

Legal Writing, Reasoning, and Research
New Scholars' Showcase

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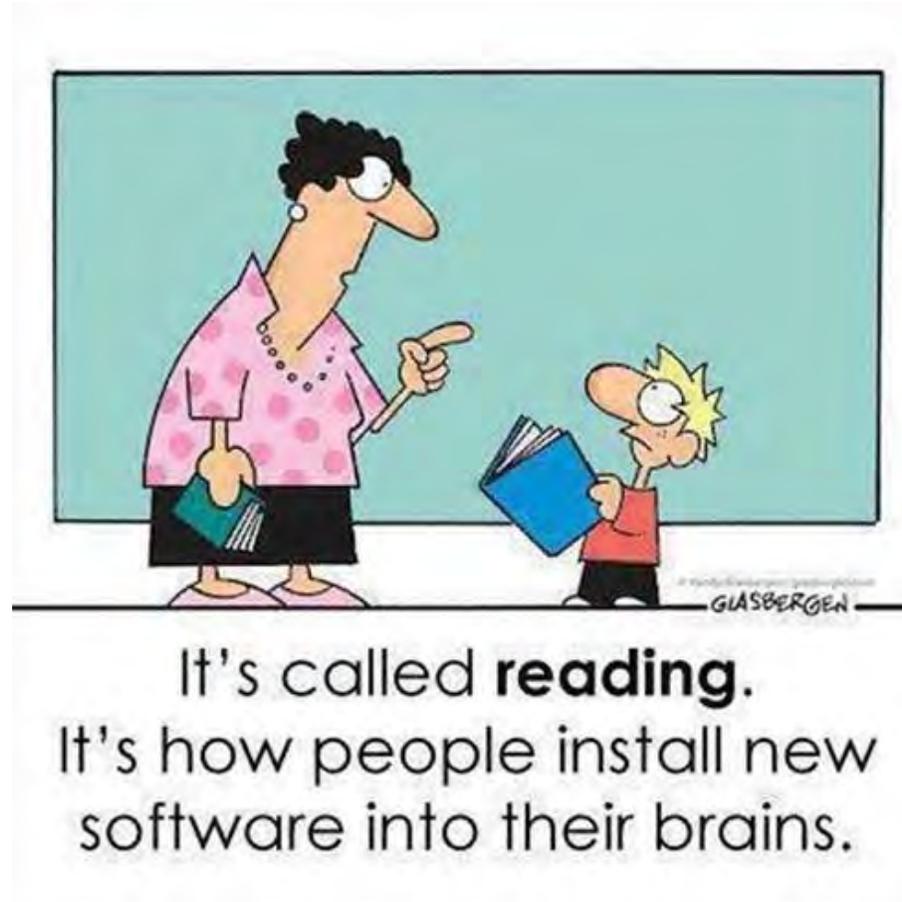


CRITICAL READING INSTRUCTION: The Road to Successful Legal Writing Skills*

- Article Summary
- Implications for Legal Writing

*18 W. Mich. Univ. Cooley J. of Prac. & Clinical L. (2017)

Critical Reading





Reading Studies

“a correlation exists between the reading strategies of the top law students and their first semester grades.”

Leah Christensen, *Legal Reading & Success in Law School: An Empirical Study*, 30 Seattle L. Rev. 603 (2007)

Lundeberg Study: 1987

| Category | Novices | Experts |
|-----------------------------|---------|---------|
| Context – look for headings | 1 | 10 |
| Overview | 0 | 8 |
| Reread rule | 3 | 9 |
| Reread terms | 3 | 6 |
| Synthesis | 3 | 6 |
| Evaluate | 1 | 10 |
| Underline | 5 | 6 |

Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 Reading Res.Q.407 (1987)



Dorothy Deegan: Law Review Article (1995)

| Reading Strategies | Upper Quartile | Lower Quartile |
|--------------------------|----------------|----------------|
| Paraphrase, underline | 29.1% | 44.7% |
| Reread, question | 58.9% | 40.3% |

Dorothy H. Deegan, *Exploring Individual Differences Among Novices Reading in a Specific Domain: The Case of Law*, 30 Reading Res.Q. 154 (1995)

Laurel Currie Oates: Torts Casebook (1997)

| Category | Top 15% | Bottom 20% | Professor |
|------------------|---------|------------|-----------|
| Read as advocate | yes | no | yes |
| Reread | yes | no | yes |

Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted through Alternative Admissions Programs*, 83 Iowa L. Rev. 139 (1997)

Leah Christensen: Judicial Opinion (2007)

| | Higher Performance | Lower Performance |
|-----------------------|--------------------|-------------------|
| Paraphrase, underline | 21% | 77% |
| Reread, question | 45% | 12% |
| Evaluate | 32% | 9% |
| Read as advocate | 55% | 15% |

Leah Christensen, *Legal Reading & Success in Law School: An Empirical Study*, 30 Seattle L. Rev. 603 (2007)



Lower Performing Students

- ✓ Read for class.
- ✓ Skimmed over the facts.
- ✓ Underlined and highlighted a great deal.
- ✓ Focused on paraphrasing.
- ✓ Did not question the result.



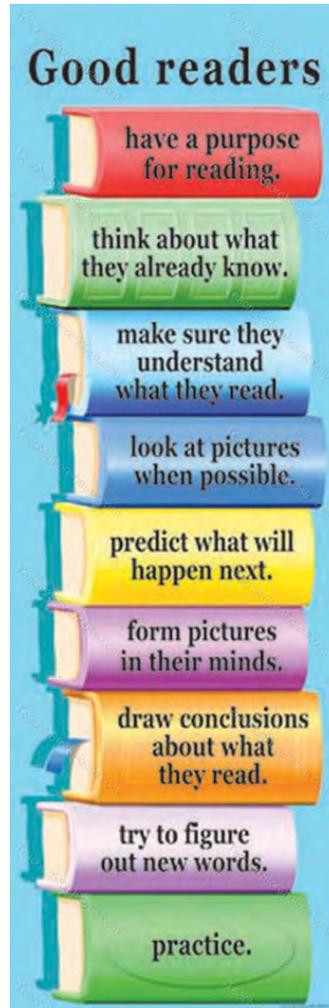
Higher Performing Students

- ✓ Read as advocate or judge.
- ✓ Understood context of case.
- ✓ Created mental picture of facts.
- ✓ Read and re-read.
- ✓ Evaluated decisions.

General Learning Theory



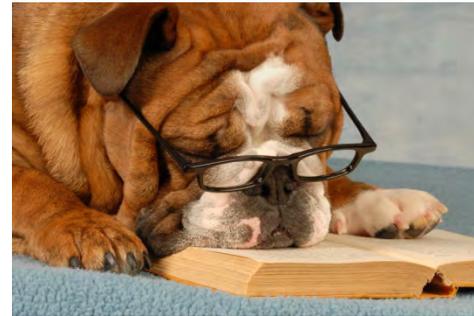
Reading Theory





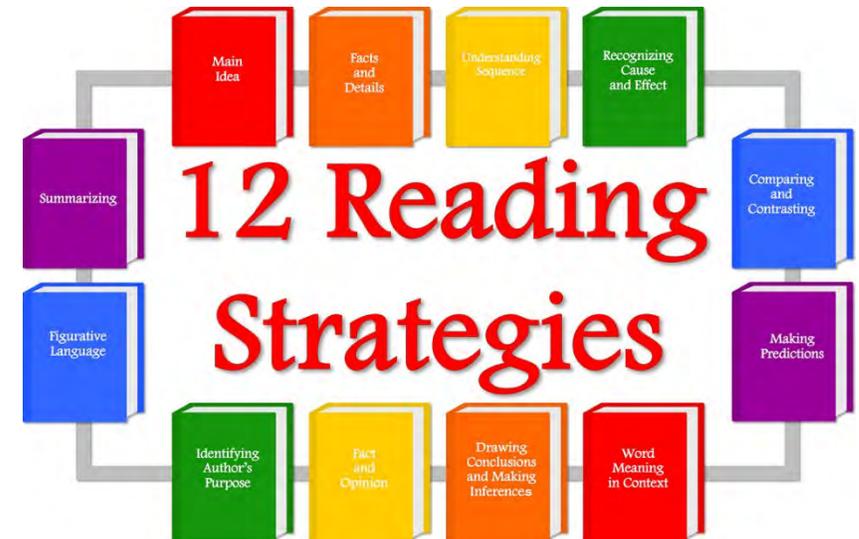
Can Reading Instruction Impact Writing?

- Very little empirical work
- Iranian study
- United Kingdom study



Study Hypothesis

Law students who receive critical reading instruction will be stronger writers.



Study Design

- ✓ 24 first year students (12 control, 12 participants) w/equivalent LSAT/UGPA
- ✓ Participants received 8 sessions of reading instruction
- ✓ Pre-test: first graded writing assignment
- ✓ Post-test: final graded writing assignment

Critical Reading Instruction

| BEFORE READING | TOPICS |
|----------------|--|
| Session 1 | ➤ Read for purpose & as advocate/judge. Focus. |
| Session 2 | ➤ Context, case structure, procedure |
| DURING READING | |
| Session 3 | ➤ Read for an Overview |
| Session 4 | ➤ Facts |
| Session 5 | ➤ Issue, Holding, Rationale, Unclear Language |
| Session 6 | ➤ Inferences |
| AFTER READING | |
| Session 7 | ➤ Evaluation |
| Session 8 | ➤ Synthesis |



Purpose for Reading Cases

got purpose?

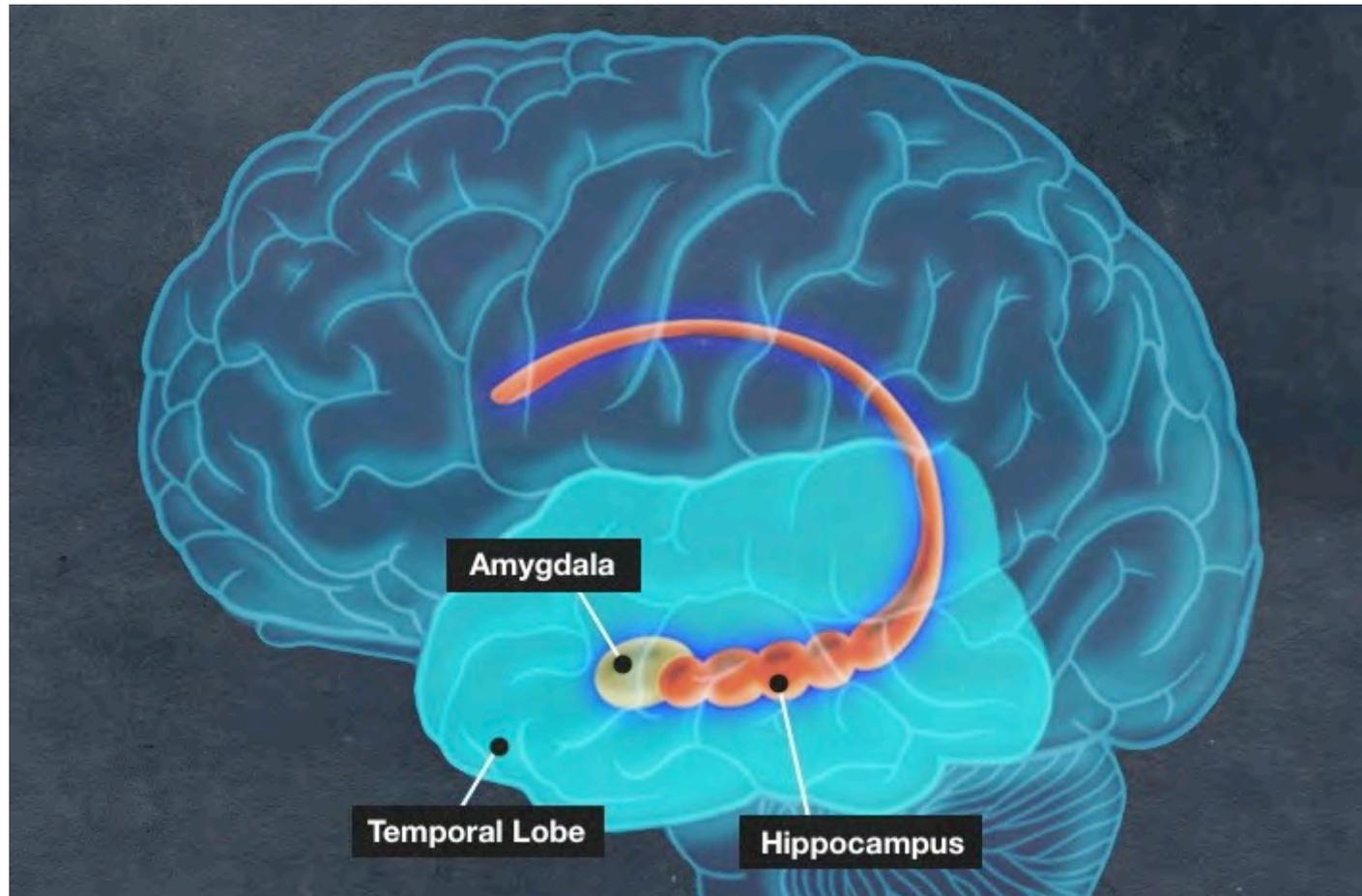
Read as Advocate or Judge



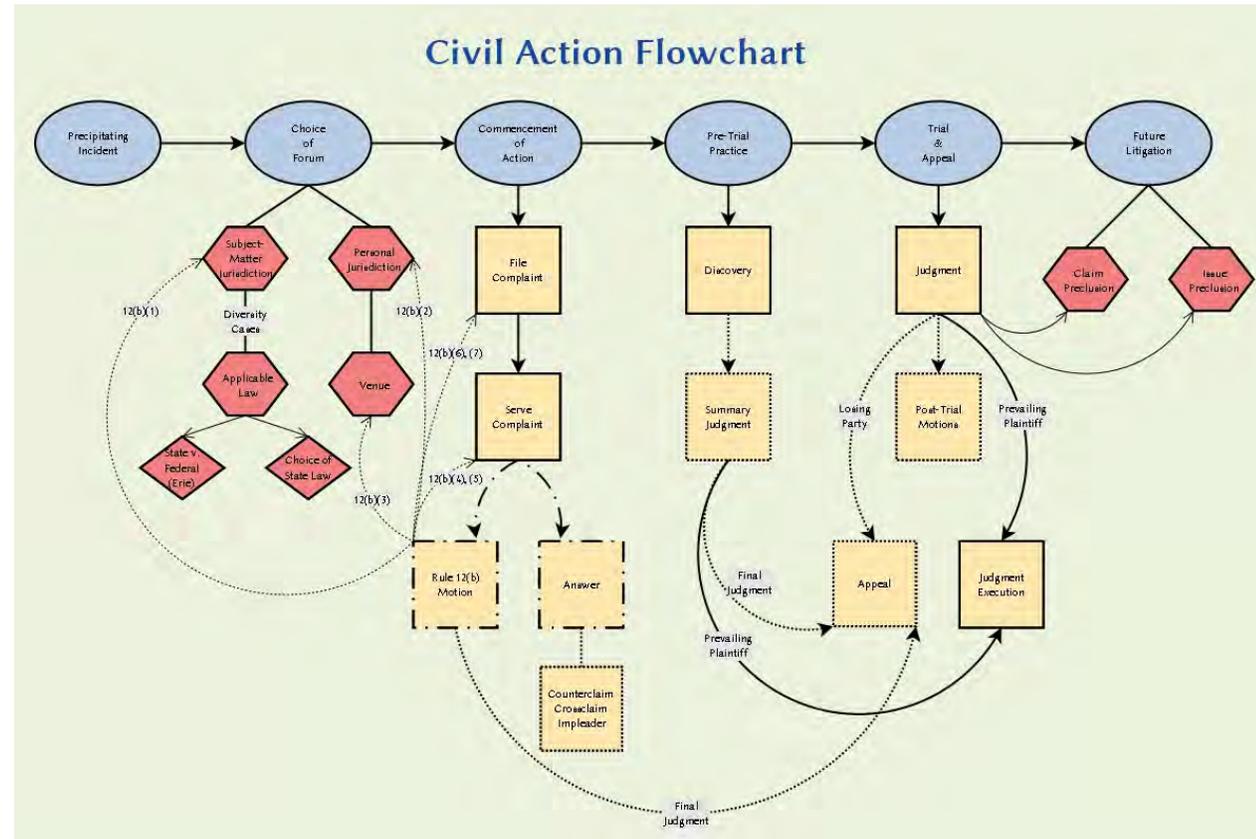
(C) DWI Lawyer



Read with Focus



Case Structure / Procedure

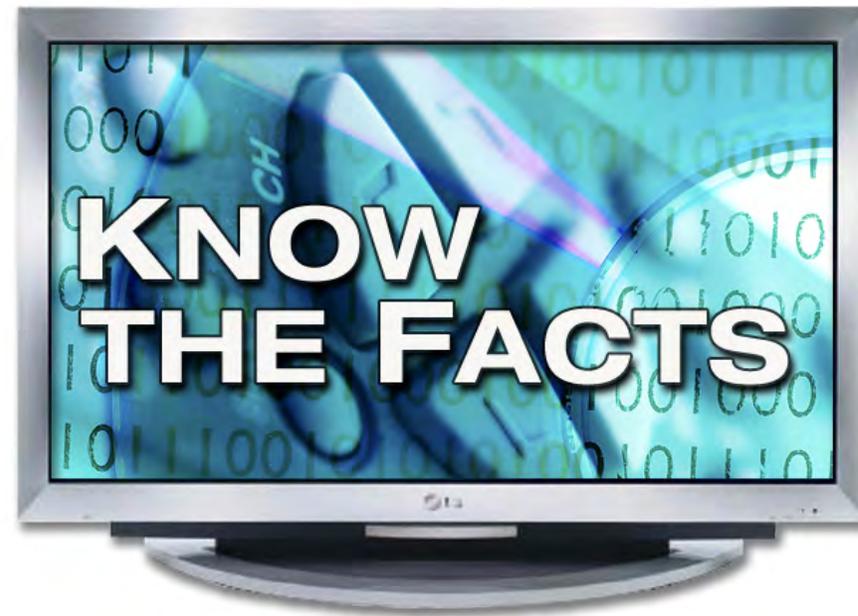


Context/Overview

CONTEXT
MATTERS



Facts





Comprehension Techniques

| Large Scale | Small Scale |
|---------------------|---------------------------|
| - Context clues | -Look up words |
| -Reread | -Notice conjunctions |
| -Topic sentences | -Notice repeated words |
| -Analyze main ideas | -Track pronoun references |
| | -Break up sentences |
| | -Read aloud |

Main Ideas: Issue, Holding, & Reasoning



Issue

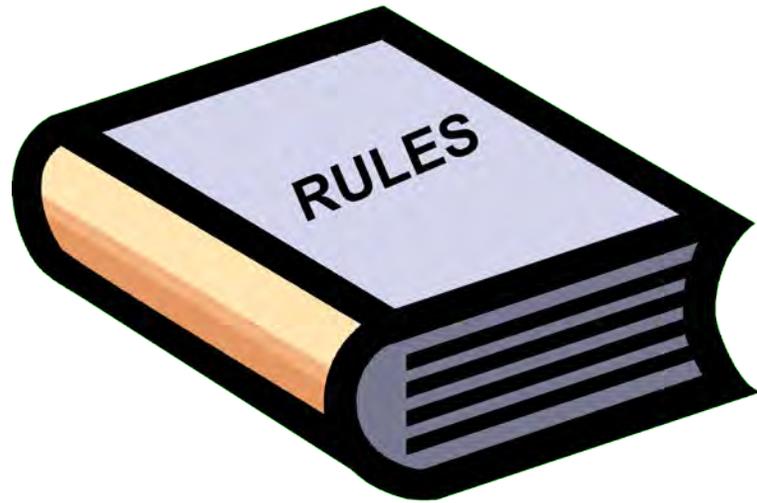


Holding



Reasoning

Finding Rules



What is an inference?

*We make **inferences** when the author does not give us all of the information.*

We must be detectives and...



Find clues from the story or pictures



AND

Use what we already know about the topic

Case Brief

March 27, 2012

Marbury v. Madison

- ★ What are the Midnight Judges?
- ★ Why did Marbury sue James Madison?
- ★ What was Marshall's ruling?
- ★ Why was this ruling so important?
- ★ How does this power change the nature of the Judicial Branch?
- ★ **Jefferson** tried to stop the appointment of the **Midnight Judges**. **William Marbury** was one of these judges.
- ★ **Marbury** sued and took his case to the Supreme Court. **Marbury** believed the **Judiciary Act of 1789** gave the Supreme Court the power to force his appointment.
- ★ Chief Justice **John Marshall** ruled that the court did not have the power to force **Jefferson** to give **Marbury** the job.
- ★ The Supreme Court declared the Judiciary Act of 1789 unconstitutional.
- ★ **Marbury vs. Madison** established **Judicial Review**: it gives the Supreme Court the power to declare laws unconstitutional.



Evaluation

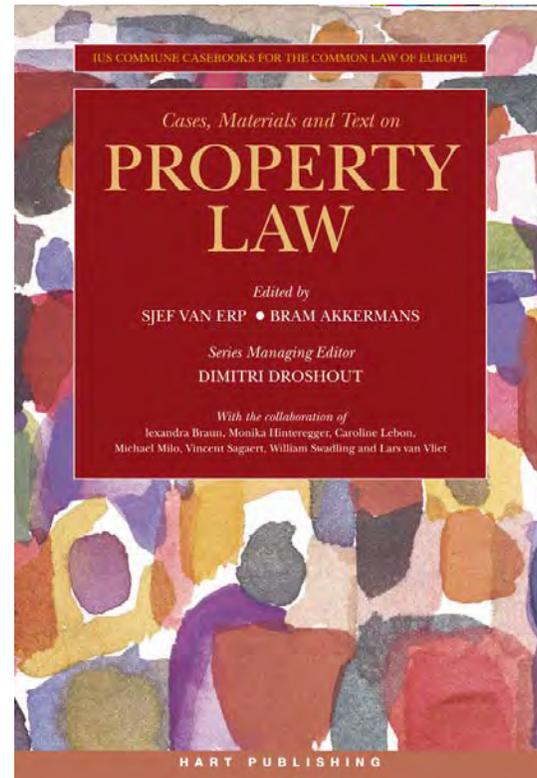
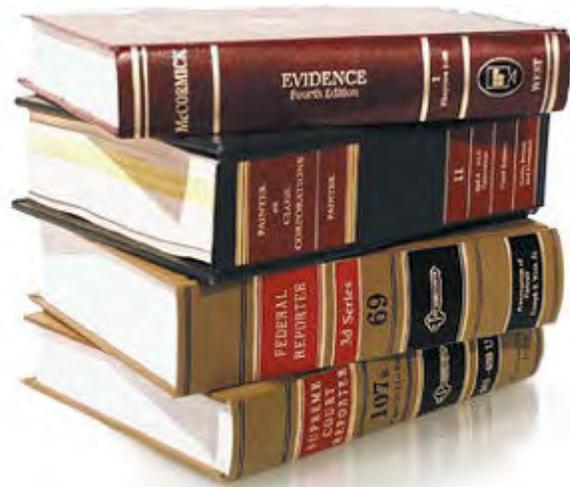




Synthesis

| Step | Analysis |
|------|---|
| 1 | Identify topic |
| 2 | Locate and read cases |
| 3 | Identify facts, holding, rule, & result for each case |
| 4 | Determine if synthesis is necessary |
| 5 | Compare case facts, holdings, rules and results |
| 6 | Synthesize |

Reported Cases vs. Casebook Cases





Results: Raw Data

| | Memo 2 Mean Score | Memo 2 Rule Explanation Mean Score | Memo 2 Citation Form Mean Score |
|-------------|------------------------------|---|--|
| Control | 26.4 | 5.08 | .87 |
| Participant | 28.5 | 5.94 | 1.25 |

Results: Statistical Significance

| | MEMO 2 TOTAL SCORE | MEMO 2 RULE EXPLANATION | MEMO 2 CITATION FORM |
|---|--------------------------------------|-----------------------------------|-----------------------------------|
| Comparison Control/Participant Scores | T (22) = 1.577, P = .064 | T (20) = 1.88, P = .036 | T (22) = 1.89, P = .035 |
| Comparison Control/Participant Scores w/Larger Sample Size | T (33.5) = 2.084, P = .044 | | |



Results: Student Evaluations

| Category | Student Response |
|---|--|
| Do you like the checklist? | 19/19 – Yes |
| Usefulness of sessions for legal writing? | 14 – Rule identification 7 – Case synthesis |
| Most useful ideas from sessions. | 13 – Read as advocate 10 – Look up words 10 – Case synthesis |
| When should sessions be done? | 14 - Before school starts 5 - Earlier in the semester |



Study Implications: All Classrooms

| | |
|-----------------------------------|-----------------------------------|
| 1. Cases are difficult to read. | 6. Facts. |
| 2. Read as an advocate or judge. | 7. Comprehension techniques. |
| 3. Casebook vs. reported cases. | 8. Rule formulation & Inferences. |
| 4. Structure of cases, procedure. | 9. Main ideas in cases. |
| 5. Context. | 10. Evaluation and synthesis. |

Study Implications: Legal Writing



Strategies: Legal Writing

- Acknowledge that cases are difficult to understand.
- Discuss purpose for reading early in the first semester.
- Case selection.
- Incorporate critical reading skills into initial assignments.
- Model good critical reading techniques.

Expanded Critical Reading Instruction

