

## OSH 261 How to Brief a Case

### Student briefs

These can be extensive or short, depending on the depth of analysis required and the demands of the instructor. A comprehensive brief includes the following elements:

1. [Title and Citation](#)
2. [Facts of the Case](#)
3. [Issues](#)
4. [Decisions \(Holdings\)](#)
5. [Reasoning \(Rationale\)](#)
6. [Separate Opinions](#)
7. [Analysis](#)

#### 1. Title and Citation

The **title** of the case shows who is opposing whom. The name of the person who initiated legal action in that particular court will always appear first. Since the losers often appeal to a higher court, this can get confusing. The first section of this guide shows you how to identify the players without a scorecard.

The **citation** tells how to locate the reporter of the case in the appropriate case reporter. If you know only the title of the case, the citation to it can be found using the **case digest** covering that court, or one of the computer-assisted legal research tools (*Westlaw* or *LEXIS-NEXIS*).

#### 2. Facts of the Case

A good student brief will include a summary of the pertinent facts and legal points raised in the case. It will show the nature of the litigation, who sued whom, based on what occurrences, and what happened in the lower court/s.

The facts are often conveniently summarized at the beginning of the court's published opinion. Sometimes, the best statement of the facts will be found in a dissenting or concurring opinion. WARNING! Judges are not above being selective about the facts they emphasize. This can become of crucial importance when you try to reconcile apparently inconsistent cases, because the way a judge chooses to characterize and "edit" the facts often determines which way he or she will vote and, as a result, which rule of law will be applied.

The fact section of a good student brief will include the following elements:

- A one-sentence description of the nature of the case, to serve as an introduction.
- A statement of the relevant law, with quotation marks or underlining to draw attention to the key words or phrases that are in dispute.
- A summary of the complaint (in a civil case) or the indictment (in a criminal case) plus relevant evidence and arguments presented in court to explain who did what to whom and why the case was thought to involve illegal conduct.
- A summary of actions taken by the lower courts, for example: defendant convicted; conviction upheld by appellate court; Supreme Court granted certiorari.

#### 3. Issues

The issues or questions of law raised by the facts peculiar to the case are often stated explicitly by the court. Again, watch out for the occasional judge who misstates the questions raised by the lower court's opinion, by the parties on appeal, or by the nature of the case.

Constitutional cases frequently involve multiple issues, some of interest only to litigants and lawyers, others of broader and enduring significance to citizens and officials alike. Be sure you have included both.

With rare exceptions, the outcome of an appellate case will turn on the meaning of a provision of the Constitution, a law, or a judicial doctrine. Capture that provision or debated point in your restatement of the issue. Set it off with quotation marks or underline it. This will help you later when you try to reconcile conflicting cases.

When noting issues, it may help to phrase them in terms of questions that can be answered with a precise "yes" or "no."

For example, the famous case of *Brown v. Board of Education* involved the applicability of a provision of the 14th Amendment to the U.S. Constitution to a school board's practice of excluding black pupils from certain public schools solely due to their race. The precise wording of the Amendment is "no state shall... deny to any person within its jurisdiction the equal protection of the laws." The careful student would begin by identifying the key phrases from this amendment and deciding which of them were really at issue in this case. Assuming that there was no doubt that the school board was acting as the State, and that Miss Brown was a "person within its jurisdiction," then the **key issue** would be "Does the exclusion of students from a public school solely on the basis of race amount to a denial of 'equal protection of the laws'?"

Of course the implications of this case went far beyond the situation of Miss Brown, the Topeka School Board, or even public education. They cast doubt on the continuing validity of prior decisions in which the Supreme Court had held that restriction of Black Americans to "separate but equal" facilities did not deny them "equal protection of the laws." Make note of any such implications in your statement of issues at the end of the brief, in which you set out your observations and comments.

NOTE: More students misread cases because they fail to see the issues in terms of the applicable law or judicial doctrine than for any other reason. There is no substitute for taking the time to frame carefully the questions, so that they actually incorporate the key provisions of the law in terms capable of being given precise answers. It may also help to label the issues, for example, "procedural issues," "substantive issues," "legal issue," and so on. Remember too, that the same case may be used by instructors for different purposes, so part of the challenge of briefing is to identify those issues in the case which are of central importance to the topic under discussion in class.

#### **4. Decisions**

The decision, or holding, is the court's answer to a question presented to it for answer by the parties involved or raised by the court itself in its own reading of the case. There are narrow procedural holdings, for example, "case reversed and remanded," broader substantive holdings which deal with the interpretation of the Constitution, statutes, or judicial doctrines. If the issues have been drawn precisely, the holdings can be stated in simple "yes" or "no" answers or in short statements taken from the language used by the court.

#### **5. Reasoning**

The reasoning, or rationale, is the chain of argument which led the judges in either a majority or a dissenting opinion to rule as they did. This should be outlined point by point in numbered sentences or paragraphs.

#### **6. Separate Opinions**

Both concurring and dissenting opinions should be subjected to the same depth of analysis to bring out the major points of agreement or disagreement with the majority opinion. Make a note of how each justice voted and how they lined up. Knowledge of how judges of a particular court normally line up on particular issues is essential to anticipating how they will vote in future cases involving similar issues.

## **7. Analysis**

Here the student should evaluate the significance of the case, its relationship to other cases, its place in history, and what it shows about the Court, its members, its decision-making processes, or the impact it has on litigants, government, or society. It is here that the implicit assumptions and values of the Justices should be probed, the “rightness” of the decision debated, and the logic of the reasoning considered.