

## INTRODUCTION TO CASE BRIEFING

Reading cases is probably an unfamiliar skill for you, and it is a skill that you will have to practice to master. Even though an assignment might only be ten pages long, you should still expect it to take you a couple hours to prepare adequately. Try to read every case twice. The first time, just get the big picture. The second time, dig into the details, thinking about and challenging the judge's analysis. Then, after you have read the case a second time, you should brief it.

A case brief is a short summary of the main points of the decision. The key is short—do not rewrite the opinion, but rather distill it down to its essence.

*Why brief?* Besides being a good way to prepare for class, briefing has some other advantages. 1) It forces you to unpack the opinion and test your understanding of it by putting the facts and the analysis in your own words. This is why so-called “book briefing,” in which students just highlight the rule and issue in their casebook, is not enough. You only know whether or not you have understood the case if you can restate it yourself. 2) Briefing gives you a daily means of assessing yourself. One of the quirks of law school is that the grade rests entirely, or almost entirely, on a single final exam. You do not get a lot of feedback during the semester about how you are doing. By briefing, you can check each day in class whether or not you have gotten the right things out of the case. 3) Having a brief gives you a place to start when you are called on. Being called on in class is scary. Everyone gets nervous when put on the spot, no matter how brilliant or how prepared they are. But if you have your brief in front of you, you have a cheatsheet with which to begin your answer. 4) Good briefs provide useful study aids at the end of the semester. You do not have to go back to the casebook to review; you just have to go over your briefs. 5) Good briefs reduce the note taking you need to do in class. If your brief already contains the facts, rule, and analysis, you do not need to spend class time writing notes about that. Instead, you can focus your attention on listening to and participating in the discussion.

Here are the basic elements of a brief:

1. **Case title and date.** It is also wise to list the page in the casebook for easy reference. Due both to the case method of studying the law and the common law emphasis on judicial opinions, the title of an opinion (*Jones v. Smith*) becomes a symbol of the rule for which it stands. So, for instance, a court wanting to talk about the rule of consequential damages might not recite the rule but rather say, “the rule in *Hadley v. Baxendale*.” Thus it is important for you to fix in your mind the name of each case, its basic facts, and the rule (or rules) it stands for.
2. **Facts.** This is a critical part of the brief. The facts determine the legal issue about which the plaintiff can sue, and they determine the rule the court will choose to apply in order to arrive at a resolution. Your fact section should aim to accomplish three things.
  - a. Make clear who the parties are. It can be confusing if you just write “plaintiff” and “defendant,” so include more details, such as “Seller (Rogan Corp.—plaintiff)” or “the appellee, Thompson (the buyer)”.

- b. Tell the story briefly rather than just list facts. This helps you remember the details and puts the rule into context. If the order of events matters, make a timeline. Don't rewrite the fact section. A few brief sentences should almost always suffice to summarize the key facts in a usable narrative.
- c. Keep your focus on the *facts that determine the outcome*. If the event in question happened on Tuesday, but that fact was not relevant to the outcome of the case, then it can be ignored. This means that you have to figure out, before you brief, which facts were the relevant ones upon which the judge based her decision.

When you are asked to "state the case" in class, your goal is to cover these three points: tell the story of what happened clearly but succinctly, concentrating on the facts that determined the outcome, and clearly identifying the parties.

- 3. **Procedural posture.** You will study trial procedure in your Civil Procedure class, but you will encounter the reality of procedure in all of your classes. Procedure is important, so you should take note of it as you read cases. The main matter to mention in your brief is how the suit came before the court writing the opinion. If the opinion was written by an appellate court, which party won below? Did the dispute come before the court on a final disposition (the judge below made a decision on the main legal merits of the issue being litigated) or on an interlocutory appeal (the judge below made a ruling on a subsidiary matter, which the parties appealed before going any further on the merits)? Was the case decided on summary judgment, meaning that the facts were not in dispute and the only issue was one of law?
- 4. **Issue.** What legal question is the judge determining? Be sure that you are finding the legal question, not a factual question. The job of a judge is to rule on questions of law. The job of a jury is to decide questions of fact. Consider this Contracts example: Buyer sues Seller because the car she bought from him turned out to be unsafe and as a consequence, she was injured in an accident. Buyer claims that she bought that particular car because Seller told her, "this car is the safest car on the road today." Such a statement might be a warranty, in which case it is a legally-enforceable promise and Seller could be liable for the harm Buyer suffered, or it might just be sales talk, called puffery, and Seller would not be liable on a warranty claim. Determining whether the statement is a warranty or puffery is a question of law, which the judge decides. Determining whether Seller did, indeed, make the statement and whether Buyer decided to buy the car because of it is a question of fact for a jury. In your brief, you need to note that the *legal* issue in this case is whether Seller made a warranty. Try to make your statement of the issue as exact as possible.
- 5. **Rule.** A judge resolves disputes by applying facts to a legal rule. The choice of rule is determined by the legal issue in dispute. Picking out the rule controlling a case is an important skill, because, of course, that rule is the statement of the law for which the opinion stands. It is a good idea to copy the rule from the opinion

straight into your brief. But be sure that you have identified the correct rule. Judges do not always come out and say, “the rule controlling this case is . . . .” Sometimes the judge might talk about different rules, or different versions of the rule. Think about the issue and the analysis and ask yourself whether the statement you think is the rule is really what is driving the opinion toward its outcome.

6. **Holding.** What was the disposition? If the court issuing the opinion was a trial court, the result will usually be that the plaintiff either proved his case and won or failed to prove his case and lost. At the appellate level the court can uphold or overturn the lower court ruling. Alternatively, the court could remand, which means that it cannot make a decision on the legal merits but instead returns the dispute to the lower court for a decision on a particular factual matter. When more than one legal issue has been appealed, the court could decide some of them and remand others.
7. **Analysis.** After stating the facts, the issue, and the legal rule that controls the case, the judge has to apply the facts to the rule to arrive at a holding. This is the body of the opinion, which we call the legal analysis. What does it mean to “apply the facts to the rule”? Here is an example. A statement is a warranty if it is (1) an affirmation of fact or a promise, (2) that relates to the goods, and (3) that becomes a part of the basis of the bargain between the parties. In the example of the sale of the car above, the court would test the facts to decide whether the statement “this car is the safest car on the road today” was an affirmation of fact or a promise, whether the statement related to the car being sold, and whether Buyer chose in part to buy the car because of the statement. In your brief, you want to outline how the court goes through its analysis and arrives at its conclusion. But, again, you want to keep your analysis tight and short. You are not rewriting the analysis; you are just outlining it.
8. **Concurrence or dissent.** Appeals are heard by a panel of judges, ranging from the normal three-judge federal circuit panels to larger panels of state or federal supreme courts. Sometimes not all of the judges on the panel agree with the majority opinion. Some of the judges may accept the holding but not want to join the opinion. In this case, the disagreeing judge might write a separate concurrence. If the judge disagrees with the holding, she might want to write a dissent. The inclusion of a concurrence or a dissent in the casebook indicates that the facts of the case present a particularly difficult legal problem, and you should think about why that is. In your brief, summarize the analysis in the concurrence or dissent and note any differences in how the majority and concurring or dissenting judges describe or explain the facts.
9. **Definitions of new vocabulary.** How can you understand a case if you do not understand what the words in the case mean? Use your briefs to record the new definitions you have looked up in the dictionary.