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Why I use “Seinfeld” as precedent

By Irma S. Russell

My students enjoy “Seinfeld” – sometimes even more than Contracts class. But I have stopped worrying and learned to love popular culture in the classroom – when it helps convey legal concepts. “Seinfeld” provides some good examples of how popular culture can stimulate student interest and make points of law more memorable. Visualize Kramer and Newman dancing in a frenzied circle, each with one hand clutching a radar detector and the other hand gripped around a motorcycle helmet. The two agreed to trade the goods (a sale under the Code), but neither trusted the other enough to deliver first. Neither let go, but each was tendering (“putting and holding” as required under UCC), in a scene more dramatic but essentially similar to tender by commercial actors who lack trust in one another. In another episode, Jerry tried to return a blazer to a store. He told the clerk he was returning it for “spite.” When the clerk explained the store’s policy allowed only returns based on customer dissatisfaction, Jerry tired to back-pedal to fit his declaration to the test: “Well, that’s it. I am dissatisfied.” Too late! The clerk reasoned that once Jerry gave spite as his reason, his assertion was not to be believed, illustrating pretext and bad faith. (This scene can also be used to explore the concept of a buyer waiver of objections under the UCC by a failure to particularize. See UCC 2-605.)

Other episodes on the show provide good contract coverage. Perhaps the most striking recurring theme relates to the way people as well as courts rely on the totality of circumstances as the test for decisions. Students want a single-factor test with a yes/no answer, rather than the open-ended, nuanced, messy, and indefinite standards sometimes found in common law decisions. Now when students object to a particularly complicated and involved inquiry by a court, I give “Seinfeld” as precedent. The show is not about “nothing.” It is a story of young adults trying to figure out the rules in a post-modern society that seems to lack clear norms. Like us, they grope both for the test and for relevant evidence. They consider anything and everything that seems applicable to the inquiry. For example, Elaine asks Jerry if she has to break up in person with the guy she has dated a short time. It is so much easier by phone. Jerry argues that buying soup fulfills his promise to buy dinner for a friend who gave him a suit. George whines that the office rules did not clearly prohibit sex with the cleaning lady.

Now he has been fired.

Serving as the judge on the first two questions, Jerry and Elaine use a totality of circumstances test. Jerry questions Elaine about the boyfriend she wants to dump. How many times have they gone out? How expensive were the dinners? Did she have sex with him? On the issue of whether soup is dinner, Elaine asks, “What kind of soup was it? Was it minestrone? Did he have bread with it?”

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The person serving as the judge asks these questions in a contemplative, pensive way, appearing to ponder whether other questions might shed additional light on the question. Just so, in many cases of the common law, everything counts. Cases point toward relevant inquiries in a given area. But often they do not begin to (or pretend to) exhaust

the relevant inquiry. Contract principles and cases employ a mix of common sense and practical wisdom that is reflected in numerous ways in the common experience and understanding of students and people generally. This is what I want to tap into: recognition that there is often no simple, exhaustive test for difficult situations. Like people, courts face questions that do not fit squarely in the tests formulated. Like us, courts ask, “What kind of soup was it?”

One argument against using examples from television shows like “Seinfeld” is that the examples trivialize the law. While this criticism concerns me, I believe that the presentation of such examples need not have this effect. My intent is simply to get the attention of the students and to connect the concepts we study to something familiar or already accepted. I am not trying stand-up: “Hey, what’s up with this consideration thing, anyway?” When a joke is funny, it is because you “get it.” The realization is immediate and visceral. If jokes or references to popular culture help students “get” contract principles, it is time well spent.

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