Briefing a Case

Your goal in writing a case brief is to create notes about your critical reading of the case. Having a case brief can help you respond when called on in class, but writing the case brief can also help support your critical reading of the case. It forces you to pull the case apart into the categories of information that lawyers and judges are looking for when they read a case. In other words, briefing a case makes you read the case like a lawyer.

Because your goal in writing a case brief is to capture your thoughts about a case, your case briefs should paraphrase rather than quoting the case. As an additional bonus, writing about the case in your own words will help you to monitor your comprehension and thus identify areas where you are struggling or confused.

You will eventually develop your own approach to case briefing, which will likely vary depending on the purpose for which you are writing the brief (for a case you were assigned to read for a class, for a case you are reading in order to advise a client). However, all case briefs contain much of the same fundamental information. Below, you'll see descriptions for each part of a traditional case brief.

As you begin law school, start by using this as a guide for briefing cases. You will soon learn how to adapt case briefs to suit your style and your needs. But, for now, start with these fundamentals.

Heading

Include the name of the case and the case citation. During orientation, you'll be reading *Plessy v. Ferguson.* The citation for *Plessy* is 163 U.S. 537 (1896).[1] This tells you that, if you were to go to the library, you would find *Plessy* in volume 163 of the United States Reporter on page 537 and that the decision was published in 1896.

[1] In the copy of the case you'll receive, you'll see that the full citation references three different books, the United States Reporter (U.S.) the Supreme Court Reporter (S.Ct.) and the Lawyers Edition (L.Ed.). You'll learn more about different reporters and parallel citations in your legal research and writing course.

Not only does the citation tell you where you would find the case in a library, but it also gives you some important context about the decision. It tells you who authored the opinion (in the case of *Plessy*, the U.S. Supreme Court) and when the decision was issued. This context allows you to think about how long ago the decision was made and what else might have been happening in the country at the time.

While the citation tells you where to find the case in a reporter, when you are reading the case from a casebook, you will also want to note the page on which the case appears in your casebook so that you can easily refer back to it.

Parties

You should include the names of the parties as well as their designations (appellant, respondent, etc.). But you should also include information about each party's role generally. Are the parties employer and employee? Landlord and tenant? Thinking about the parties in terms of their roles will help you to think about how this case might apply to future employers and employees or landlords and tenants or criminal defendants, etc.

Facts

The facts help you to understand what happened between the parties that brought them to court. But when you are including facts in your case brief, you want to focus on the legally significant facts. A fact is legally significant if the court relied on it coming to its decision.

One way to decide whether a fact is legally significant is to ask yourself whether the court's decision would have been the same if the fact were changed. In fact, be prepared for your law professors to ask you this question quite frequently as a way of helping you develop the skill of identifying legally significant facts.

In this section, you might also want to include a few background facts so that those legally significant facts will make sense to you when you're called on in class or when you come back to this case brief in a month or two. The key to including background facts is to include the bare minimum. The facts of the case are almost always much less important than the holding and the reasoning. So be brief.

Procedural History

Most cases that you read in law school will be appellate court cases. That means that the parties first took their dispute to a trial court. The trial court made some decision, which was then appealed to a higher court. Your procedural history should tell this part of the story. How did the case begin? What was the outcome at trial? Which party is bringing the appeal?

Issue

The issue is the question the court is trying to answer. Note that a single case may contain several issues. Use your critical reading skills to find the context for this case – why is your professor having you read it? What topic heading does this case fall under? Some of that context will help you to identify the issue.

Holding

Identifying the holding can be a little tricky because different professors can mean different things when they say the word holding. Some professors use holding to mean both the outcome and the reasoning. Some professors use holding to mean the rule and the reasoning. Other professors use holding to mean just the answer to the question presented in the case or issue with no reference to the rule or the court's reasoning.

When you begin articulating holdings in writing for your legal research and writing course, you will, typically in a single sentence, identify the applicable legal principle of law (the rule), and the court's reasoning, including the facts that were critical to the court's conclusion.

For purposes of a case brief, you might decide to express the holding fairly simplistically as an answer to the question presented in the case, knowing that your rule and reasoning are articulated elsewhere in the brief. Ultimately, the way in which you approach writing the holding in your case briefs will undoubtedly change quite a bit as you learn more about your classes and professors and how to read the law.

Rule

The rule in a case is a statement of the applicable law. The rule can recite a statute or can come from prior case law, or can be a combination of the two. For each issue in the case, there will be at least one rule that the court relies on.

One of the things that can makes identifying a rule tricky in some cases is that the rule the court begins with (sometimes called the inherited rule) might not be the same as the rule the court ends with (sometimes called the processed rule). It's sometimes really clear when this happens because a court will overturn a prior decision. It's sometimes much more subtle. So pay attention to both where the court starts and where the court ends.

Remember, too, that the rule that comes out of a case must be applicable to future cases. Because the rule needs to be generally applicable, unlike an issue statement or a holding, it should be free of any particular facts and articulated in a way that would allow it to be applied to a new set of facts.[2]

Reasoning

The reasoning tells you how the court came to the holding it came to. It's the *why* of the decision.

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[2] Take a look at the case brief of *DeGrego v. Levine* posted on Canvas. Notice how the reasoning section of the brief contains all kinds of details about DeGrego's particular situation. Now, look at the rule section. Notice how there is no mention at all of DeGrego in that section. You could use that rule to decide whether anyone you ever worked with had provoked her own discharge, right? That's key to writing a rule.

When you identify the reasoning in the case, in addition to using general critical reading skills, you can also think about three specific things. First, you should be thinking about how the court applied the rule to the facts of the case. You should be able to "explain why it is that the rule the court stated warranted the result the court reached. This explanation involves identifying the key facts and explaining what aspect(s) of the facts caused the court to conclude that the factual situation required by the rule *was* present in the case or *was not* present in the case."[3]

Second, you should be able to explain how the court treated prior precedent. Did the court explain how the case in front of it was the same as a prior case (analogize) or did the court explain how the case in front of it was different from a prior case (distinguish)?

Finally, consider the public policy that is served by the court's decision. Sometimes the court makes its policy rationales explicit and sometimes it doesn't. "Five policy trade-offs common to legal decision-making are: (1) Certainty and predictability vs. flexibility and justice (2) Encouraging competition vs. preserving individuals' rights (3) Allowing freedom of action vs. protecting society (4) Encouraging economically efficient behavior vs. preserving individuals' rights (5) Punishing and discouraging socially undesirable behavior vs. preserving individual rights."[4]

Disposition

The disposition tells you what the appellate court decided to do with the case. It's the end of the story that you started to tell in the procedural history. Did the court affirm the trial court's decision? Reverse it?

Concurring and Dissenting Opinions

[3] Michael Hunter Schwartz & Paula Manning, *Expert Learning for Law Students*, 82 (3d ed. 2018).

[4] *Id.*

When your casebook prints a concurring or dissenting opinion, you need to summarize the key points of that concurrence or dissent. This requires you to identify the main points on which the majority opinion and the dissenting or concurring opinion diverge and to explain the view laid out in the concurring or dissenting opinion.

Notes

This *notes* section will allow you to do two things. First, note anything about the decision that didn't belong anywhere else. Maybe you learned the definition of a legal term. Or maybe you have questions you'd like to ask in class.

Second, use this section of your brief for synthesis – to understand how this case relates to the other cases that you've read for this class, to the specific topic you're covering in class, and to the class as a whole.