimes a court's holding (what it decided) is different from the black letter law you should take from the case. So, it is important to note any additional law in the case.
6. The reasoning: How the court "thought" about the issue and came to its decision.
7. Critique or questions: You should make notes of any personal comments, questions, or thoughts that you have about the case. These notes will help you get the most out of your professor's discussion because you'll understand what's going on.

Lee Burgess: Okay, here is an argument against briefing: Alison didn't brief a single case in law school, other than one that was required for Legal Writing. She understands why it's helpful in theory, but it just didn't work for her. It seemed overly time-consuming, and she found that she could generally remember the facts of a case

without rewriting them, so long as she highlighted them in the book. Yes, she was a book briefer. If you look at any of her old casebooks, it's like an Easter egg factory exploded – green, pink, yellow, orange – everywhere!

Lee Burgess: For the uninitiated, "book briefing" involves highlighting different parts of the case in different colors, so you can rapidly find things if you're called on. Facts, for example, might be green. Legal reasoning is yellow. The holding, or conclusion, is pink. Key elements of the dissent are orange. And so on. You can include whatever you want, really, as long as you have a system.

Lee Burgess: In addition to rainbow striping each case, she did a little doodle at the beginning to remind her what the case was about. She found it extremely helpful, both as a memory jog and as an exercise in distilling the case. What's the single most memorable aspect of the case? How does one draw that? Considering these questions forced her to really think about the case and enabled her to remember it better later on.

Lee Burgess: Now, would this system work for everyone? Probably not. But if you're a visual learner, as Alison is, it's something to consider. So, you can do quite well in law school, without ever briefing a case.

Lee Burgess: And unfortunately, with that, we're out of time. Stay tuned for more in the "Start Law School Right" series. Next up we will be talking about the Socratic method. If you're starting law school soon and want some personalized help to feel confident on day one, check out StartLawSchoolRight.com for details of our "Start Law School Right" course. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

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Tutoring for Law School Success
Strategies for Pre-Law Students
United States v. Carroll Towing Co.

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