Color Coding
Comments to Facilitate Revisions

Technology and The Teaching of Legal Research & Writing
Duquesne University School of Law
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Our students get the meaning behind colors
Our students (sometimes) don’t get the meaning behind comments

• Varying purpose
  – Organization, grammar, punctuation, analysis, citation, format

• Varying importance
  – Hierarchy in comments
  – Edit in stages
What students see

Carter responds where she bought the purse. The kids then comment about the quality of the store that Ms. Carter named. The video continues, until the next comment of “why you looking at me like that? Do you want to rape me?” Ms. Carter responds that she knows where the kids live and that she’s going to send them a thank you card, “for being so nice.” The video ends with the kids saying, “you don’t have a family, they all killed themselves because they didn’t want to live with you.”

Defining the first element of an IIED claim, the conduct must be extreme and outrageous.

Extreme and outrageous conduct is purposely a hard element to prove. Howard at 121. “Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” Howard at 122. Extreme and outrageous conduct must be more than “insults, indignities, and annoyances.” Harville at 1106. While embarrassing, stating and publishing facts does not constitute as extreme or outrageous conduct. Howard at 124. While general vulgarity and rudeness is frowned upon in society, it alone does not constitute extreme and outrageous conduct. Roach at 491. As stated, the element is very tough to meet. Even “the use of religious, ethnic or racial aspersions to denigrate a person… is not sufficiently egregious conduct to sustain,” the element of extreme and outrageous conduct. Graham at 864. While alone not sufficient, the duration of abuse, both public and private, will be significant factors to consider when determining if conduct is extreme and outrageous. Mitchell at 1042.

How extreme and outrageous conduct has previously been applied.

Abuse that occurs over a prolonged period of time may constitute extreme and outrageous conduct. Mitchell at 1042. For example, in Mitchell, the defendant harassed the plaintiffs for two years. Mitchell at 1042. The court held that while insulting language intended to denigrate a person may not, in and of itself, rise to the required level of extreme and outrageous conduct, liability may be premised on such expressions where, as here, defendant’s campaign of harassment and intimidation is constant.” Mitchell at 1043. The court determined the length of the conduct is a significant factor to consider when determining if conduct is extreme and outrageous. Mitchell at 1043.

Another way to define extreme and outrageous conduct is if one is playing with human remains “for entertainment purposes.” Roach at 492. For example, in Roach, the defendant had the cremated ashes of the plaintiff’s sister on his show. Roach at 489. The defendant played with the

Comment [M18]: You are going to have to shorten this up. What are some of the most offensive things that he says and does? Give the reader a “flavor” of what is on the video. But you don’t have to repeat the entire video. Once you have this double spaced, it should only be about two pages long.

Comment [M39]: Because?

Comment [M10]: Certain facts. Not all facts published are going to be embarrassing.

Comment [M11]: If you’ve stated this, you don’t need to state it again.

Comment [M12]: You have missing here—what is that thing alone?

Comment [M13]: This is a good topic sentence. I wonder about the word “abuse.” Maybe use the language the court uses. Insulting insulting conduct that occurs over a prolonged period.

Comment [M14]: Tell us more about what they did. The conduct is important, as is the duration.

Comment [M15]: This is a long quote. Try to put more of it in your own words and quote only the essential language.

Comment [M16]: This is little too specific. Again, look at the language of the court. So vulgar and disrespectful language which might otherwise be just offensive becomes extreme and outrageous when used “for entertainment purposes.”
What do students think?
admit that they must examine each scenario on a case-by-case basis to allow them to understand the nature of the property. *Reed v. Pickering Elementary School District*, 50, 690 N.E.2d 1077, 1079 (Ill. App. 3d 1998); *Wallace*, 707 N.E.2d at 143; *Adamec*, N.E. 2d at 33. With this, the courts look to the property’s character as a whole rather than the plaintiff’s use of the property at the time of injury. Bubb, 657 N.E.2d at 892; *Sylvester*, 689 N.E.2d at 1124; *Reed*, 769 N.E.2d at 1045; *Ozuk*, 666 N.E. 2d at 690; *Batson*, 690 N.E.2d at 1079; *Wallace*, 707 N.E. 2d at 143; *Adamec*, N.E. 2d at 33. In Mr. Gershwin’s situation, the walkway our client fell on is not intended or permitted to be used for recreational purposes as the §3-106 statute aims to include nor does it increase the usefulness of recreational property. Therefore, the court would likely reject the Washington Elementary School District’s affirmative defense of immunity.

The statute applies if the public property is intended or permitted to be used for recreational purposes, regardless of the primary purpose of the property. Bubb, 657 N.E.2d at 892; *Reed*, 769 N.E.2d at 1044; *Ozuk v. River Grove Board of Education*, 666 N.E.2d 687, 690 (Ill. App. 3d 1995); *Wallace*, 707 N.E.2d at 143. In examining whether property is intended or permitted to be used for recreational purposes, courts must consider: 1) whether recreational activity is “so incidental” that it is insufficient for a public entity to reach immunity and 2) whether the property has been used for recreation in the past or whether recreation has been encouraged there. Bubb, 657 N.E.2d at 893; *Reed*, 769 N.E.2d at 1045; *Ozuk*, 666 N.E. 2d at 691; *Batson*, 690 N.E.2d at 1081 (so incidental); Bubb, 657 N.E.2d at 893; *Ozuk*, 666 N.E. 2d at 691; *Batson*, 690 N.E.2d at 1079; *Wallace*, 707 N.E.2d at 143 (used for recreation in the past or whether recreation was encouraged).
recreation, they could not unequivocally conclude that the school intended the sidewalk to be used for recreational activities.

Additionally, when recreational use is so “incidental” to the properties overall and regular use the immunity provision does not apply. See Wallace v. Metropolitan Pier and Exposition Auth., 707 N.E.2d 140, 141 (Ill. App. 1st Dist. 1998) (finding section 3-106 inapplicable when the recreational nature of a pier “so minor or casual.”)

In the case of Mr. Gershwin a walkway that had painted markings not intended for recreational purposes, and is occasionally permitted to be used for recreational use is not within the meaning of statute 3-106. In Batson the court held that even though the school occasionally permitted students to use the sidewalk for recreational purposes it was not enough to conclude that it was intended for recreational purposes. Similarly, the walkway in our case was occasionally permitted by students to be used during recess for recreational activities such as a game of tag. Even though, painted markings are strong indicators of recreational use, in contrast to our case the painted yellow stripes were not intended for recreational use, but were used to differentiate a walkway from the playground. Bubb, 657 N.E.2d 887 at 893. Additionally, it specifically provided access for the teachers only as designated by the sign “Walkway for Teachers Only.” The school also had proceeded to notify the teachers that a fence would be placed were the orange cones are, indicating that the school had not intended the walkway to be used for recreational purposes.

Also, like in Wallace where the court held that the use of the property for recreational purposes was so “incidental” to the overall and regular use, similarly in our case the walkway was used incidentally for games of tag. The overall and regular use of the walkway had been designed to provide access for the teachers only.
What do students think now?
Goal for myself

- Tell students more often they’ve done something well
- Avoid redlining
- Get students to incorporate comments into future assignments
  - Not just detect, but diagnose

The greatest sign of success for a teacher is to be able to say, “The children are now working as if I did not exist.”

- Maria Montessori
Adobe Reader

- Students required to submit second assignment in .pdf format
- Commented using **Sticky Note** and **Highlight Text** in three colors
  - Yellow = organization or analytical issue
  - Blue = grammar, punctuation, or citation
  - Green = good or good, but…
- Sought student feedback on color-coding
Features

- Comment Tab
  - Sticky Note
  - Highlight Tab
Student Assessment

• Three questions
  1. Which type of commenting (comment bubbles in Word or colored comments in .pdf) did you prefer?
  2. Why did you prefer one type of commenting over the other?
  3. Which type of commenting would you prefer in LARW II?
Student Responses

• Preference
  – 4 student = either
  – 9 students = .pdf
  – 14 students = word
Student Responses

- Reasons
  - .pdf
    - “It made clearer what was well done, what was almost there and what needed most work”
    - “caught my eye on what to focus on, but also seeing I did well in other parts”
    - “easier to understand the [comments] when printed off”
    - “Mac compatible”
Student Responses

- Reasons
  - Word
    - “makes editing easier”
    - “could see the comments as I edited my paper whereas with the PDF I had to hover over the comment and switch screens”
    - “too hard to find/too many pages to go through”
    - “easier to see what’s wrong”
    - “easier to read when printed out”
    - “Adobe isn’t very user friendly”
Student Responses

- Next semester
  - You choose
My assessment

• I love color (and the mobility for comment placement), but…
• I’m not a fan of color-coding in Adobe Reader
  – Takes more time
  – Less comments
  – More paper, color effect less when printed
  – How many greens did you get?
  – Better revisions?
Law Prof. Comments

- Adobe Pro
  - More features—“think of Adobe Reader as the watered down version of Adobe Pro”
    - Audio comments
    - Save actions (keystrokes)
  - More expensive
    - Adobe Reader is free
    - Adobe Pro is $200-300 (special deal through university for $85)
  - Convert files into .pdf in batches
Law Prof. Comments

• Specific apps
  – “I have a Tablet PC and I use software called .pdf Annotater by Grahl. It allows me to write in edits, like standard proofreading marks, and also type comments or cut and paste typed comments from my master list of common comments. My only complaint about the software is that the text boxes sometimes get cut off when you print out the documents, so that's something to watch out for.”
  – “I use an app on my iPad called PDF Expert that lets me highlight, type, draw, and all other manner of things directly onto the document (it works best with a stylus, and I use a bluetooth keyboard too). It's like grading on paper, but I don't have to haul stacks of briefs around with me. And it was very reasonable -- I think I paid around $7 for the app.”
  – “Another good one I recently came across is iAnnotate on the iPad. You can handwrite or type bubbles or add audio, and many other annotations.”
  – Airsketch—Open PDF documents from Mail or other Apps in Air Sketch to wirelessly annotate and project them. Email the full annotated versions afterwards…5 drawing tools: Pencil, pen, marker, brush, and highlighter..
What I should have presented on…

Color Coding Comments with an app on my iPad
Next year!

Questions/Comments?
Your assessment/experience?