Legal Probabilism

Marcello Di Bello – ASU

Reading Guide – Week #3

R v Clark. This is a long decision, about 30 pages. You don't have to read it all with painstaking precision, but get a good sense of the key arguments. As usual, when you read an appellate court case, you'll need to identify the question the court addresses; the disputed and undisputed facts; what others courts have said; the evidence in the case against/for the defendant. Pay attention to the role of probability in the case.

- Paragraphs 1 to 17 give you facts and background about the case.

- In paragraphs 18 to 93, the court discusses the medical evidence, with a summary discussion in paragraph 93.

- In paragraphs 94 to 110, you'll find a discussion of the statistical evidence. Read those very carefully.

- Paragraphs 111 onwards discuss new evidence that surfaces after the last appellate decision was reached. This is evidence that the victims could have died of natural causes. These paragraphs also contain a second discussion of the statistical evidence (172-180). What does the court mean by <u>unsafe</u> conviction?

- Paragraphs 180 and 181 contain the conclusion.

Derksen This is a book chapter translated from Dutch about the Lucia the Berk Case.

- PART I (pp. 1-16) explains how an incredible coincidence can lead many—doctors, judges and lay people—to draw conclusions about someone's culpability. Make sure you understand how the reasoning from an incredible coincidence works.

  PART II (pp. 16-24) gives you the data and formulas needed to come up with probabilities for the incredible coincidence argument. What does the author think about this application of probability?

Precis. Your precis should be one of the following:

- summary of the *Clark* decision: holding and supporting arguments, considering the medical and statistical evidence; or

- summary—without and without probabilities—of the argument about incredible coincidence in the Lucia de Berk case (as discussed by Derksen).

A precis should be no more than one page. If you want to write more, that's fine, but do not exaggerate! Be clear, simple, and concise. Due at the beginning of class.