

Case Briefing

2 of 3 Handouts on Case Briefing

Briefing Pitfalls

1. Using cryptic citations. Legal professionals use citations to provide information regarding the case, i.e. case name, case court, case date, case location, etc. Putting down some combination of numbers and letters as the citation is incorrect and serves absolutely no purpose. ALWD is a required book in this course for a reason. Use ALWD.
2. Taking things directly from the case, word for word, and putting them in the case brief. This is generally encouraged in only one instance: when stating the rule of law. However, even in this instance, you should not take the rule of law word for word if the rule of law is too complex or superfluous because doing so will not serve your interests as a student to understand and easily recall the rules of law.
3. Including a huge amount of irrelevant and pointless facts. The standard used to decide whether a fact should be included in your case brief is whether that fact is important. Whether a fact is important or not turns on whether the court's reasoning and holding is dependent on that fact. Your facts section should line up with your reasoning section. Every fact addressed in the court's reasoning should be in your facts to the extent of detail addressed in the reasoning. If the court does not address a fact in its reasoning, it is not important.
4. Mentioning parties in the case brief that were not even part of the case. Nobody cares about the defendant who was acquitted. Nobody includes you, the court, and me. Nobody also cares about Lee. He's probably in a hospital somewhere recovering from the accident. He is not part of the case. Even his name is not important. It doesn't matter whether Lee, Lauren, or Latoya was the driver. What matters is the action of the defendants and that the defendants were chasing a car with a driver and a passenger, a crash happened, the passenger died, and the defendants were convicted of negligent homicide as to the passenger's death.
5. Identifying an incorrect procedural posture. Focus. Why are these parties here in this court? What are they asking the court to do? The procedural posture should include the procedure of what happened pre-arrival at this court, and what is being asked of the court. That's it. What happens after the case is not important. What this court decides in the opinion is the result section of your brief. Eventually, once you've mastered case briefing and understanding, you can simply add the result to your procedural posture.
6. Failing to include all parts of the rule of law. Rules of law are organized and logical. Reading an opinion is like putting together a puzzle. Throughout the opinion, rules of law will be referenced. This may happen in a logical order or it may not. Your job is to pick out each piece of the puzzle and put it together in a logical and organized fashion to form the complete picture on that rule of law.

7. Identifying the wrong issue or too many issues. To determine what the issue is in a case, ask yourself what issue you would pull this case for. For what issue does this case offer a rule of law and sufficient reasoning on that rule of law? What rule of law does this case stand for?
8. Confusing the holding with the result. The holding is legal in nature and will correspond to your issue. If the issue is, was there sufficient evidence to support the jury's negligent homicide conviction. Then the holding might be, the evidence was/the evidence was not sufficient to support the jury's negligent homicide conviction. The result is procedural in nature. The result is the next step in this case's story after what you've already included in the procedural posture. A possible result might be: the court upheld the defendants' convictions and sentences or the court reversed the trial court's decision and remanded the case for retrial.
9. Failing to include the court's reasoning. This is the most important part of the case brief and the most important part to being a successful legal professional with a sharp legal mind. The reasoning is the portion where the court takes each fact or set of facts and reasons: "the fact that the defendants did x and or y establishes this element of the crime." Any fact used in your reasoning must be stated in your facts section. Your reasoning should line up with your rule. For every element in your rule, you will have some reasoning on how that element was or was not met by this fact or that fact in the case.
10. Stating the result in the present tense. Unless you are sitting in the courtroom as this case is being tried and writing things as they happen moment by moment, you should not discuss what happened in this case in the present tense.
11. Incorrect verb usage. The court is not a human being, it does not think.
12. Lack of subject and verb agreement. If your subject is singular, then your verb must be in singular form. If your subject is plural, then your verb must be in plural form.
13. Lack of subject and pronoun agreement. A single human being is not an "it" or a "they". The jury is not a "they." The jury is an "it."