

## HOW TO BRIEF A CASE

There are as many ways to brief a case as there are lawyers and law students briefing cases. Some prepare elaborate summaries. Some highlight the essential points and make notes in the book (book briefing). Some rely on prepared case summaries (either “canned briefs” in specialized books available for sale, or notes made by students in previous years, or even their benchmates’ briefs! – any of which may prove useful in a pinch but all of which can get the answers wrong, just FYI). You must find the way that works best for you, with “best” defined as “preparing you most fully to analyze a novel fact pattern on your own in an exam.”

Regardless of the mechanics, though, whether you’ve done it right is really a simple question:

*Can you answer the questions listed below?*

If you can, then you’ve briefed the case adequately. If you can’t, there’s more work yet to do.

### REQUISITE QUESTIONS ANY CASE BRIEF SHOULD ANSWER

- A. What are the FACTS and PROCEDURAL HISTORY of the case?
1. What happened (before anybody went to court) that made somebody want to sue somebody else? That is, what is the story behind the controversy? Also, when did the original events happen?
  2. What do we know about the original suit?
    - a. Who sued whom?
    - b. What was the legal cause of action upon which they sued?
    - c. What were they asking the court to do for them or to give them?
      - i. Money damages?
      - ii. A court order?
        - (a) An order defining the parties legal relationship?
        - (b) A court order compelling one party to do something?
        - (c) A court order prohibiting one party from doing something?
  3. What happened in the lower court(s)?
    - a. Did the party who originally sued win or lose in the lower court?
    - b. If they won, what exactly did they win?
    - c. Which party appealed?
    - d. What was the basis of their appeal? (Hint: It’s always a question of law – not fact)
      - i. Is the appellant claiming that the lower court applied the wrong rule of law? or,
      - ii. Is the appellant happy with the rule of law but claiming that the court applied the right rule wrongly?
    - e. Be sure to repeat this section for every lower court decision. Look for:
      - i. The original “court” (usually a district court, but sometimes an

administrative board or something else that isn't even a court).

- ii. Any intermediate appellate courts (e.g., if the case report is from a state supreme court, did it come directly from the trial court, or did it go through an appellate court on its way to the state supreme court?)
  - iii. The case might have been heard by an appellate court, remanded, gotten a new ruling on remand, and been appealed *again*. You should identify all of these prior court actions.
4. Where are we now?
- a. Which type of court? (federal or state; also, possibly a specialized court like bankruptcy or probate or the like. Check the case citation – it will usually answer most of these questions)
  - b. Which level of court? (district? appellate? supreme?)  
*Be careful – in New York, for example, the “supreme” court is the trial court.*
  - c. What state / district / circuit are we in?
  - d. What year was the case decided?
- B. What is/are the LEGAL ISSUE(S) presented?
1. Often this is simply a repeat of 3.d., above, but sometimes the appellant's stated reasons for appeal are not all there is to it, so ask these questions, too:
  2. Is the court simply answering the issue *as framed by the appellant*, or, as sometimes happen, is the court *restating the issue in a slightly (or wholly) different way*? If the court is restating it, does that change anything about the outcome?
  3. Is the issue being decided a question of *procedure* or a question of *doctrine*?
    - a. Example of procedural issue: Whether plaintiff's notice to defendant was sufficient.
    - b. Example of substantive issue: Whether the law about what notice is sufficient is constitutional.
  4. Which issues are *dispositive*, and which are merely *relevant* (or even irrelevant)? That is, which issues have to be decided one way or the other to decide who wins this appeal? Courts sometimes offer opinions on issues that are not “necessary” to reach a decision in the case before them.
- C. What is the HOLDING of the court (i.e. the answer to the question in #2)?
1. Who won the appeal?
  2. What, exactly, did the winner get? Was it what they wanted? Everything they wanted or only some of what they wanted?
  3. Did the winner (of the appeal) actually *win* their case, or did they “win” something less than that, and what is the significance of what they “won”? For example, if the district court granted summary judgment for defendant, and the plaintiff wins on appeal, what they most likely won is a reversal of that summary judgment for defendant; this does not mean the plaintiff wins the original lawsuit,

only the right to continue with the lawsuit.

D. What REASONING does the court use to reach its decision?

1. Upon what legal arguments did the appellant base the appeal? What statutes, precedents, or principles did the appellant use? *Note: You usually will be reading the court's decision, and ordinarily you will not have access to the appellant's brief, so you will have to infer the appellant's arguments from the court's opinion.*
2. Upon what legal arguments did the appellee base its defense? What statutes, precedents, or principles did the appellee use? *Note: Again, you'll most likely have to infer these.*
3. What legal arguments did the court (i.e., the majority) use to justify its decision?
  - a. What statutes, precedents, or principles (i.e., rules of law) did the court mention in the opinion? For each of these, did the court mention it because one of the parties cited it, or because the court is relying on it, or both, or neither?
  - b. Were these rules of law already established [in this jurisdiction], or is the court articulating [or choosing] them for the first time [in this jurisdiction]?
  - c. If based on existing law, do you think the court chose the correct authority? (i.e., did they use the right or best statutes, precedents, or principles?)
  - d. If the court is articulating a new or revised rule [for that jurisdiction], does the rule make sense in light of the pre-existing law [in that jurisdiction]?
  - e. Are there any flaws in the court's reasoning? (i.e., does the conclusion about who wins flow logically from the rules chosen, even if you think the court chose the wrong rules?)
  - f. Does the court seem to be addressing issues or solving problems or satisfying agendas other than the ones directly addressed in the court documents? (i.e., do you get the feeling something is going on in the background or that the court is worrying about anything other than the narrow legal issue(s) before it?)
4. Upon what legal arguments did the dissent (if any) base its reply to the majority decision? (repeat 3a-f for the dissent, if there is one).

### ADDITIONAL NOTES

**THE POWER OF NARRATIVE:** Never forget that a case report is, first and foremost, a *story*. The first reports of cases in the courts were created by English entrepreneurs who printed up summaries of the most scandalous cases and sold them as pamphlets in the streets of London – a kind of precursor to *The National Enquirer*, perhaps. When a case seems too dense to comprehend, back up and make sure you know the underlying story; sometimes that will help untangle the legal reasoning.

**THE POWER OF EMPATHY:** Once you have briefed your case, take at least a moment to think about the personalities and positions of the people involved, to imagine the events from

their point of view. Understanding what each party won or lost (and why) is the goal of briefing a case; trying to figure out what either party can or will or should do next (or should have done in the first place) is the goal of *lawyering*.

**THE POWER OF COMPARTMENTALIZATION:** Remember as you are briefing that (a) you may end up disagreeing with the court; (b) you may end up disagreeing with the law; and (c) you may hate the outcome even when you agree with the law and the court's reasoning. Any or all of those reactions are legitimate responses to what you are reading. None of them changes the basic task, which is simply to understand the court's reasoning and the legal principles on which the court relies. Disliking the court's opinion should have no impact on your ability to understand the court's reasoning. You can hate every jot and tittle of the decision, but you must still understand it and be able to articulate it. Set your feelings aside for as long as it takes to dissect the case – that will make the dissection easier – and *then* pick them back up again and let them drive your critique. Bad law can be reversed or overturned, but without a clear understanding of the position you oppose, you are wasting your breath arguing against it.

<b>CASE:</b>	<b>NOTES &amp; QUESTIONS:</b>
<b>CITE:</b>	
<b>COURT:</b>	
<b>DATE:</b>	
<b>FACTS:</b>	
<b>PROCEDURAL HISTORY:</b>	
<b>ISSUE(s):</b>	
<b>HOLDING:</b>	
<b>REASONING:</b>	