

PROPERTY IN PLACE: A LEGACY OF CONTEXT

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Legal research that highlights context to emphasize circumstances in which decisions occur is important for the legal academy as it reveals the realities in which law operates. This is particularly true for property law which, as the work of Bruce Ziff shows, the perspective of stories, people, and geographies are essential to understanding. In his investigation of seminal property case law, Ziff does not simply discuss legal rules, rather, Ziff explores the real life features of each case. Ziff provides a micro perspective on cases, which also capturing broader information that provides a macro outlook on how legal argument is created. Through this work it becomes clear that context matters.

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I. INTRODUCTION

Legal research that highlights the context in which legal cases occur make important contributions to the legal academy. Context-based research is a device through which people, place, and legal argument can be brought together. This body of research might be in the tradition of law and society, legal realism, legal archaeology, or — increasingly — in the tradition of legal geography. For property law research, these mechanisms reveal important facts about the reality of property as a construct within legal, social, and political systems. Most important it highlights the simple point that property law is more than a legal principle applied.

A starting point to discuss the power of contextual accounts of property is Bruce Ziff’s article “The Great Onyx Cave Cases: A Micro History.”¹ In this article Ziff takes the decision

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¹ Bruce Ziff, “The Great Onyx Cave Cases: A Micro History” (2013) 40 N Ky L Rev 1 [Ziff, “The Great Onyx Cave Cases”].



Edwards v. Sims,² which ostensibly provides a legal analysis of the legal rules concerning the extent to which property ownership rights extend down into the ground, and takes a deep dive into the story of the case. Ziff's case study reveals detailed information about the histories of persons, the location and a litigation histories of places in the legal decision. This article has greatly influenced me in my legal research and teaching career. It demonstrates the power of legal archaeology which in this case operated as a mechanism to take a rote legal principle and reveal how personal property law can be.

This article firstly reviews the work of Ziff and his important contributions in developing property scholarship through legal archaeology. These insights are important for research and also for legal education, as critical social, political, and economic aspects of property are revealed. Secondly, this article turns to look specifically at Ziff's article on the Great Onyx Cave Cases to examine insights made in this work. Finally, this article concludes with thoughts on the importance of contextual-based property research for teaching purposes. Ultimately, Ziff's work presents a call for a re-contextualized property and it is the work of the legal academy to bring these connections into present day teaching and litigation, and this article presents some thoughts on how this can happen.

II. PROPERTY, LEGAL ARCHAEOLOGY, AND PLACE

Ziff's research has centered on revealing the stories, people, and contexts in which a given property case has been decided. This approach to re-examining cases already past has been termed "legal archaeology."³ The metaphor of legal archaeology is used to represent the process of locating, unearthing, and examining the context of a legal case. The term was coined by Brian Simpson who describes this metaphor in the following way:

[A] reported case does in some ways resemble those traces of past human activity — crop marks, post holes, the footings of walls, pipe stems, pottery shards, kitchen middens, and so forth, from which the archaeologist attempts, by excavation, scientific testing, comparison, and analysis to reconstruct and make sense of the past. Cases need to be treated as what they are, fragments of antiquity, and we need, like archaeologists, gently to free these fragments from the overburden of legal dogmatics, and try, by relating them to other evidence, which has to be sought outside the law library, to make sense of them as events in history and incidents in the evolution of the law.⁴

Thus research that adopts a legal archaeology method looks beyond narrow legal doctrine that is affirmed, developed, or established by a case and instead makes sense of the case by reflecting on the ramifications of timing and setting.⁵ It is an approach that, by its definition, is historical as researchers examine the past. In a presidential legal system such as the

² 24 SW (2d) 619 (Ky CA 1929) [*Edwards*].

³ AW Brian Simpson, *Leading Cases in the Common Law* (Oxford: Oxford University Press, 1995) at 12; Judith L Maute, "Response: The Values of Legal Archaeology" [2000] 2 Utah L Rev 223; Deborah L Threedy, "Unearthing Subversion with Legal Archaeology" (2003) 13:1 Tex J Women & L 125 [Threedy, "Unearthing Subversion"]; Deborah L Threedy, "Legal Archaeology: Excavating Cases, Reconstructing Context" (2006) 80:4 Tul L Rev 1197; William Twining, "What Is the Point of Legal Archaeology?" (2012) 3:2 Transnational Leg Theory 166; Emma Nottingham, "Digging Into Legal Archaeology: A Methodology for Case Study Research" (2022) 49:S1 JL & Soc'y S16.

⁴ Simpson, *ibid* at 12.

⁵ Richard Danzig, "Hadley v. Baxendale: A Study in the Industrialization of the Law" (1975) 4:2 J Leg Stud 249 at 250.

common law, an approach that considers anew historical cases makes a perfect fit, both as legal archaeology provides the methodological tools for examining cases decided which by their nature are historical and as well it acknowledges the ongoing importance of cases past to new legal matters.

Ziff explicitly adopts legal archaeology methodology in his work.⁶ His work exemplifies the goals of this methodology by re-examining the official story constructed through the case report to consider anew the impact and meaning of a case. One can point to any number of Ziff's works as demonstrative of this. In his monograph *Unforeseen Legacies: Reuben Wells Leonard and the Leonard Foundation Trust*,⁷ Ziff examines a case called *Canada Trust Co. v. Ontario (Human Rights Commission)*.⁸ *Canada Trust Company* considered the limits of testamentary freedom in trust terms which set up scholarships but required that recipients be white, Protestant, and Christian.⁹ The terms of the Leonard Foundation Trust, named after its benefactor Colonel Reuben Wells Leonard, were deemed inoperative on public policy grounds by the Ontario Court of Appeal in a unanimous decision. *Canada Trust Company* is an important decision for it demonstrates the limits of testamentary freedom and changing standards in public policy considerations. A close reading of *Canada Trust Company* provides ample material for the teaching of property law and for examining the operation of estates law from a critical perspective. In *Unforeseen Legacies*, Ziff takes a deeper undertaking to explore the cultural and social context in which Reuben Leonard lived, and his impact on colonial Canada.¹⁰ Ziff constructs a reading of the Leonard Foundation Trust document whereby it can be interpreted as (1) an autobiography reflecting Leonard's life experiences;¹¹ (2) as a political manifesto through which "he was able to insinuate his ideology into Canadian life";¹² and (3) as a time capsule holding "relics of a bygone time."¹³

In another article called "The Law of Property in Animals, Newfoundland-Style"¹⁴ Ziff examines the decision *Clift v. Kane*,¹⁵ a case on the law of the capture of wild animals. *Clift* is the Canadian equivalent to *Pierson v. Post*¹⁶ which concerned the ownership of a fox hunted by one party, but captured by another. We learn that *Clift* is not an anomaly in the application of the law of capture, but instead is one of many disputes concerning the seal hunt in Newfoundland.¹⁷ The issue before the courts concerning the law of capture was one caused by geography. The seal hunt occurs in early spring when the seals are migrating and also when the waters are full of ice floes. Ice floes move due to currents, temperature

⁶ Ziff, "The Great Onyx Cave Cases," *supra* note 1 at 2. His works are also recognized as examples of legal archaeology. See e.g. Nottingham, *supra* note 3 at S20 (referring to Ziff, "The Great Onyx Cave Cases").

⁷ Bruce Ziff, *Unforeseen Legacies: Reuben Wells Leonard and the Leonard Foundation Trust* (Toronto: University of Toronto Press, 2000) [Ziff, *Unforeseen Legacies*].

⁸ (1990) 74 OR (2d) 481 [*Canada Trust Company*].

⁹ *Ibid*; Ziff, *Unforeseen Legacies*, *supra* note 7 at 43.

¹⁰ Colonel Reuben Wells Leonard lived from 1860 to 1930.

¹¹ Ziff, *Unforeseen Legacies*, *supra* note 7 at 56.

¹² *Ibid* at 57.

¹³ *Ibid* at 59.

¹⁴ Bruce Ziff, "The Law of Property in Animals, Newfoundland-Style" in Eric Tucker, James Muir & Bruce Ziff, eds *Property on Trial: Canadian Cases in Context* (Toronto: Irwin Law for The Osgoode Society for Legal History, 2012) [Ziff, "Law of Property in Animals"]; Bruce Ziff, "The Law of Capture, Newfoundland-Style" (2013) 63:1 UTLJ 53 [Ziff, "The Law of Capture"].

¹⁵ (1870) 5 Nfld LR 327 (SC) [*Clift*].

¹⁶ 3 Cai R 175 (NY Sup Ct of Judicature 1805).

¹⁷ Ziff, "The Law of Capture," *supra* note 14 at 56.

changes, and winds causing problems for ships who find themselves unexpectedly trapped in the ice.¹⁸ In *Clift* one ship had carried out the hunt by going out onto the ice, killing, cleaning, and hauling the carcasses.¹⁹ But before they could bring the catch onto the ship, the ice floes shifted and another ship now closer to the catch hauled it onboard. The legal issue in these circumstances is one of possession — at what point have the wild animals been sufficiently possessed so as to effectuate capture? To answer this question in the context of the seal hunt in Newfoundland, the Court considered the common law rule of capture which would ordinarily find an animal captured if it is killed in the geographic context of Newfoundland. Ultimately the Court declined to alter the common law rule maintaining that killing of a wild animal afforded sufficient possession, but it did award salvage fees for the ship that recovered the seals. At appeal the dissenting Judge observed:

[I]n the seal-fishery of Newfoundland every one knows that killing the seal is only one of several steps in the process of reducing the pelt into possession, no doubt it is the first, then follows sculping, then hauling over the ice (in which act the pelt is often lost) and finally securing it on board ship.²⁰

Though not persuasive enough to alter the outcome in *Clift*, this statement does foreshadow what will be ongoing conflict between the legal rule of capture and its application in the complexities of the sealing industry of Newfoundland in the mid-nineteenth century.²¹ In this research Ziff tells the reader about an almost forgotten piece²² of Canadian legal history and highlights the limiting effect precedent can have on development of legal rules when the courts are faced with localized place and changing geography.

III. “THE GREAT ONYX CAVE CASES”

Close examination of one of Ziff’s works, “The Great Onyx Cave Cases,” is illustrative of the insights that are made when taking a context-based research analysis. “The Great Onyx Cave Cases” discusses the case *Edwards*.²³ The facts of *Edwards* are well known to property law teachers across Canada. Neighbours Edwards and Lee found themselves embroiled in a legal dispute when Edwards discovered a cave beneath the surface of his land and began developing the cave as a tourist attraction. The conflict arose because the cave extended to beneath the property of Lee who had no cave openings on their property. From a doctrinal perspective, Ziff writes:

These facts suggest two obvious questions: Should title to a whole cave belong to the party who owns the mouth and who has taken possession? And if not, how might one assess damages for trespass where [Edwards] has benefited financially from the acts of trespass, but [Lee] has no practical use for his portion of the cave?²⁴

¹⁸ *Ibid* at 54–55.

¹⁹ *Ibid* at 57.

²⁰ *Clift*, *supra* note 15 at 344, Robinson J, dissenting; Ziff, “The Law of Capture,” *supra* note 14 at 59.

²¹ Subsequent cases that dealt with similar conflict are: *Doyle v Bartlett* (1872), 5 Nfld LR 445 (SC), *en banc*; *Power v Kennedy* (1884), 7 Nfld LR 34 (SC).

²² Ziff, “The Law of Capture,” *supra* note 14 at 54 (Ziff reports that he was only able to find only a single reference to Newfoundland sealers decisions).

²³ *Edwards*, *supra* note 2.

²⁴ Ziff, “The Great Onyx Cave Cases,” *supra* note 1 at 1.

The answer to this question was (and is) dependant on the application of the latin maxim *cujus est solum, ejus est usque ad coelum et ad inferos*, which means “that the owner of the surface of land is taken to own all of the airspace above, as well as the subsurface to the very centre of the earth.”²⁵ The answer from the Court was that this Latin maxim very much applied in the circumstances of the case and it ordered a property survey be done to ascertain the extent to which the cave trespassed into the property lot of Lee.²⁶

A doctrinal approach to reading *Edwards* would leave the reader with a legal rule about the extent to which property rights extend into the earth and a reaffirmation of an historic Latin legal phrase in the (relatively) modern context. The closer examination of *Edwards* by Ziff reveals that this case is more than a spat between neighbours and instead Ziff shows that this decision is part of a bigger story about caves and tourism, the creation of a national park, and the compelling story of the “cave wars.”²⁷

A. THE GEOGRAPHY OF THE KENTUCKY REGION

Edwards can only be understood against the backdrop of a detailed account of the “cave wars” that were taking over Kentucky. Ziff foregrounds an account of the geography of Kentucky in his writing. The geography of Kentucky is essential to understanding the importance of the specific cave at issue in *Edwards*. Edwards wanted to build a commercial enterprise in the cave he discovered by opening it up for tourism. The Great Onyx Cave, though not as important as the Great Mammoth Cave²⁸ which was larger in size and drew thousands of tourists into the region annually, could serve as a “show cave.”²⁹ This show cave, and others like it that were already established in the region, would capitalize on the influx of tourists who were visiting the nearby Great Mammoth Cave, “the most magnificent cave in the region,”³⁰ by enticing them to pay to view the smaller caves. On a small scale looking at Kentucky as a whole, cave systems generally were important as Ziff’s research reveals that the Mammoth Cave National Park Association sought to make the Mammoth Cave the centre piece of a new national park.³¹ The implications of a model of private property holdings which protected rights extending down into the ground threatened the possibility of creating a national park of a huge cave system, when the caves would inevitably be located under private property holdings.³² Ziff speculates that the dissenting judgment of Justice Logan arguing against such a finding may have been in part due to his work with the Mammoth Cave National Park Association.³³

B. LEGAL MANOEUVRES

There are multiple separate legal cases connected to the Great Onyx Cave and surrounding areas. *Edwards* is an action focused on the correctness of an order for a property survey to

²⁵ *Ibid* at 19.

²⁶ *Edwards*, *supra* note 2.

²⁷ Ziff, “The Great Onyx Cave Cases,” *supra* note 1 at 1.

²⁸ *Ibid* at 3.

²⁹ *Ibid* at 5.

³⁰ *Ibid* at 3.

³¹ *Ibid* at 7.

³² *Ibid* at 26.

³³ *Ibid*.

be completed to assess whether and how much of the Great Onyx Cave went under Lee's land. This turned on whether the Latin maxim as to ownership rights applied (which it did) and thus "it was perfectly sensible to order a survey to determine if a trespass had occurred."³⁴ In addition, there was another action between the neighbours Edwards and Lee, concerning their surface boundary which was also in dispute.³⁵ There was a separate condemnation proceeding brought by the Kentucky National Park Commission in order to acquire Edwards' property so as to include the Great Onyx Cave in the Mammoth Cave National Park that was being developed.³⁶ This legal action occurred after efforts to acquire the property for the national park failed.³⁷ Ultimately the condemnation action fell through when the appraisal of Edwards' property was valued at \$398,000 — approximately USD\$6 million today³⁸ — which, though favourable for Edwards, put the property outside of the budget of the Mammoth Cave National Park Association. The solution was to establish the Mammoth Cave National Park without the Great Onyx Cave.³⁹ Finally there was the action between Edwards and Lee to settle the matter of compensation for the one-third of the Great Onyx Cave that was on Lee's property and hence trespassed on by Edwards.⁴⁰ Through Ziff's reflection it becomes clear that the plethora of litigation concerning the Great Onyx Cave is unsurprising given the interest in caves and caving at that time. As we will see, this had a deeply felt impact on relations in communities, and, between neighbours.

C. THE PEOPLE

Finally, we learn detailed stories about the people involved in the matter. This includes the personal histories of the neighbours Payton Lee and L.P. (Levi Porter) Edwards, and the history of their acrimonious relationship with each other. We learn about a man called Edmund Turner,⁴¹ a geologist and civil engineer who assisted Edwards to locate an entrance to the Great Onyx Cave, though the exact details of Turner's role are not clear.⁴² By some accounts Turner entered into a partnership with Edwards to find the Great Onyx Cave,⁴³ and by yet other accounts Turner was hired by Edwards to support Edwards' work as he searched for the cave entrance.⁴⁴ As Ziff finds out, it is known that Turner sued Edwards for breach of contract alleging there was a fifty percent profit share agreement in place should a cave entrance be located.⁴⁵ This action never proceeded to trial. The disputing accounts of Turner and Edwards' relationship is reflective of the acrimony in what seems to be all aspects of the story of the Great Onyx Cave.⁴⁶

³⁴ *Ibid* at 19; *Edwards, supra* note 2 (affirmed the validity of the order of a property survey).

³⁵ Ziff, "The Great Onyx Cave Cases," *ibid* at 28, citing *Edwards v Lee*, 61 SW (2d) 1049 (Ky 1933) [*Lee*].

³⁶ Report of Commissioners, Court Records: *Kentucky National Park Commission v Edwards*, File 2165, Edmonson County Court House, Brownsville, KY [*Kentucky National Park Commission*], cited in Ziff, "The Great Onyx Cave Cases," *ibid* at 28.

³⁷ *Kentucky National Park Commission, ibid*.

³⁸ Ziff, "The Great Onyx Cave Cases," *supra* note 1 at 30.

³⁹ *Ibid* at 31.

⁴⁰ *Ibid* at 33, citing *Edwards v Lee's Adm'r*, 96 SW (2d) 1028 (Ky 1936).

⁴¹ Ziff, "The Great Onyx Cave Cases," *ibid* at 11.

⁴² *Ibid* at 10–12.

⁴³ *Ibid* at 11.

⁴⁴ *Ibid*.

⁴⁵ *Ibid* at 12.

⁴⁶ See e.g. *ibid* at 46 (Ziff writes that between Edwards and Lee there was protracted litigation of "eight trials ... six appellate hearings, and three motions for re-hearings").

Ziff also provides detailed information about one judge, Justice Logan, who wrote in dissent against ownership rights extending down into the subsurface. Justice Logan's dissent is unique for its flowery and extensive prose. It would be amiss not to include some of this writing. Reflecting on the work that was undertaken to unearth the Great Onyx Cave, Justice Logan writes:

Men fought their way through the eternal darkness, into the mysterious and abysmal depths of the bowels of a groaning world to discover the theretofore unseen splendors of unknown natural scenic wonders. They were conquerors of fear, although now and then one of them, as did Floyd Collins, paid with his life, for his hardihood in adventuring into the regions where Charon with his boat had never before seen any but the spirits of the departed. They let themselves down by flimsy ropes into pits that seemed bottomless; they clung to scanty handholds as they skirted the brinks of precipices while the flickering flare of their flaming flambeaux disclosed no bottom to the yawning gulf beneath them; they waded through rushing torrents, not knowing what awaited them on the farther side; they climbed slippery steeps to find other levels; they wounded their bodies on stalagmites and stalactites and other curious and weird formations; they found chambers, star-studded and filled with scintillating light reflected by a phantasmagoria revealing fancied phantoms, and tapestry woven by the toiling gods in the dominion of Erebus; hunger and thirst, danger and deprivation could not stop them. Through days, weeks, months, and years – ever linking chamber with chamber, disclosing an underground land of enchantment, they continued their explorations; through the years they toiled connecting these wonders with the outside world through the entrance on the land of Edwards which he had discovered.

...

When the wonders were unfolded and the ways were made safe, then Edwards patiently, and again through the years, commenced the advertisement of his cave. First came one to see, then another, then two together, then small groups, then small crowds, then large crowds, and then the multitudes. Edwards had seen his faith justified. The cave was his because he had made it what it was, and without what he had done it was nothing of value. The value is not in the black vacuum that the uninitiated call a cave. That which Edwards owns is something intangible and indefinable. It is his vision translated into a reality.⁴⁷

Justice Logan was writing in strong objection against protection of private property rights extending underground and in support of Edwards' labour unearthing the Great Onyx Cave. Ziff queries the motive and utility of the dissent which interestingly does not rely on any legal citations.⁴⁸ For the law teacher this excerpt is a goldmine for examining legal prose. The descriptive writing style challenges assumptions students may hold about legal writing, opens up a myriad of possibilities for how legal argument is constructed and invites the reader to consider what the goals of the writer are. Here, it is clear that Justice Logan is telling the reader that context — of the geography, of the people — is central to *Edwards*.

⁴⁷ Ziff, "The Great Onyx Cave Cases," *supra* note 1 at 22–23, citing *Edwards*, *supra* note 2 at 622–23.
⁴⁸ Ziff, "The Great Onyx Cave Cases," *ibid* at 21.

IV. CENTRALITY OF CONTEXT FOR TEACHING

This work of foregrounding property in context and embracing the complexities that presently exist around property relations has become part of legal research broadly through a growing body of research that follows an approach grounded in contextual analysis. This approach is also an important tool for teaching purposes.⁴⁹ As a tool, the information revealed about historical, social, political, and geographical context requires the extra step of processing that information.⁵⁰ It is not enough to find interesting information without coming to conclusions about the extra-legal content and the legal content that does not end up in the case report. The processing of this information is central to legal archaeological work. Thus in Ziff's work we see that the legal text of a trust is re-written to be simultaneously a map to knowing the law, a biographical account of a person, and a record of a past society.⁵¹ Or we learn about the importance of place for developing the common law, which then swiftly runs into the burden of precedent which can operate to limit innovation in legal rules.⁵² Or we learn about the complex interaction between property law holdings and a geographic locale that lends itself to be developed into the natural space of a national park.⁵³

This step of processing the information that is unearthed is prime teaching material. Indeed, it is no coincidence that Ziff is the founding author of the leading property law textbooks in Canada.⁵⁴ Processing information that is extra to the case report, but central to the story of a legal matter, invites students to reflect on the role of these pieces of information to our legal system. This can occur in a small way as it relates to a case or in a larger way as systemic issues are examined. Speaking on this process, Judith Maute describes this as follows: “[L]egal archaeology involves both a microscopic examination of the shards uncovered by painstaking digging, and a macroscopic assessment of how the component parts fit together to describe and explain the culture left behind.”⁵⁵ Deborah Threedy argues that examining a case from a broader contextual perspective is inherently subversive.⁵⁶ She contrasts the work of the “traditional scholar” – who considers “all the activity that comes before a judicial opinion ... [as] pretty much invisible and irrelevant”⁵⁷ — with the legal archaeology scholar who “operates from an alternative assumption about what is worth study.”⁵⁸ Importantly for teaching and learning purposes “recovering ... ‘unofficial’ accounts ... provide[s] a different and complementary way of ‘knowing’ the law than that obtained by the manipulation of abstract rules.”⁵⁹ Taking a legal archaeology approach may reveal concerns about bias or at the least question motives of central figures

⁴⁹ Maute, *supra* note 3 at 225; Threedy, “Unearthing Subversion,” *supra* note 3.

⁵⁰ Threedy, “Unearthing Subversion,” *ibid* at 135.

⁵¹ See generally *supra* notes 10–13 and accompanying text.

⁵² See generally *supra* notes 21–22 and accompanying text.

⁵³ See generally *supra* notes 27–46 and accompanying text.

⁵⁴ See Eran Kaplinsky, Malcolm Lavoie & Jane Thompson, *Ziff's Principles of Property Law*, 8th ed (Toronto: Thomson Reuters Canada, 2023). And see e.g. Bruce Ziff, *A Property Law Reader: Cases, Questions & Commentary* (Toronto: Thomson Carswell, 2004), now in its 5th edition with new authors taking on this work. See Douglas C Harris et al, *A Property Law Reader: Cases, Questions, and Commentary*, 5th ed (Toronto: Carswell, 2022).

⁵⁵ *Supra* note 3 at 234–35.

⁵⁶ Threedy, “Unearthing Subversion,” *supra* note 3 at 135–36.

⁵⁷ *Ibid* at 136.

⁵⁸ *Ibid*.

⁵⁹ *Ibid*.

in the decision; it might raise questions about the outcome of a decision, or it might highlight the impact of social and economic circumstances on a decision.

Legal archaeology embraces the complexity of a case and encourages critical engagement with the law. With this there is an important aspect of this contextual work, that is challenging for students who are training to be lawyers and challenging for teachers who are trying to impress a deeper reading of legal texts on their students. Legal archaeology work, by its nature, examines the context of a case by bringing in information that is not captured in the factual record before the court. The overworked law student's response to extra content such as this can sometimes be "so-what" as they hasten to organize their readings into a set of manageable legal rules. Perhaps for some students the context invites critical reflection or even a scepticism about the impartiality of judges; perhaps some other students simply find it to be a good story. In the rush to distill complex legal issues into clear singular legal rules, some students will be unwilling to look beyond the answer to the legal issue of "should title to a whole cave belong to the party who owns the mouth and who has taken possession?"

This is the work of the legal academy and the challenge moving forward — how do we make an approach which highlights extra content about property law cases already concluded relevant to the present and the future? Ziff writes that "when the myriad details of [the] micro-history [of the Great Onyx Cave] are unearthed, another intriguing stratum is visible."⁶⁰ Bringing this wonderful imagery into an approach that focuses on context in the present, I would suggest that when myriad details of place currently experienced are made central to the reading of property law disputes *currently* experienced, a strata of property in context will be revealed. Impressing on students the complexity of a case record, of the circumstances in which cases are brought forth, and of the existence competing interests in a matter (many of which are unspoken), will afford students the opportunity to better handle the complexity of facts, circumstances, people, geographies, and public policy goals that they will encounter in practice. And that ultimately is the most interesting piece about the work of Ziff and legal archaeology more broadly, that detailed examination of that which is left out of the case report, reveals more about a legal matter than a narrow reading of doctrine allows. It is through critical examination of complex contexts that students will be better placed to manage complex client files on matters currently being experienced.

V. CONCLUSION

Stories of property law in context take what is seemingly extra-legal content and reveals that it is in reality or information deeply connected to the story of a case. An account of *Edwards*⁶¹ which explains the persons, places, and histories involved in the matter turns the case from an authority that re-affirms the legal principle for measuring the extent of property boundaries (*cujus est solum, ejus est usque ad coelum et ad inferos*) to a legal case that is about the interaction between property boundaries, community interests, and land management efforts, specifically the management of cave systems that would later become

⁶⁰ Ziff, "The Great Onyx Cave Cases," *supra* note 1 at 46.

⁶¹ *Edwards*, *supra* note 2.

part of a national park.⁶² A reading of *Canada Trust Company*,⁶³ which provides an account of the biography of the trust settlor, turns the case from one about the limits of testamentary freedom as they interact with public policy to a legal case that represents a critical account of the life and contributions made by historical Canadian public figures and invites discussion about Canadian values and beliefs.⁶⁴ A reading of *Clift*,⁶⁵ which explains the specific context of sealing in Newfoundland mid-nineteenth century, turns the case from a statement of legal principles concerning the law of capture to one which highlights the impact of Canada's geography and local circumstances⁶⁶ to the development of common law rules.⁶⁷

The insights made by Ziff in these works are both “micro” in their focus on individual cases and macro in their use of and development of a context-based research methodology. At the micro level, a detailed focus on individual cases provides great depth of analysis of property law principles and application in a given set of facts. This detail foregrounds the importance of an individual case and captures information that would otherwise be lost. For the property law teacher, the stories of the people and places involved in cases aid teaching and learning goals as they give difficult legal rules context, invite critical reflection by learners, and, frankly, make otherwise dry cases memorable. At the macro level a context-driven approach demonstrates how legal principles develop through the selection of facts, creation of a narrative, and a strong sense of the theory of the case. By foregrounding a contextual approach to property the legal academy — teachers and learners alike — are best placed to ensure that legal argument reflects the complexities of context.

Bruce Ziff's refusal to take property law out of context continues to have resonance for the legal academy. It is no longer acceptable to distill cases into a series of disparate legal principles, when instead it is possible to capture a fulsome account of a legal context which reveals intimate information about that place. Whether this approach be described as legal archaeology, or a law and society, or legal geography research methodology, the point is that it highlights that the context is as important, if not more so, than a legal principle distilled from doctrine. Legal work requires approaching matters as only ever contextual in nature. Looking ahead, the legal academy and profession must find ways to ensure that the people and the places of cases are not taken out of property law principles and instead are utilized to support more just approaches to thinking about property in place.

⁶² Ziff, “The Great Onyx Cave Cases,” *supra* note 1.

⁶³ *Canada Trust Company*, *supra* note 8.

⁶⁴ Ziff, *Unforeseen Legacies*, *supra* note 7.

⁶⁵ *Clift*, *supra* note 15.

⁶⁶ *Ibid.*

⁶⁷ Ziff, “Law of Property in Animals,” *supra* note 14; Ziff, “The Law of Capture,” *supra* note 14.