

# Why and How to Write a Case Brief

## Why Write Case Briefs?

In law school, you read cases from a casebook for each subject. There is very little explanatory text in a casebook, so in the beginning it is difficult to identify rules of law. A brief helps you focus on and remember important points.

Some students think that briefing cases is unnecessary, either because of the proliferation of canned case briefs available online, or because they think that when they are lawyers, they can get all the information they need from resources like Lexis-Nexis's case headnotes or case briefs, or from other legal research sites where the work is already done for the lawyer. However, while this may be true in some cases, it is not always true. Lawyers need to be able to read and quickly understand cases to find legal precedents and arguments which support their clients' cases, or to find reasons why the cases being cited by their opponents should be distinguished from the current matter. It would be foolish to always trust someone else's research or written case brief for every argument a lawyer needs to make, especially in the event the lawyer is handling a new issue.

Other students stop briefing cases after a while because they have mastered the process. We recommend that you brief cases regularly during your entire time in law school. It is important training, and we think you'll be thankful one day that you did so. Toward that end, [REDACTED] requires, on average, about ten or twelve case briefs to be submitted to the school for each course.

## How to Brief a Case

For your first few case briefs, you should read the case once to familiarize yourself with the case material. Then reread it for the purpose of preparing your brief. As you become proficient at briefing cases, you may be able to brief as you go, reading the case just once.

First, start by looking for the material facts. These are the facts that are important to the outcome of the case. Identifying material facts is an acquired skill, and it may take you some time before you feel confident in discerning material from immaterial facts.

Once you have identified the material facts, by underlining them or highlighting them in your casebook, summarize them as a coherent statement of facts. This should be completed in a brief narrative paragraph and in a chronological manner.

A key to writing a good summary of the facts of a case, is to write as if you are explaining the case to someone who has not read it.

Second, you need to spot the issue in the case. Ask yourself what question the court is trying to resolve. This will help you to identify the issue or issues in the case. Note that many cases have more than one issue and subject. If you can't figure out the issue, ask yourself why the parties are in court. One party is suing the other, obviously. But why is the plaintiff suing? For example, if the defendant was driving down a street, failed to stop at a red light and crashed into another car, he may be sued by the other driver (the plaintiff). What is the plaintiff's "cause of action?" Perhaps it is negligence under tort law. Assuming so, what issue is before the court? The issue is whether the defendant was negligent in hitting the plaintiff's car.

You must be careful about how you phrase the issue. You should usually begin with the words "was," "did," or "whether." Once you know what the court must answer in the hearing of the case, phrase the issue as a yes-no question for purposes of your brief. For example, any of the following would be appropriate issue statements for a case brief in the hypothetical discussed above:

Was the defendant negligent in hitting the plaintiff's car?

Did the defendant negligently hit the plaintiff's car?

The issue is whether the defendant was negligent in hitting the plaintiff's car.

Third, find the rules of law that the court used to resolve the issue. In order to do this, you must have some knowledge of the law. This is difficult at the beginning of law school since your only knowledge of the law comes from reading cases, and you haven't read many yet. The process is circular, at best, but you will improve the more you read, study, and learn the laws.

Ask what rules of law are applicable to the case. For example, in the above hypothetical, the court must apply the rules of law governing negligence, and in particular, must determine whether each element of that cause of action has been met according to the material facts of the case, in order to make its ruling on whether the defendant will be found negligent.

Fourth, what is the court's holding, or ruling? This is usually fairly easy to spot. Sometimes the holding appears at the very end of the case decision, and sometimes it's at the beginning. Either way, the judge who writes the court's decision will state what the court has decided, that is, in whose favor the court ruled (the plaintiff's, the defendant's, the appellant's, or the appellee's). Another way to spot the holding is to ask yourself who won the case.

The court's holding is also referred to as the "decision." You want to identify the decision, since it is the conclusion of the legal matter before the court. For

example, the court may say, “We find the defendant was negligent.” Notice that the holding is the answer to the question posed by the issue statement. If you wrote the issue in the form of a yes/no question, such as “Was the defendant negligent?” then the holding can be reduced to “yes” or “no.”

Fifth, consider how or why the court arrived at its decision. This is known as the court’s “analysis.” What did the court consider important? What rules of law or other case decision did the court rely upon to support its decision? Identifying the court’s analysis can be tricky because there may be a lot of it. You need to sort through it and identify what is important, and what is merely the judge’s opinion or commentary, known as “dicta.”

The court’s analysis is key for law students to understand. If you don’t know why the court ruled as it did, you’ll be unable to figure out how the court might decide a similar case in the future. On the other hand, if you understand the basis for the court’s ruling, then you will be able to apply that same reasoning in later cases or hypotheticals, so that you will begin to master legal reasoning.

Finally, many cases will include opinions rendered by more than one judge. This is particularly true in Appellate or Supreme Court cases. How many judges are there? Do they all agree? Is it a unanimous decision? If not, are there concurring or dissenting opinions? If so, summarize them.

## **Book Briefing**

It was mentioned earlier that you might want to mark the material facts in your case book while you’re reading. Actually, it’s good practice to mark all the key points of a case as you read. It will help when you write out a case brief, but will also help if you ever need to review a case you have already read.

Many students use different colored highlighters for various parts of a case. Others prefer to make notes in the margin. Either way, marking the elements of a case brief on the case itself is called “book briefing.”

Here is a common way to do it:

When you spot the material facts, underline or highlight them and write “F” in the margin to indicate “facts.”

The issue being decided should be labeled “I.”

The rule of law, whether statute or common law, should be marked “R.”

The key parts of the analysis, that is, the sections which show you why the court ruled as it did should be labeled “A.”

Finally, the holding or decision should be labeled "C."

Thus, a common format for a case brief is FIRAC.

### **How to Structure a Brief**

Formats may differ; however, the discerning student will note that most good case briefs share more similarities than differences. Here are the case brief sections required for the [REDACTED] case briefs assignment:

**Topic:** For [REDACTED] briefs, we ask that you identify the topic of the case. Many students have trouble reading a case because they have failed to identify the subject matter (the topic) of the case. All casebooks have a table of contents. If you know what page your case is on, then refer to the table of contents to see what the topic is for that case. You may also want to consult the heading on the actual page on which you have found the case because often times that will also alert you to the topic. The topic will be a key to the issue, particularly when a case includes several issues. In most circumstances, an assigned case brief is assigned because it is important, and it is important because one of the holdings on one of its issues established a new law or made a significant change to an old law. Your brief will only need to cover that important issue, so use the topic listed in the casebook to help you identify it.

**Case Name:** Provide the name of the case and the citation. This exercise, although trite, helps you to become comfortable with case citation, but also helps you focus on the date of the case and the court. Is it a trial court or an appeals court? If it is an appeals court, which is a higher court, you may need to consider what happened in the lower court, and how the lower court ruled in the case. The date is important because many of the cases you read are over 30 years old. An old case may have set a precedent which still applies; or it may have been overruled or modified later, but set an important direction that affected the entire judicial system at the time.

**Facts:** Summarize the facts, and identify parties (who is the plaintiff, defendant, appellant, appellee?)

**History:** What is the history of court actions on this case? If your case involves a higher court decision, summarize the holding and history of the lower court decision. It is important to know if the higher court affirmed (agreed with), remanded (sent back to the lower court), or reversed the lower court's decision.

- Issue:** State the issue in a yes-no question format. Try to begin your issue question with “Was,” “Did,” or “Whether.” If there is more than one issue, and each one relates to the topic of the case, state each issue separately and number them.
- Holding:** Set forth the ruling or holding in the case. There will be a ruling for each issue. Thus, if you have two issue questions, you must have two rulings. List them in the same order as the issue statements and number them. Begin your ruling with “Yes.” or “No.” Then, if you wish, add a descriptive statement such as “The U.S. Supreme Court affirmed the lower court’s decision.”
- Rationale:** Seventh, summarize the material reasons for the Court’s decision. Label this as “Rationale,” though you will see other briefs in which this section is labeled as “Analysis.”
- Rule of Law:** Finally, set forth the rules of law upon which the court relies in rendering its decision. There should be a rule of law to coincide with each issue and ruling. Thus, if your case has three issues, there should be three rules of law.

A sample case brief is shown on the following page.