

# Case Briefing

1 of 3 Handouts on Case Briefing

## CASE BRIEFING

You've probably heard lawyers on television or in the movies talk about filing briefs with the court. But law school case briefing is something altogether different. To brief a case is to reduce the case to its bare essentials--to analyze the facts and the law that the court applied in a procedural context, and to explain the reasons for its decision. Briefing forces you to read the case thoroughly so that you can state the essentials **in your own words**. Briefing also gives you a condensed version of the case that you can understand and use later to make your outline and to study.

Some students chose to use "book briefing" or "Technicolor briefing." These two shortcut methods involve making notes in the margins of your book or highlighting different parts of a case in different colors. **THESE TECHNIQUES ARE NOT ADEQUATE SUBSTITUTES FOR CASE BRIEFS WRITTEN IN YOUR OWN WORDS.** If you don't put the case into your own words, it is unlikely you will absorb the information you need to respond properly if called on in class and to provide sufficient answers on law school exams.

Each professor has his or her own preferences for brief writing, because the basic form has many variants. Follow the first rule on case briefing—for each class, prepare briefs the way that professor prefers. If the professor expresses no preference, use the basic form described below, with these nine sections:

1. Case name and citation,
2. Facts (the story of what happened condensed to what you think the court found relevant to this judicial decision),
3. Procedural Posture (what happened when the case was brought to trial and subsequently appealed),
4. Issue (the question that the appellate court must answer in this case),

5. Rule Applied (the rule that the appellate court decides will be used to come to a decision based on the facts of this case),

6. Holding (the court's decision after applying the rule to the facts of this case - therefore, the holding is specific to the case before the court),

7. Reasoning (the process the court uses in selecting the rule and applying the rule to the facts of the case),

8. Result (what the court did with the case),

9. Concurrences and dissents (what other judges said who did not completely agree with the majority).

Read the case while keeping in mind that you are looking for information that will be placed under one of the nine headings. If you must read the case more than one time to really understand it, don't be discouraged. Beginning law students often have to read cases multiple times. Remember, you will get better at reading cases with practice.

Now that you've read the case at least once, read it again and begin putting the essential information on paper.

### **CASE NAME AND CITATION:**

A case is located by its citation, which tells you where to find the case in a case reporter. In a textbook, the name and citation of a case will usually be given to you, and you can just copy them onto your brief, with perhaps a reference to the textbook page number. If the case you are briefing comes from one of the reporters, you may need to use a citation manual to get the proper citation form.

The case name goes before the citation. Do not use the first names of the parties or the names of other parties besides the first named. In other words, if the case was originally captioned John Smith and Sue Smythe v. Frank Deaux and Big Bad Insurance Company, you'd write Smith v. Deaux. Underline the name of the case.

**FACTS:**

Only those facts that are relevant and operative to the question presented to the court for determination should be included in the brief. The fact summary should identify the parties and their relationships, along with statements describing the action involved and what defense was asserted. Include only the relevant facts. When deciding whether to include a fact in a brief, ask yourself: If this fact were otherwise, would the outcome of the case be different? If the outcome would be different, include it. If not, exclude it.

An example: Witnesses testified that at the time the victim was shot, he was holding a Sprite in one hand and a Baby Ruth candy bar in the other. Defendant claimed he fired at the victim because he was afraid the defendant was going to shoot him. The prosecution argued the defendant's fear was irrational because neither of the victim's hands held a gun. Is the brand of soda or candy bar relevant? The outcome wouldn't change if the victim had been holding a Mountain Dew and a Twix. But the fact that the victim's hands were full was important to the prosecution. So your brief should simply state that the victim's hands were full with a soda and a candy bar at the time he was shot.

Other examples: Unless you are briefing an age-discrimination case or a case in which a party's age is important, you should omit the plaintiff's age, even if the court mentions it. If you're briefing a personal injury case, the crucial legal questions are how the defendant behaved and how the plaintiff was hurt. Unless you're briefing a racial-discrimination case, the race of the parties involved is irrelevant.

**PROCEDURAL POSTURE:**

Most cases you'll be reading and briefing as a law student are cases decided by appellate courts. If you don't understand the procedural terminology at first, look it up. (Having a pocket

version of *Black's Law Dictionary* handy when you're briefing is always a good idea. If you don't understand the words you're reading, you'll never figure out what the court was doing.) Is the case before the court on a motion or exception, such as a motion for summary judgment? Was the case tried on the merits? Was the trial by a judge or jury? Did the losing party move for a new trial?

In a criminal case, always include the crime the defendant was charged with or convicted of, what appeals were taken, and what disposition was made by an intermediate appellate court. In a civil case you would include the basis for the plaintiff's lawsuit and the outcome in the trial court. In both you would also include the trial court's action or failure to act that is the basis for the appeal.

### **THE ISSUE:**

The issue is the question or questions the court is deciding. Sometimes the court will make it easy for you and say, "The issue we decide is . . ." or something equivalent. Often it will not. Even when the court tells you the issue, you have to check to see if the court is right. The court may, in fact, discuss several issues, or you may conclude that the issue the court actually decides is different from the one it says it's deciding. Sometimes determining the issue requires a great deal of thought.

Think of the issue as a legal question that relates to the facts of the case. Your statement of the issue should explain the question in one sentence that a person who hasn't read the case can understand.

If you're having trouble stating the issue, ask yourself this question: "What does the appellant say the trial court did wrong?" A basic rule about appellate courts is that they do not retry cases. Instead, they correct errors. This means the appealing party must claim the trial

court did something it should not have done or failed to do something it should have done. The substantive issue is likely to be bound up with the trial court's error. If you find the issue is too general--appellant argues the evidence was insufficient to convict, or appellant challenges the instructions--then ask, "What grounds does the appellant have for arguing, or the court for deciding, that the evidence was or wasn't sufficient, or that the instructions were or were not valid? What element of the offense did the government fail to prove? What was improperly left out of or improperly added to the jury instructions?"

**RULE APPLIED:**

A rule, sometimes called the black letter law, is a general statement of law that prescribes, prohibits, or permits general conduct. Louisiana courts will generally first examine the statutory law (revised statutes and codes) and then Louisiana case law. In federal cases and cases from other states, the courts look to statutes and common-law rules formed by synthesis of several cases on the same issue. Not all the elements of the rule may be at issue in any one case.

**HOLDING:**

A holding is a decision based upon an application of the chosen rule to the key facts of the case. It is the answer the court gives in response to the issue. Sometimes it is as hard to find the holding as it is to find the issue. When having trouble spotting the holding, ask yourself what the court minimally had to decide to come out the way it did. Another way to discover the holding is to rephrase the issue question as a statement.

**REASONING:**

In some opinions, the court will clearly state the reasons for its decision. In others, the court won't be so generous. But your common sense should tell you that there is a reason for every rule.

Once you've read the opinion and understand why the court did what it did, you have to decide what part of the reasons to leave out. Try summarizing each paragraph in one sentence. Then look at those sentences and figure out which steps aren't necessary in understanding what the court did.

**RESULT:**

A good brief should make clear the outcome of the case. Did the appellate court send the case back for a new trial? Did it affirm the dismissal of the case? Who won or lost? This information is vital to understanding the case.

**CONCURRING AND DISSENTING OPINIONS:**

A concurring opinion is a separate opinion given by a judge who did not vote with the majority. In a concurrence, the judge agrees with the court's ultimate decision but for different reasons. In a dissenting opinion, a judge disagrees with the procedural result reached by the majority of the court. These opinions are important because the judicial system is always changing. A statement that is made in a concurring or dissenting opinion today may become the law of the land tomorrow.

## **BRIEF FAQs**

**Q.** Does every brief have to have the listed headings: Case Name and Citation, Facts, Procedural Posture, Issue, Rule, Holding, Reasoning, Result, and Concurring and Dissenting Opinions?

**A.** No. The brief is a tool for your use. Some cases may not have concurrences or dissents. In some, the holding and rule might be the same. Unless you are preparing the brief for a class in which the professor has told you that you must use certain headings, do what works best for you.

**Q.** How long should a brief be?

**A.** It depends on the case and the size of your handwriting. If it is longer than one or two typed pages, you should ask yourself if you are including unnecessary or irrelevant information.

**Q.** Why should I bother with briefing cases?

**A.** Eventually, you probably won't. At the beginning of law school, however, most of you don't know how to read a case the way a lawyer does. Briefing the cases you discuss in class will force you to pay closer attention to them and will help you to learn what information in an opinion is relevant to a lawyer. It should enable you to use and discuss the cases better than you would if you merely read them or even read and underlined them. When you later research a legal problem, your experience in briefing cases will improve your ability to decide which cases are relevant to your problem. Finally, practice in summarizing cases and, in particular, in stating the issue will help you in subsequent writing assignments.

**Q.** How many times do I have to read the case before I brief it?

**A.** As many times as it takes for you to understand it. Very few 1-Ls can understand a case after only one reading.

**Q.** What if I can't understand the case no matter how many times I've read it?

**A.** Try reading a horn book, a legal treatise that explains legal concepts with only marginal references to cases. (The term hornbook comes from the tradition of covering a basic text—often a single sheet or board containing the alphabet or other rudimentary information and held by the teacher as a visual aid—with a protective covering, usually of animal horn, much like today we use a sheet of plastic to protect a page. This term has been attached to lawbooks that are basic primers.) After you understand the concept, briefing the case is much easier.

**Q.** What do I do with the brief once I've written it?

**A.** Take your brief with you to class. It will be a handy dandy reference when the professor calls on you. Write your brief with oversized margins on the sides and bottom. During class discussion, annotate your brief using the space in the margins. If you type your briefs, your handwritten class notes will dramatically reflect how your understanding of the case changed or



remained the same as the result of class discussion. Thus, you can see if you are on the right track.

**Q.** Can I throw the briefs away after class?

**A.** No! Regularly review your briefs and the notes you have added. When you get to the end of a particular concept, take all of your briefs and notes for that concept and synthesize them into your course outline, which you will later use to study for exams.