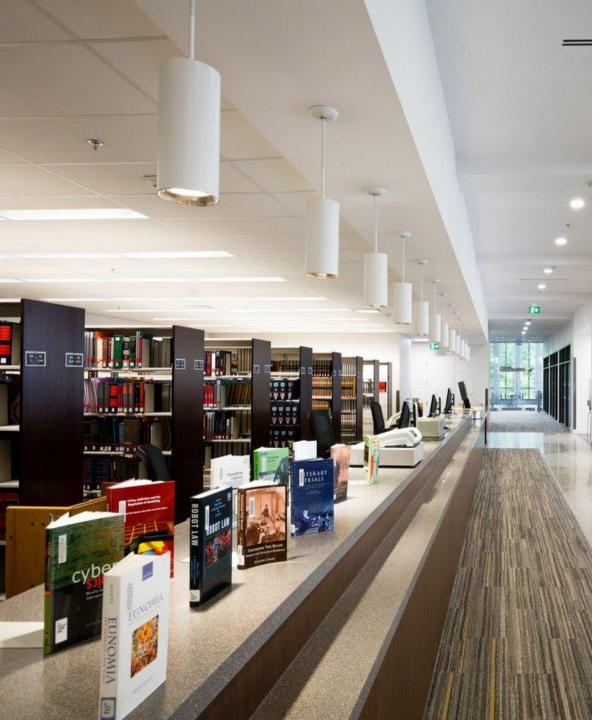
Introduction to Legal Research

Legal Research and Writing Program September 30, 2022 John Bolan & Alexia Loumankis



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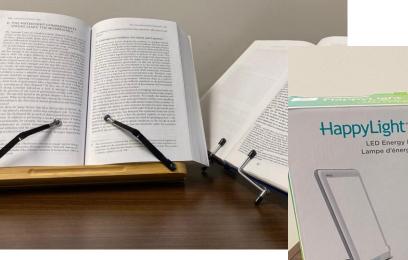
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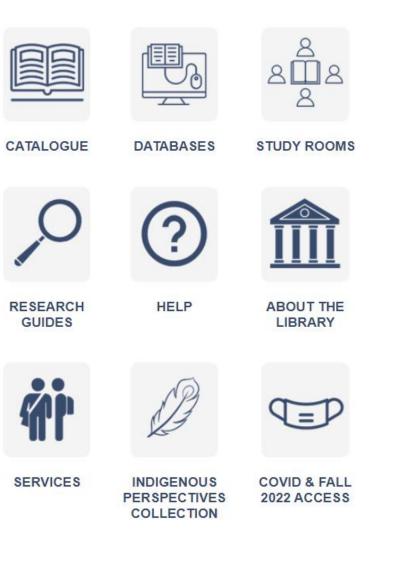


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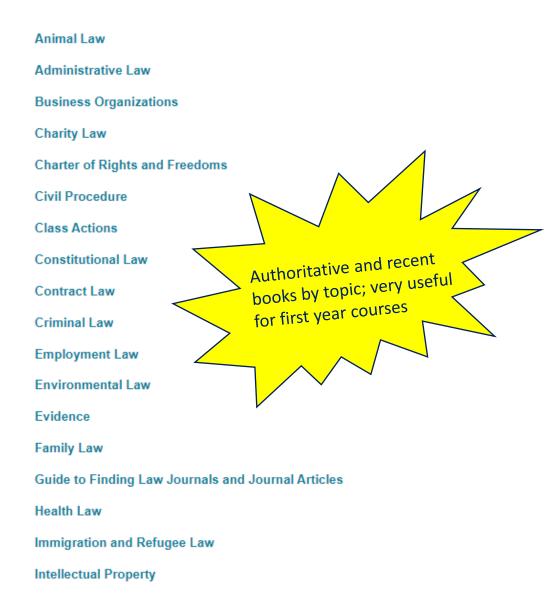
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The Bora Laskin Library, University of Toronto

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Constitutional Law



Textbooks

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The Charter of Rights and Freedoms by Hon. Robert J. Sharpe & Kent Roach

Call Number: KE4381.5 S54 2021 Course Reserves Also available on **online** to the U of T community

Constitutional Law by Patrick J. Monahan, Byron Shaw, Padraic Ryan

Call Number: KE4219 .M66 2017 Course Reserves Also available on **online** to the U of T community

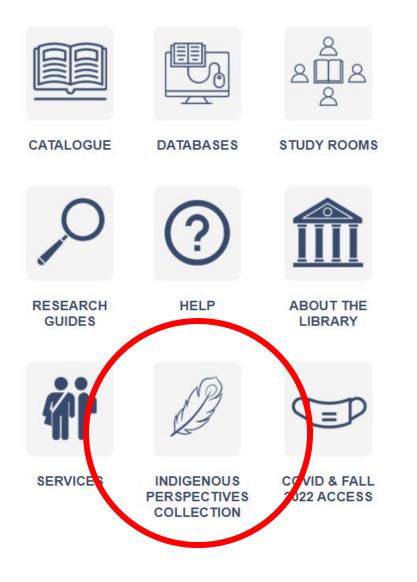
Constitutional Law of Canada, by Peter w. Hogg Call Number: KE4219 .H62 2007 Course Reserves Also available on **online** to the U of T community

The Law of the Canadian Constitution by Guy Régimbald, Dwight Newman Call Number: KE4219 .R446 2017 Course Reserves

Oxford Handbook of the Canadian Constitution by Peter Oliver, Patrick Macklem, and Nathalie Des Rosiers Call Number: KE4219 .094 2017 Course Reserves Also available **online** to the U of T community

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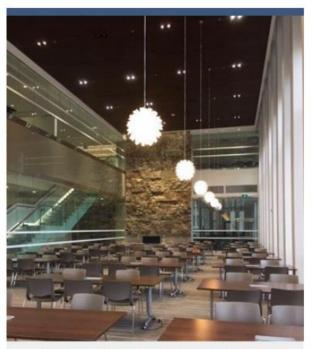


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The Bora Laskin Library, University of Toronto

Lexis+ Canada & Westlaw Edge Canada

- These databases include vast amounts of case law, legislation, secondary materials (incl. books and law journals), and additional research tools like indexes, forms, etc.
- All students have their own accounts/passwords to these services
- Free while you are in law school; expensive in practice
- Take advantage of free access to become experts in their use
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Upcoming L+ and WEC Training

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IN PERSON

- Thursday, October 13, 2022 @ 12:30-1:30PM [Rm P120, Bennett Lecture Hall]
- Thursday, October 27, 2022 @ 1-2PM [Rm J250, Rosalie Silberman Abella Moot Court Room]

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Tuesday, October 18
@ 4-5PM

Questions? Email <u>alexandra.kwan@utoronto.ca</u>

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ONLINE ONLY

- Monday, September 26th @ 1-2PM
- Tuesday, October 25 @ 1-2 PM

CanLII

Search all databases

Document text	Q
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Manitoba	Prince Edward Island	

Commentary

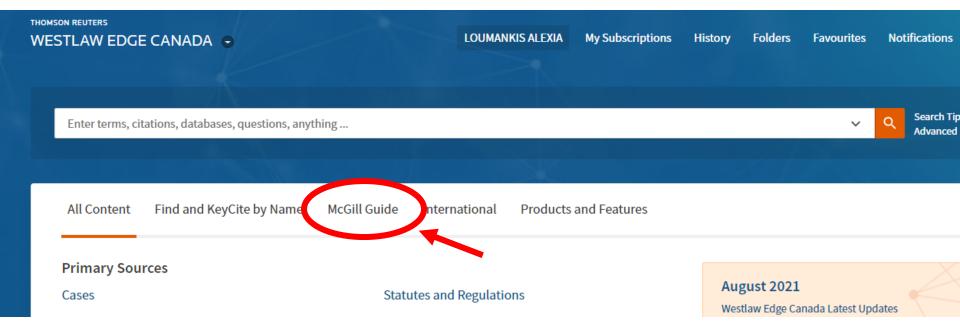
Books, articles, reports and more...

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2021-09-06	COURT OF APPEAL SUMMARIES (AUGUST 30 – SEPTEMBER 3, 2021): Ontario First Nations (2008) Limited Partnership v. Ontario Lottery and Gaming Corporation, 2021 ONCA 592 (CanLII)
2021-09-06	COURT OF APPEAL SUMMARIES (AUGUST 30 – SEPTEMBER 3, 2021): Heliotrope Investment Corporation v. 1324789 Ontario Inc., 2021 ONCA 589 (CanLII
2021-09-06	Waiver of Privilege - Client says yes, lawyer says no - who wins?: Department of Finance (Re), 2019 NTIPC 25 (CanLII)
2021-09-06	COURT OF APPEAL SUMMARIES (AUGUST 30 – SEPTEMBER 3, 2021): 1758704 Ontario Inc. v. Priest, 2021 ONCA 588 (CanLII)

Legal Citation

- At U of T Faculty of Law we follow the Canadian Guide to Uniform Legal Citation, aka the McGill Guide
- The final word is up to your course instructor
- You will cover citation more thoroughly in LRW
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People

Feel free at any time to make an appointment with a librarian for research assistance

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sufei.xu@utoronto.ca (Inter-Library Loans)

<u>anna.szot.sacawa@utoronto.ca</u> (Library Account/Circulation Matters)

Introduction to Legal Research

Legal Research and Writing Program



Agenda for this part of our session

- How legal research differs from other research
- Basic legal research concepts and process
- Anatomy of an online judgment
- Explanation of parallel citations



Legal Research

- Not just finding the finding part can be tricky, but it's just the beginning....
- Evaluating, synthesizing will be key to your analysis – and it's your analysis which is the point after all
- BUT you won't be able to do the analysis if you aren't able to find the right material, and be confident that you've looked in all the right places



How legal research differs from other types of research

- Some peculiarities that complicate legal research:
 - Jurisdiction
 - Role of precedent
 - Court heirarchies
 - Interaction between statutes, constitutions and judicial decisions
 - Textual and conceptual: much less data focused than other disciplines, and analysis of competing theories may not be amenable to sorts of proof you are be used to seeing
- However, you have many tools for dealing with those complicating factors. We will be going over those in our future sessions!



Research: a mainstay of legal practice

- In the early years of your career you are often evaluated on the quality of your writing and research
- Later on in your career you will be evaluating research done by others, and of course you will be maintaining current awareness of the legal situation throughout your career
- Bottom line: Throughout your careers you will be connected in a variety of ways to legal research. It's a conduit for the knowledge that will undergird your professional practice



Research & Academic Success

- Throughout law school you will be writing substantial papers that require effective research
 - You can miss the target on some analytical aspects of an issue and still provide at least a decent answer by compensating in other areas
 - But failing to include key cases or statutes is another matter hard to come back from that mistake [true in practice as well as school].
 - And excelling requires hitting the target in both your analysis and your research



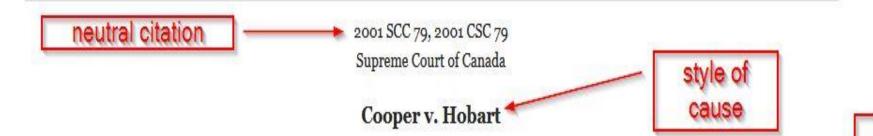
Some terminology

- Secondary Sources
 - Sources which explain or describe the law.
 - Books
 - Journal articles
 - Encyclopaedias
 - Other forms of academic commentary
- Primary Sources
 - These are the law itself:
 - Constitution
 - Legislation
 - Cases



 Let's break down a case as it appears in the online databases, because there is a lot of information present that you usually don't find in your casebooks and coursepacks.

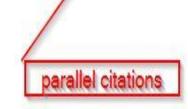




2001 CarswellBC 2502, 2001 CarswellBC 2503, 2001 SCC 79, 2001 CSC 79, [2001] 3 S.C.R. 537, [2001] B.C.W.L.D. 1084, [2001] S.C.J. No. 76, [2001] B.C.T.C. 215, [2002] 1 W.W.R. 221, 110 A.C.W.S. (3d) 943, 160 B.C.A.C. 268, 206 D.L.R. (4th) 193, 261 W.A.C. 268, 277 N.R. 113, 8 C.C.L.T. (3d) 26, 96 B.C.L.R. (3d) 36, J.E. 2001-2153, REJB 2001-26862

Mary Francis Cooper, Appellant v. Robert J. Hobart and Her Majesty the Queen in right of the Province of British Columbia, Respondents and The Attorney General of Canada, the Attorney General for Ontario, the Attorney General for New Brunswick, Her Majesty the Queen in right of Alberta, the Minister of Justice and the Attorney General for Alberta, the British Columbia Securities Commission, the Ontario Securities Commission, and the Alberta Securities Commission,

Interveners



McLachlin C.J.C, Gonthier, Major, Bastarache, Binnie, Arbour, LeBer J.

Heard: June 20, 2001 Judgment: November 16, 2001 Docket: 27880





Docket: 27880

Proceedings: affirming 2000 BCCA 151, 2000 CarswellBC 475, 184 D.L.R. (4th) 287, 75 B.C.L.R. (3d) 54, 49 C.C.L.T. (2d) 148, [2000] 6 W.W.R. 8, 135 B.C.A.C. 266, 221 W.A.C. 266 (B.C. C.A.); reversing 1999 CarswellBC 620, 68 B.C.L.R. (3d) 274 (B.C. S.C.); additional reasons at 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and reversing 1999 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and 1990 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and 1990 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (4th) 124 (B.C. S.C.); and 1990 CarswellBC 1300, 68 B.C.L.R. (3d) 293, 35 C.P.C. (3d) 293, 35 C.P.

Counsel: David P. Church , Andrew J. Pearson , Ian G. Schildt , for Appellant D. Clifton Prowse , Karen Horsman , Keith L. Johnston , for Respondents Donald J. Rennie , for Intervener, Attorney General of Canada Sara Blake , for Intervener, Attorney General for Ontario Written submissions only by Cedric L. Haines, Q.C. , for Intervener, Attorney General for New Brunswick Tim Hurlburt , for Interveners, Her Majesty the Queen in right of Alberta, Minister of Justice, and Attorney General for Alberta James A. Sasha Angus , Lorne Herlin , for Intervener, British Columbia Securities Commission Neil Finkelstein , Johanna M. Superina , for Interveners, Ontario Securities Commission and Alberta Securities Commission

Subject: Torts; Civil Practice and Procedure; Public

Related Abridgment Classifications Civil practice and procedure V Class and representative proceedings V.1 Representative or class proceedings not under class proceedings legislation V.1.a. Requirements V.1.a.vil Miscellaneous Civil practice and procedure V Class and representative proceedings V.2 Representative or class proceedings under class proceedings legislation V.2 Representative or class proceedings V.2 Representative or class proceedings under class proceedings legislation V.2 b. Certification V.2 b. I Plaintiff's class proceeding

HEADNOTES

Mortgage Brokers Act, R.S.B.C. 1996, c. 313.

Autorités publiques --- Lois relatives à la protection des autorités publiques — Portée et objet des lois

Mortgage Brokers Act, R.S.B.C. 1996, c. 313.

A registered mortgage broker acted as broker for large syndicated loans. The broker arranged for investors to pool their funds for the purpose of making those loans. It was alleged that the funds provided by investors were used by the broker for unauthorized purposes. The broker was investigated by the registrar of mortgage brokers and the broker's licence was suspended. Soon afterward the broker went out of business. Money was outstanding to the investors, and the amount that they would likely realize from the security taken from the loans was such that there would be a shortfall of millions of dollars.

The plaintiff, one of over 3,000 investors who had advanced money to the broker, brought an action against the registrar. The statement of claim alleged that the registrar breached the duty of care that he allegedly owed to the plaintiff and other investors. The plaintiff alleged that the registrar was liable in negligence for failing to oversee the conduct of the broker, which had been licensed by the registrar. The plaintiff asserted that the registrar failed to suspend the broker's licence until more than a year after the registrar was aware of serious violations of the *Mortgage Brokers Act*, and failed to notify the investors that the broker was under investigation. The plaintiff applied to have the action certified as a class proceeding.

The trial judge concluded that the registrar would have reasonably contemplated that carelessness on his part was likely to cause damage to the plaintiff, a person dealing with a mortgage broker. The trial judge held that therefore there was a prima facie duty of care, and that there were no considerations negating or limiting that duty of care. The trial judge held that the pleadings disclosed a cause of action. The action was certified as a class proceeding. The registrar and the Crown appealed. The Court of Appeal held that even though the registrar might reasonably have foreseen that losses to investors would result if the registrar was careless in carrying out his duties under the Act, there was not a sufficiently close relationship between the parties. Therefore, a prima facie duty of care was not established. The appeal was allowed. The plaintiff appealed.

Held: The appeal was dismissed.

The first branch of the applicable test required an answer to the question of whether the circumstances of the case disclosed reasonable and foreseeable harm, and proximity sufficient to establish a prima facie duty of care. The case did not fall within and was not analogous to a category of cases in which a duty of care had previously been recognized. Nor was this a situation in which a new duty of care should be recognized. In this case, the factors giving rise to proximity, if they existed, had to arise from the statute under which the registrar was appointed. The *Mortgage Brokers Act* does not impose a duty of care on the registrar to investors with mortgage brokers regulated by the Act. The registrar's duty is rather to the public as a whole. A duty to individual investors would potentially conflict with the registrar's overarching duty to the public. A review of the relevant powers and duties of the registrar under



Table of Authorities

Table of Authorities	
Cases considered by <i>Major J.</i> :	
Alcock v. Chief Constable of South Y	orkshire Police (1991), [1992] 1 A.C. 310, [1991] 4 All E.R. 907 (U.K. H.L.) — referred to
Anns v. Merton London Borough Cou Merton) [1977] 2 All E.R. 492 (U.K. H	uncil (1977), [1978] A.C. 728, [1977] 2 W.L.R. 1024, (sub nom. Anns v. London Borough of I.L.) — followed
	Saint John Shipbuilding Ltd., 153 D.L.R. (4th) 385, 221 N.R. 1, 158 Nfld. & P.E.I.R. 269, 490 C.C.L.I. (2d) 1, 37 B.L.R. (2d) 1, 40 C.C.L.T. (2d) 235 (S.C.C.) — referred to
	Pacific Steamship Co. (1992), 11 C.C.L.T. (2d) 1, 91 D.L.R. (4th) 289, 137 N.R. 241, (sub Cie des Chemins de Fer nationaux du Canada) [1991] R.R.A. 370, [1992] 1 S.C.R. 1021,
Comeau's Sea Foods Ltd. v. Canada 236, 43 Admin. L.R. (2d) 1, [1997] 1	(Minister of Fisheries & Oceans), 142 D.L.R. (4th) 193, 206 N.R. 363, 31 C.C.L.T. (2d) S.C.R. 12 (S.C.C.) — referred to
Davis v. Radcliffe, [1990] 2 All E.R. 53	36, [1990] 1 W.L.R. 821 (England P.C.) — considered



JUDGMENT

The judgment of the court was delivered by The Chief Justice, McLachlin C.J.C. and Major J.:

1 The present appeal revisits the *Anns* test (from *Anns* v. *Merton London Borough Council* (1977), [1978] A.C. 728 (U.K. H.L.)) and, in particular, highlights and hones the role of policy concerns in determining the scope of liability for negligence. The appellant is an investor who alleges that the Registrar of Mortgage Brokers, a statutory regulator, is liable in negligence for failing to oversee the conduct of an investment company which the Registrar licensed. The question is whether the Registrar owes a private law duty of care to members of the investing public giving rise to liability in negligence for economic losses that the investors sustained. Such a duty of care is as yet unrecognized by Canadian courts. For the reasons that follow, we find that this is not a proper case in which to recognize a new duty of care. In the course of these reasons, we attempt to clarify the distinctive policy considerations which impact each stage of the *Anns* analysis.

1. Facts

2 Eron Mortgage Corporation ("Eron") was registered as a mortgage broker under the *Mortgage Brokers Act*, R.S.B.C. 1996, c. 313 ("the Act"), from early 1993 until 1997. On October 3, 1997, the respondent, Robert J. Hobart, in his capacity as the Registrar under the Act ("the Registrar"), suspended Eron's mortgage broker's licence and issued a freeze order in respect of its assets.

3 Eron acted as a mortgage broker for large syndicated loans. It arranged for numerous lenders (or investors) to pool their funds for the purpose of making a single loan to a borrower, which was typically a developer of commercial real estate. The syndicated loans were made in the name of Eron or one of its related companies, which held the security in trust for the investors.

4 It is alleged that the funds provided by the investors were used by Eron for several unauthorized purposes, such as funding interest payments on other non-performing mortgages and paying for personal items for the benefit of the principals of Eron. It is currently estimated that \$222 million is outstanding to the investors on these loans. Investors will likely realize only \$40 million from the security



Concurring & Dissenting judgments

- Concurring judgments (judges agree with the decision but for a different reason)
- dissenting judgements (judges disagree with a decision or part of a decision and explain why)
- With some rare exceptions, both of these will follow the judgment of the court



Noting up

- Refers to the process of finding cases that have considered other cases or legislation
 - Essential part of legal research. Necessary to determine the precedential value of a case, and obtain courts' interpretations of legislation
 - You will cover this in LRW



Tip: keep track of cases you look at

- Case research can become repetitive.
- When you do your research you will read a LOT of cases. It's helpful to keep track of the cases you have read, somehow.



Help for in person and remote students

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- Whether it's citation, research strategy or problems finding a case or article, please ask us
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