

the law generally, you learn not only the law but also the process of legal reasoning.

A case brief is a way to be prepared for that grilling. But briefing the cases you read is important for another reason. It teaches you how to read the critically, by breaking the case into its component parts. You will brief. You will not come to my class unless you have a brief for each case I assign you to read. From now on, here's how you will do it.

The Basics

Let's start with the basics, and how and why you will write case briefs.

A. A Case Brief Defined

What is a case brief? As its name suggests, it is a short summary of the different components of the cases you read. A brief is nothing more than a study tool: a set of notes, organized in a specific, methodical way, to identify what the case is about and why it was decided in a particular way. A brief is usually no more than one page long.

Be careful not to be confused. Lawyers also use the term "brief" to refer to a legal memorandum filed in support of a motion or an appeal that presents a legal argument. That sort of brief is formal. Legal briefs are used to persuade a court to do something. You will learn about legal briefs in your first-year legal writing course. That is not the type of brief I am talking about.

B. Why You Will Brief

A case brief is useful for several reasons. It will help you understand the material, prepare for class, and complete an outline. Rewriting and summarizing material leads to better comprehension. And, perhaps most importantly, a brief helps you distill a case down to its important parts. Doing so allows you to under-

stand and remember key components of a case—particularly helpful when you are being called on in class.

Cases have a unique structure and method to them that is different from other kinds of writing. When you first begin law school, you will find cases difficult to read and understand. Briefing a case calls upon your analytical reading ability and helps you train yourself to read and understand cases more quickly. This is important. By dissecting a case into its component parts, you improve your legal analysis and legal reasoning skills.

Upper division students will often give you bad advice. They will tell you that briefing takes too much time; that briefing does not help you do well on your exams; that briefing is not essential to class preparation. You will ignore them. Of course, some students may do well on exams without briefing. But you are not briefing solely to prepare for the exam. And, more importantly, you will not know if you are one of those students who can do well without briefing until it's too late.

C. How to Use Your Case Brief

Keep your case brief on hand during class. Do not just have it on your laptop. Be sure to print out a hard copy. By the end of class, the case brief should be covered with additional notes and jottings spurred by the day's class discussion. Consider using oversized margins so you will have plenty of space to make annotations.

At the end of the week, you should review your briefs and take the information you've learned and place it in a course outline. You should synthesize the week's material into an outline and use your case briefs as a starting point for doing that. We'll talk more about outlining later.

How to Read Cases

To brief a case properly, you must first be able to read and understand the case. The difficulty is that reading in law school is dif-

ferent than reading in college. In college, the reading was generally straightforward and descriptive. But reading cases in law school is not like reading a textbook in college. Nor is it like reading a novel.

A. Prepare to Read

Worry about your environment. You need a place with no distractions, where you can read without interruptions. You can not read law school cases with the necessary focus while the TV is on, while you're doing laundry, or while you're on the bus. You need a quiet, distraction-free environment. Turn off your phone, disconnect the internet, and get everything you might need for the next hour or so. Also, be honest with yourself. If reading in a nice, comfy chair will lead to an inevitable nap, get a stiff, hard-back chair. If reading in the library will lead to socializing, go somewhere else.

B. Preview the Case

Previewing a case is an important first step to reading. Before you start reading the case, get a sense of where it fits into the class generally. What is the context? Where does the case fit in the casebook's table of contents or the course syllabus? What is the case likely to be about, and why is the professor assigning it now? Are you able to get an idea as to the key issues the case will be about and where it fits into the course? Placing the case in the broader context will give you a framework to work with and make the case easier to read and understand.

C. Read Carefully

After you've placed the case in context, you should read the case carefully all the way through. Do not skim. Judicial opinions are too complicated to understand from a cursory review. And you must pay attention to detail. If a sentence or a paragraph does not make sense, stop and re-read. Don't move on until you understand what you have read.

When reading a case, it is not enough to understand what the judge writing the opinion has said. You must understand why the judges chose to reach the decision they did in the way they did. Students should energetically attack the case and assess what is written. Is what the judge has said correct? What follows from this holding? How does this decision compare to other decisions? Is the case merely applying a prior rule, or creating a new one? Why is the case in the casebook?

D. Use a Legal Dictionary

When you begin law school, you are as much learning a new language as you are learning the law. You must look up words you do not understand. Even words you think you know may have a particular, if not peculiar, legal meaning. You will be tempted to gloss over words, but don't. Building your legal vocabulary is an important skill. Most of the cases that you read will be chock full of archaic terms, Latinisms, or other legalese. You may come across hundreds of new terms in the first weeks of law school. If you fail to look those terms up, you will be at a disadvantage. Professors often ask students in class what those terms mean.

An aside: using a dictionary does not mean you need to purchase a \$150, leather-bound, deluxe edition of *Black's Law Dictionary*. Sure, it's impressive. It may make you feel like a real lawyer. You may be just compensating for a Napoleonic complex. But you don't need to lug around a 50-pound, 2,000-page book. A much cheaper, used, pocket edition will serve you fine.

E. Avoid Excessive Highlighting

When reading the case for the first time, avoid excessive highlighting. Highlighting can be useful for many students. But you should employ highlighting cautiously. Because students are often unsure on what details to focus on, many students end up with a book filled with yellow. That makes highlighting useless. And students who use highlighters excessively have a tendency to skim the words they are highlighting. The same is true for excessive under-

lining. The first time you read a case, read it through carefully and then go back and highlight or underline details you find particularly important.

F. Take Selective Notes

Just as you should be nervous about excessive highlighting, also be wary of taking too many notes (at least the first time you're reading the case). Taking some notes will keep you engaged and reading actively. But you do not have time to write essays on every case you read. Avoid filling the margins of your casebook with mindless jottings. Save the writing for when you write the case brief.

G. Keep Track of the Parties

When reading a court decision, you should keep track of the parties. In civil cases, you have a plaintiff and a defendant. The plaintiff is asserting the claim and seeking a remedy. In a criminal case, you have the government (state or federal) and the defendant.

The name of the party initiating the court action, no matter at what stage of the judicial proceedings, appears first in the legal papers. For example, if Jones sued Smith in Federal District Court (i.e., the trial court), Jones is the plaintiff and the case is known as *Jones v. Smith*. If Jones loses in the District Court, she may appeal. At that time, in the Court of Appeals, Jones (the appealing party) is referred to as the appellant and Smith becomes the appellee. The case is still known as *Jones v. Smith*. If Jones then wins on appeal and Smith successfully petitions the U.S. Supreme Court to hear the case, the name of the case will change to *Smith v. Jones*. Smith is now the petitioner and Jones is the respondent. Changes to case titles are common in criminal cases because most reach the appellate courts when a convicted defendant appeals.

H. Distinguish Kinds of Opinions

As you read, be careful to distinguish the kind of opinion you are reading. What court is deciding the case? Is it a federal or a

state court? Is it a trial or an appellate court? Is this a majority, dissenting, concurring, or plurality opinion?

A majority opinion is an opinion that is agreed to by the court's majority (for the U.S. Supreme Court, usually five of nine justices). A concurring opinion agrees with the majority's disposition of the case but is written to express a particular judge's reasoning. A dissenting opinion, in contrast, disagrees with the majority's disposition and will set out the dissenting judge's reasons for disagreeing. Lastly, a plurality opinion is the opinion from a group of justices in a case where no single opinion received support from a sufficient number of justices to create a majority.

How to Brief

No one formula exists for what should be included in a case brief. The contents of a brief should vary depending on the course and the professor. But certain components are common to all briefs: the issue, the facts, the procedure, the holding, the rules, and the court's reasoning. I am going to take you through each of these parts and explain how they work. There is also an example case and case brief in Appendix B.

A. The Issue

In this section you want to identify what legal issue the court is deciding. Appellate cases, like the ones you are reading, exist for a reason. An appellate court hears a case on appeal when one of the parties believes there is a problem with the lower court's decision. You must identify what the problem is. A well written court decision will often begin by setting out the legal issue. If the court sets forth the issue, take the time to carefully phrase the issue in your own words. Note that sometimes the issue is procedural, and sometimes it's substantive. Procedural challenges deal with court rules, while substantive challenges deal with the law the court applies.

You can state the issue in many ways. Conventionally, the issue is a short, single-sentence question. If framed properly, the ques-

tion may be answered with a “yes” or “no.” The issue statement should convey the legal principles in play and the significant facts material to those principles. The question should be objective and not slanted in favor of one party, nor should it state a conclusion. A common way of framing a legal issue is to use an “Under ... does ... when...” format. Under [a particular law], does [a party have a particular legal obligation or legal status] when [certain legally significant facts are present]. A case brief should indicate the precise issue the court is addressing.

Let’s take an example taken from a California Supreme Court case, *Perez v. Van Groningen*. Assume you are reading a case about a passenger who was injured when he fell from a tractor, while the driver was using the tractor to disk his employer’s orchards (i.e., to cultivate the soil with a disk harrow). Assume also that the employer previously told the driver that no passengers were permitted to ride on the tractor. The injured passenger is suing the driver’s employer for damages, but can only prevail if the injury occurred within the driver’s scope of employment.

A good issue statement might read: “Under California law, does an employee act within the scope of employment when he takes an unauthorized passenger with him in performing duties assigned by his employer?” This issue statement is effective because it includes not just the specific legal issue before the court, but identifies the relevant facts as well. It is specific enough to identify what is going on in the case, yet broad enough to be applied in future cases as well.

An issue statement that included only “Was the employee acting within the scope of employment?” is abstract and omits the facts that bring to life what occurred in the case to place it in context. There are hundreds of cases about whether an employee is acting within the scope of employment and, without further information, you do not know enough to determine what this case is about. The issue is too broad to be helpful to anyone. It needs more detail. There is another reason to be specific. Broad pronouncements of law that go beyond the case’s facts are not binding on courts deciding later cases (these broad pronouncements are known as *dicta*). Your issue must be framed in a way that incor-

porates both the dispositive facts and the applicable legal principles. Lastly, writing your facts in chronological order is usually best (yes, isn't it amazing how starting with first things first makes sense!).

An issue statement can, however, be too specific. For example, the following issue statement includes too many details: "Is a tractor driver acting within the scope of employment when he is asked to disk the orchards of his employer and takes his nephew along with him without his employer's permission?" This issue statement may be technically correct. But the purpose of reading cases is to use them to predict how courts will decide future cases. It is unlikely that future cases you encounter will be about tractor drivers, nephews, and disking orchards. And those facts—the relationship of the driver and the passenger—are not material to the court's decision.

Remember, more than one "right" issue statement exists. As long as your issue statement marries relevant facts and legal principles, and is clear and concise, you may word it in different ways.

B. The Facts

You should summarize the legally significant facts of the case. What happened? What gave rise to the lawsuit? What is this case all about? Do not cut and paste what is contained in the case itself. Instead simplify. Who sued who for what? What was the crime? What happened that gave rise to the lawsuit?

The facts section should be short: one or two paragraphs—maybe less. Only include those facts necessary to understand the case. This is difficult. But struggling to identify those facts that are key to the decision is important. If you understand what facts were crucial to the court's decision, you likely understand the case. Another small point: use descriptive terms rather than proper names when referring to parties. Usually it's more helpful to refer to the parties as the buyer, seller, driver, passenger etc., than Smith, Jones, Perez, etc. Once you decide how to refer to the parties, be consistent throughout your brief.

Let's return to our example of the injured passenger. The brief's facts section would include that the defendant employed the driver

and that the driver's regular duties included disking the orchard. You would include that a passenger rode with the driver and that passengers were not permitted on the tractor. Finally, the facts would state that the passenger was injured. That's it. Three sentences. Keep your facts section short.

Much of the factual description set forth in the cases you read will not be relevant to the issue before the court. For example, whether the injured passenger lived with his uncle is not relevant to the case's outcome (i.e., the issue of whether the driver was acting within the scope of his employment). Similarly, what orchard disking is, where the passenger was sitting in the tractor, and the numerous details about the passenger's injuries are all irrelevant to the case's holding. Interesting facts maybe, but not legally significant to whether the driver was acting within the scope of employment. Although sometimes you may wish to include one or two descriptive facts to provide context, including too many descriptive facts will result in a case brief as long as the case itself. If a fact is not legally significant, leave it out.

C. The Procedure

Not only should you explain what gave rise to the lawsuit, you should also briefly explain how the case came before the appellate court. Summarize what happened in the lower courts. The brief should identify the courts that have made rulings in the case and how those rulings have led to the appeal. For example, in a criminal case, was the defendant convicted? Was there a trial? In a civil case, was the defendant found liable? Was there a trial? Did a party file a motion? What kind of motion? How did the lower court rule? Who appealed?

In our tractor-injury example, the passenger filed suit against the employer. There was then a jury trial and the jury returned a verdict in the employer's favor. The passenger appealed arguing that the court should have instructed the jury that the driver was acting within the scope of employment. These are the procedural facts. They are not what actually happened to cause the injury, but what happened in court after the plaintiff filed suit.

D. The Rules

In an appeal, a court will apply a particular rule of law or standard to reach a result. The court will set forth a legal framework within which to analyze the case's facts. For the rules section of your brief, you need to determine what rule or legal principles the court applied. Sometimes rules are directly taken from a statute or code. Be careful, however, because often the rule the court applies is a common law rule that defines one of the elements set forth in the statute. In fact, many cases will not even mention a statute at all. Sometimes the rule will be a test or a set of factors a court must apply.

Often there are several different rules in one case. Sometimes there are several issues the court is addressing and each issue will have its own rules. Even if there is only one issue before the court, the case will often set forth multiple rules in its analysis of that issue. Sometimes the different rules are merely part of one larger rule or set of principles. Often a court will set forth the same rule but use a variety of different ways of saying the same thing. You need to first identify the rules that apply to the specific issue the court is addressing and then combine them into one concise rule statement that can be inserted into your brief. Sometimes to help with understanding, it is better to paraphrase the legal rule, other than merely copying it verbatim.

Let's use our tractor example to illustrate. In determining whether the tractor driver was acting within the scope of his employment, the court set forth several different legal principles. First the court said that an employer is "liable for risks arising out of employment." The court further defined this rule by stating "A risk arises out of employment when an employee's conduct is not so unusual or startling that it would seem unfair to include the loss as a cost of business." The court also included the rule that "an employer will be liable if the risk was one that may fairly be regarded as typical of or broadly incidental to the enterprise undertaken." Finally, the court mentioned that if the employee substantially deviated from the duties assigned for personal purposes, the employer is not liable.

What must you do? You need to take these rules and devise a rule summary for when an employer will be liable for acts of his

employee. A good strategy might be to start with the general rule that an employer is liable for risks arising out of employment. Yet this rule alone is insufficient. This rule alone does not indicate when a court will consider risks to have arisen out of employment. Thus, you should also include when a risk will be considered “arising out of employment.” You should note that risks arising out of employment include risks that are typical of or broadly incidental to the duties assigned by the employer. You might also mention in your rule that employers will not be liable if the employee’s act is a substantial deviation from the duties assigned.

So your rule section might state: “An employer is liable for risks arising out of employment. Risks arising out of employment include risks that are typical of or broadly incidental to the duties the employer assigns. An employer will not be liable for an employee’s negligent acts when the employee substantially deviation from the duties assigned.”

Keep in mind, this is just one acceptable way of phrasing the rule. Many other versions would also be correct. Just remember to include enough of the rule to understand how to apply it and remember to combine like parts together so you don’t have a rule that is a page long listing every detail the court mentioned.

E. The Holding

Your brief should also precisely state the decision’s holding. What did the court do? What was the outcome? What action did the court take and for which side did the court rule? Be sure to briefly summarize what the court did on the particular facts before it.

If the court rules for the injured passenger who fell off of the tractor, the holding of the court may be that the driver was acting within the scope of his employment and the company is therefore liable for the passenger’s damages.

F. The Reasoning/Policy

In appellate decisions, courts will explain why they have reached the decision they did. In the reasoning section of your

case brief, you should summarize the reasoning behind the court's decision.

If the court decided the driver acted within the scope of his employment, you need to know why and you need to include this in your brief. Perhaps the court found the driver was acting within the scope of employment because the driver performed an assigned task (driving the tractor while disking the orchard) and that the driver taking the passenger along with him was incidental to those duties. Whatever the reason, you need to know it so you can use it in predicting the outcome of future cases.

Avoiding Pitfalls

There are a few pitfalls to avoid when briefing a case.

A. You Will Not “Book Brief”

Book briefing is when you only take notes in the margins of your casebook. That's fine as a complement, but not as a substitute for a case brief. You should have a separate document that forces you to think about and write out the different components of the court's decision. The same is true with “highlighter briefing,” where students use different color highlighters to distinguish the different parts of the case. If you like your book to look like a rainbow, that's fine. But again, it complements and should not replace a case brief. Writing out and synthesizing what you've read is an important skill to develop. Scribbling yellow across the page is something you learned in pre-school.

B. You Will Value Substance Over Style

You will not spend hours making your brief look pretty. This is not a beauty contest. A case brief is a learning tool. It should not be treated as a sacrosanct document. Of course, it should be nicely set out in a useable and easy-to-read format. But don't spend hours tinkering with how it looks. Substance is more important

here. You don't get extra points for having a really nice looking brief that says nothing.

C. You Will Not Cut and Paste

Some students have a nasty habit of looking up the case online and then cutting and pasting large portions of the case's language (or worse yet, just mindlessly typing what the case says verbatim) into the case brief. Don't. A case brief is intended to force you to carefully read and analyze a case. One of the primary goals in law school is for you to teach yourself how to read complicated cases and understand the law. If you simply retype what the judge has said, you are doing an end-run around a key reason for case briefing. Strive also to keep your brief succinct (another reason not to cut and paste). This will promote comprehension and increase your ability to better prepare for classes and exams.

D. You Will Not Use a Commercial Brief

You will not use commercial outlines or commercial case summaries when briefing. These materials can be useful and can help you understand the material you are covering, but they are not a replacement for working (perhaps struggling) with the material and briefing the case yourself. No, this is not just advice for masochists. Remember the purpose of briefing: to help you to understand the different components of a case and read critically. Using a commercial outline or case summary defeats (or at least undermines) that purpose.

A related piece of advice that's hard to follow. In law school there's a nasty tendency to decide you "need" something, just because others have it. Not since junior high will you suddenly find you must have a thing, just because everyone else has it. I've seen it before—a madcap race to the bottom as everyone buys dozens of commercial outlines. If everyone else is lugging around twenty commercial outlines, perhaps you should too, you think. But you'd be wrong. You can't go through law school with the irrational fear that other students will get all the secret insights if you don't fol-

low like a lemming. And most times, following the crowd is a poor decision. If you like the herd mentality that much, leave law school now and go work on a farm. You'll fit in nicely with the sheep and the cows.

That's all. Next time I expect you to be prepared for my questions. Unless you brief, you won't be. I trust I won't have to repeat myself.

I'm done for today. Next class we'll pick up where we left off and Mr. James can tell us the facts of the *Rochester* case."

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Well, I'm glad I'm not Rick James ... Here is my checklist from the lecture:

The Main Point

- ☐ *I will brief or Prof. Lawrence will get me!*

Reading Cases

- ☐ *Find a quiet, distraction-free place to read*
- ☐ *Preview the case (skim it!)*
- ☐ *Read carefully and critically*
- ☐ *Use a legal dictionary*
- ☐ *Take selective notes and avoid excessive highlighting*
- ☐ *Keep track of the parties (who is the plaintiff, who is the defendant)*
- ☐ *Focus on what court is deciding the issue (trial or appellate, state or federal etc.)*

To Remember When Briefing

- ☐ *Use a standard, easy-to-read format*
- ☐ *Include at least: (1) a statement of issues; (2) facts; (3) procedure; (4) rules; (5) holding; and (6) reasoning*
- ☐ *Keep the brief short—one page or less ideally*
- ☐ *Don't book brief*

- ☐ Don't cut and paste (must think about what I'm writing)
- ☐ Don't use a commercial brief
- ☐ Print out hard copy before going to class
- ☐ Annotate and make notes on the brief during class
- ☐ Tailor brief for class preparation and individual professor