TRESPASS VI ET ARMIS

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"Who will explain the difference between trespass and trespass-on-the-case?" It was Section C's first tort class of 1L year, and no one had any idea how to answer the first question in what was to be one of the most intellectually challenging experiences in our academic lives.

"I'm not here to answer my own questions, you know," explained Professor Hanks, "and I'm more than happy to start calling on people if there are no volunteers. I'm sure you all did the reading for today, right?"

She scanned the room methodically, as if she could read our faces to discover who had done the reading and who had not. To the collective relief of the rest of the class, someone raised his hand and offered an answer that had something to do with "force and arms." We did not know it at the time, but before us stood a virtuoso of the Socratic method.

The "force and arms" discussion took us to a set of hypotheticals involving throwing a rock, and the difference between hitting someone with it and causing a traffic accident by throwing it into an otherwise unobstructed roadway. "Force and arms," we realized, meant nothing on its own, and the only way to understand it was to read cases and reason by analogy.

The inherent ambiguities of language meant that Professor Hanks would always find a way expose a weakness or vulnerability in our answers. For better or for worse, she explained, the tools of law are words and sentences, and these must be chosen carefully. Change one fact (at least a normatively significant one), and the whole analysis shifts. There is rarely a straightforward and easy answer—if there were, why bother litigating?

That first class ended with a succinct explanation of how the relationship Professor Hanks and her students would proceed: "My job is to make you think. Don't forget that. If you say 'this,' I will respond with 'Why not that?' If you have any questions, I am always happy to speak after class or during office hours. But, you must always prepare

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for class. You. Must. Read. The. Cases. In less than three years, you will graduate, hopefully pass the bar, and start handling other people's problems. Do not underestimate the responsibility that comes with that. Preparation starts today."

A pattern emerged very quickly. We did our reading, carefully briefed the cases, and went to class thinking we were prepared. And, after Professor Hanks guided a few students through a Socratic obstacle course, most of us would inevitably come to realize that we had missed the point. No answer was immune to a follow-up question, and every attempt to distill a "rule of law" was be easily rendered ridiculous, usually through a colorful hypothetical, formulated on the spot. It was always an exercise in improvisation, and Professor Hanks could move through the material with fluency and fluidity. On most days, the discussion continued after class in the lounge, lobby, or a nearby restaurant. Professor Hanks made good on her word. She was always generous with her time.

As a founding member of Cardozo's faculty, Professor Hanks' retirement is a real benchmark in the history of the school. Throughout the eight years I have known her, her love of teaching and dedication to students have always been her guiding principles. For me, at least, this translated into a learning experience that impacts what I do in the office on a daily basis. Future generations of Cardozo students will not have the experience of sitting in the first day of Professor Hanks' tort class and realizing that they were going to have to use their minds in ways that they never had before. So, to commemorate Professor Hank's contribution to my professional life (and, I imagine, to the lives of thousands of others), I would like to end this essay with a list of lessons I learned from her. These have turned out to be applicable far beyond her 1L Torts class. I put them to use on a daily basis in the practice of law, and there is no question in my mind that I am a better advocate for having learned them from her.

You must always read the cases. There is no substitute for reading the actual case. No treatise, law review article, commentary, case note or other secondary source will ever be an adequate substitute. And whenever possible, read the case again because you missed something.

Procedure always matters. A motion to dismiss, motion for summary judgment, and a motion for judgment notwithstanding the verdict are not the same. The first step in reading and understanding a case is figuring out the procedural posture and the applicable standard.

What the court does is usually more important than what it says. Opinions say all sorts of things, but most of the time, what the court

does is more important than what it says. Look for instances in which a court does something that seems inconsistent with what it says.

Sometimes the outcome is just unfair. Professor Hanks had a pithy saying for this—"Too bad, so sad!" usually accompanied by a shrug. On many occasions, she tied this into the difference between bright-line rules and more flexible principles, as well as their associated costs and benefits. Unpalatable results are often the cost of bright-line rules.

Pay attention to the facts and use them. Legal standards are applied to facts. It's all well and good for the plaintiff to assert that the defendant breached the applicable standard of care, but the facts are what show how that standard was breached.

Do not use words unless you know what they mean. This rule is especially applicable to legal terms in Latin. I am fairly confident that the majority of Section C decided to make regular use of our law dictionaries on the day Professor Hanks proved that res ipsa loquitor, when uttered, does not actually speak for itself.

Good legal writing is good writing. Good writing is good writing, whether it is fiction, non-fiction, creative, or technical. Legal writing should be easy to read, and it should flow.

Be suspicious of adjectives and adverbs. They are often superfluous, and occasionally confusing. If you use one, think about why. If you can make do without it, it is probably a good idea to do so.

Know your audience. Over the course of the Torts semester, Professor Hanks regularly asked if anyone had looked up the judge who had written one of the opinions on the syllabus for the day. This, she explained, would help us in the future, when it was time to assess which arguments were more or less likely to succeed before particular judges.

Write less in more time. Professor Hanks' exams are the perfect illustration of this lesson. They were notoriously difficult, in part, because of her strict word limits (which she promised to enforce with gusto). But, she allowed six hours to complete her three-question exam. The keys to success, she explained, were using more time to write less and using part of the six hours to edit and proofread.