

### First Assignment

The required text for the course is John G. Sprankling and Raymond R. Coletta, *PROPERTY: A CONTEMPORARY APPROACH, SECOND EDITION* (2012 Thomson Reuters West Interactive Casebook Series), plus Handouts posted to the course website.

For class on Wednesday, January 15, 2014, please complete the following reading and review:

1. *Ancient Hawaiian Land Use* (attached Handout)
2. Sprankling and Coletta, pp. 1-8, 95-96, 25-48.
3. Keller, *Broad and Narrow Holdings: A User's Guide* (attached Handout)

This document reviews the skill of crafting Broad and Narrow Holdings, which you have already learned and applied in the ILM class and beyond. Its purpose is to provide you with a review, signal the importance of this skill for the Property I class, and demonstrate its application in a series of Property Law cases.

A complete set of Reading Assignments will be posted by Thursday, January 9. The course requirements and learning objectives will be distributed and reviewed at the first class.

The course website for this class (on Blackboard) will go live following the first class, when you will receive the access code. Please do not seek to access or enroll in old versions of the course on Blackboard, as the old information there will be out of date and not relevant to the current version of the course.

I look forward to working with you this semester!

## Ancient Hawaiian Land Use

### Ahupua`a

The concept of private property was unknown to ancient Hawaiians, but they did follow a complex system of land division. All land was controlled ultimately by the highest chief or king who held it in trust for the whole population. Who supervised these lands was designated by the king based on rank and standing. A whole island, or moku, was divided into smaller parts, down to a basic unit belonging to a single family.

Each moku was divided into several moku, the largest units within each island, usually wedge-shaped and running from the mountain crest to shore. O`ahu was divided into six moku.

Each moku was divided into ahupua`a, narrower wedge-shaped land sections that again ran from the mountains to the sea. The size of the ahupua`a depended on the resources of the area with poorer agricultural regions split into larger ahupua`a to compensate for the relative lack of natural abundance. Each ahupua`a was ruled by an ali`i or local chief and administered by a konohiki.

Within the ahupua`a, `ili were smaller divisions (two or three per ahupua`a) that constituted the estate of the chief. Each `ili could be formed of noncontiguous pieces called lele, or jumps. Mo`o were sections of the `ili that were arable; usually these agricultural units did not extend to the sea. Smaller yet were the kuleana, or land tracts used by the common people for cultivation of crops. The size of kuleana, like the size of ahupua`a, depended on the natural fertility and abundance of the land.

The ancient ahupua`a, the basic self-sustaining unit, extended elements of Hawaiian spirituality into the natural landscape. Amidst a belief system that emphasized the interrelationship of elements and beings, the ahupua`a contained those interrelationships in the activities of daily and seasonal life.

Shaped by island geography, each ahupua`a was a wedge-shaped area of land running from the uplands to the sea, following the natural boundaries of the watershed. Each ahupua`a contained the resources the human community needed, from fish and salt, to fertile land for farming taro or sweet potato, to koa and other trees growing in upslope areas. Villagers from the coast traded fish for other foods or for wood to build canoes and houses. Specialized knowledge and resources peculiar to a small area were also shared among ahupua`a.

Although there was no private ownership of property, land tenure of the maka`ainana (commoners) was stable. They paid weekly labor taxes and annual taxes to the konohiki, or local overseer, who collected goods to support the chief and his court. The konohiki supervised communal labor within the ahupua`a and also regulated land, water and ocean use.

Stewardship of the land and its resources was formalized through the kapu system. The kapu (taboo) - administered and enforced by konohiki and kahuna, or priests - placed restrictions on fishing certain species during specific seasons, on gathering and replacing certain plants, and on many aspects of social interaction as well. In this way, the community maintained a sustainable lifestyle. Through sharing resources and constantly working within the rhythms of their natural environment, Hawaiians enjoyed abundance and a quality lifestyle with leisure time for recreation during the harvest season of the year. This lifestyle also encouraged a high level of artistic achievement. Many crafts, including Hawaiian kapa and featherwork, were the finest in the Pacific. Hawaiians devoted themselves to competitive sport and martial arts as well as expression through dance and chant, creating rich traditions that continue today.

<http://www.hawaiihistory.org/index.cfm?fuseaction=ig.page&CategoryID=299> (last visited July 5, 2012).

## BROAD AND NARROW HOLDINGS – A User’s Guide

Susan Etta Keller

A significant feature of the Anglo-American legal system is the role played by precedent. Each case we read is interesting not just for its resolution of the conflict between the two parties, or even as a model of the application of an existing rule or standard to a particular conflict, but most importantly as a source of law—as potential precedent to be applied in future conflicts.

Therefore, it is important to read cases with an eye toward the future as well as toward the past. The past is represented in our analysis of what happened and what rules or standards from pre-existing precedent applied to the conflict. Mostly, the case itself is written in the mode of looking at the past. However, it is our job as lawyers and law students to read the case’s future. What is the effect the case will have as precedent in future conflicts?

An important tool in preparing oneself to answer the question about the case’s future is the holding, or a brief statement of the lesson of the case. A holding connects the outcome of the case to the circumstances in which that outcome is likely to apply. A holding can often take the following simple form:

*When A [character] does B [situation], C [outcome] happens.*

It is unlikely a case decision will itself announce its own holding; more likely, the court opinion will instead refer to holdings of other earlier cases that serve as precedent for the current controversy. Writing the holding(s) for the current case is the job of either the law student studying the case, the lawyer arguing about the case’s meaning in a future dispute, or a judge interpreting the case in a future dispute.

Holdings can be stated either **broadly** or **narrowly**. A broad holding states the situation in an abstract manner, so that it might apply to a large number of different fact patterns. A narrow holding states the situation in a more specific manner, following closely the facts of the case, so that it might apply to only a limited number of very similar fact patterns. Although a narrow holding tracks the facts of the case, it should be stated in general terms, so that it could apply in the future to very similar facts. For example, **A** should not be “Janet Smith” but rather “a tenant” or “a property owner” or “a fox hunter.” The narrow holding and the broad holding should not contradict each other, even though one is more detailed than the other.

Broad holdings are generally deployed by lawyers who seek to emphasize the similarities between the case and a future controversy as part of an argument that the case and its outcome apply to the new controversy. Narrow holdings are used when a lawyer wants to emphasize the difference between the case and the facts in a new controversy as part of an argument that the new controversy can be distinguished from the old case: i.e., come out the other way.

For law students, broad and narrow holdings

1. facilitate applying or distinguishing cases,
2. demonstrate the “stretch” of a case—how different its interpretations can be,
3. help identify the key facts or circumstances on which a court opinion relies.

### Broad and Narrow Holdings In Action

The use by courts of broad and narrow holdings can be demonstrated by examining a series of Nineteenth Century British cases concerning rights to water.

In Acton v. Blundell [12 Mees. and W. 324, 152 Eng. Rep. 1223 (Exch. 1843)], the effect of the defendant's coal mine was to drain off the water that would otherwise supply a well on the plaintiff's land. The court refused to apply the existing rule that governed the use of surface streams, a rule that required the upstream owner to refrain from interfering in any way with the water flowing to the downstream owner. Instead, the court said that the plaintiff with the dry well had no cause of action. It justified its decision by suggesting the various ways in which underground water differed from surface streams (for instance, its unpredictability).

Dickinson v. Grand Canal Junction Co. [7 Exch. 282, 155 Eng. Rep. 953 (1852)], and Chasemore v. Richards [7 HLC 344, 11 Eng. Rep. 140 (1859)], followed. Because they occurred in the same jurisdiction, Acton was binding precedent. Both cases dealt with a combination of surface streams and underground water. In each one, the effect of the defendant's underground well was to drain off water that would otherwise have flowed to the surface and joined a river. If all that water had instead gone into the river, the river in each case would have been swifter in current and would have better operated the plaintiff's mill. In Dickinson, the court sought to **distinguish** Acton. Therefore, it offered a **narrow** holding of the prior case:

“...it was held that the owner of a piece of land, who has made a well in it, and thereby enjoyed the benefit of underground water...has no right of action against a neighboring proprietor, who, in sinking for and getting coals from his soil in the usual and proper manner, causes the well to become dry.”

Note how specific the situation is: the reference to the well and the coal mine, even to the fact that the coals were mined in “the usual and proper manner.” From this point, it was easy for the Dickinson court to demonstrate how different the circumstances of its case were, and how they justified a different outcome.

In Chasemore, the court sought to **apply** Acton. Therefore, it offered a **broad** holding:

“In the earlier case of Acton v. Blundell, the Court of the Exchequer was of opinion that the owner of the surface might apply subterranean water as he pleased, and that any inconvenience to his neighbour from so doing...gave no ground of action.

Note how devoid of specifics this example is. Having stated the holding of Acton so broadly, it was easy for the Chasemore court to apply the same outcome to the facts at hand. Of course, the Chasemore court had to **distinguish** Dickinson in order to do so.

Compare the two holdings set out above. Remember that they are both statements of the lesson of the same case, Acton v. Blundell. Also, note that the Acton court didn't give us the holding; that occurred in future cases.

Your task is to do what the Dickinson and Chasemore courts did for the Acton case and generate broad and narrow holdings for all of your cases. By writing these holdings, you will enable yourself to apply and distinguish cases when required to do so.

### Frequently Asked Questions about Broad and Narrow Holdings

1. What if I don't plan to be a litigator (or a judge), do I need these skills?

*Yes. Whenever you are counseling a client, negotiating a settlement, drafting a document, you will need to be able to make judgments about how a case might be interpreted in the future.*

2. I've just read a case that deals with two different issues. Do I need to fit the outcomes on both of them into the same holding?

*No. Often, cases lend themselves to more than one holding. For those cases, it's often much easier and more useful to write separate holdings. Of course, you should still write broad and narrow versions of each one.*

3. I've just read a case in which the court doesn't seem to rely on the factual circumstances at all. How do I generate broad and narrow holdings?

*Sometimes, courts either ignore the details of the case, or state a rule in such definitive terms that it is hard to imagine that the court relied on any specifics of the case. In such instances, try to state the rule or standard the court announces in both an open-ended (broad) way, and in a way that will more tightly limit its future applicability (narrow).*

4. I understand the form for writing holdings, and I've read and understood the case, but I don't know where to begin in making broad and narrow holdings.

*Different people find different methods helpful. Some people find it easiest to begin with a narrow holding, and then turn each of the specifics into abstractions for a broad holding. Other people find it easiest to start broad and then fill in details for a narrow holding. Others write an "in-between" holding and then move in both directions.*

5. How do I know if my broad/narrow holding is broad/narrow enough?

*Broad and narrow are just relative terms. Theoretically, an infinite number of holdings exist on a continuum from broad to narrow. Just try to get a sense of how far the case will stretch by trying to be as broad and narrow as you plausibly can. Not every case will have a lot of stretch; in some instances the broadest plausible holding and the narrowest plausible holding are very close to each other. For testing purposes, I simply require that the holding you label as "broad" must be broader than the holding you label "narrow." (Of course both holdings will also need to reflect accurately the case and its lessons).*