

The procedure for briefing a case is as follows. The student must summarize, or brief, the court's decision in no more than 400 words. (Some professors may shorten or lengthen this limit.) The assignment's format is highly structured, consisting of five parts, each of which is numbered and labeled:

<u>Part</u>	<u>Maximum Words</u>
1. Case name and citation	25
2. A summary of the key facts in the case	125
3. The issue presented by the case, stated as a one-sentence question answerable only by "yes" and "no"	25
4. The court's resolution of the issue (the "holding")	25
5. A summary of the court's reasoning justifying the holding	200
Total words	400

If these items are contained in a student's brief of a case, he or she should have a sufficient understanding of the case to discuss thoroughly in class.

See Briefing the Supreme Court: Summary and Analysis, by Kenneth M. Holland, which appears in J. Clark and A. Biddle, *Teaching Critical Thinking: Reports From Across the Curriculum* (Englewood Cliffs, NJ: Prentice Hall, 1993).

KEY TERMS

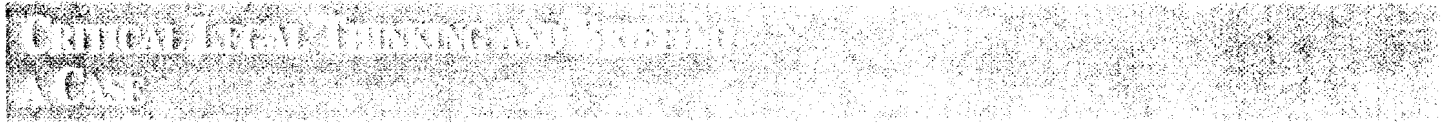
Before you embark upon the study of law, you should know the following key legal terms.

Plaintiff. The "plaintiff" is the party who originally brought the lawsuit.

Defendant. The "defendant" is the party against whom the lawsuit has been brought.

Petitioner or Appellant. The "petitioner," often also referred to as the "appellant," is the party who has appealed the decision of the trial court or lower court. The petitioner may be either the plaintiff or defendant, depending on who lost the case at the trial court or lower court level.

Respondent or Appellee. The "respondent," often referred to as the "appellee," is the party who must answer the petitioner's appeal. The respondent may be either the plaintiff or defendant, depending upon which party is the petitioner. In some cases, both the plaintiff and the defendant may disagree with the trial court or lower court's decision, and both parties may appeal the decision.



The court decisions presented in this book are usually those made by appellate or supreme courts. Trial court decisions are hardly ever presented. The reason for this is that it is the appellate courts and supreme courts of this country that are charged with interpreting the law. Their decisions usually become precedent for lower courts to use when deciding individual legal disputes in the future. Because actual decisions of the courts may be long, often between 10 and 30 pages (and some longer), the cases presented in this book have been edited. The editing was done with a goal of succinctly presenting the most important legal issue of each case for review by the student.

It is often helpful for a student to “brief” a case in order to clarify the legal issues involved and to gain a better understanding of the case. Briefing a case generally consists of making a summary of each of the following items of the case.

1. Case Name and Citation

The name of the case should be placed at the beginning of each briefed case. The case name usually contains the names of the parties to the lawsuit. However, where there are multiple plaintiffs or defendants, some of the names of the parties may be omitted from the case name. Abbreviations are also often used in case names.

The case *citation* consists of a number such as “113 S.Ct. 774,” and along with the year in which the case was decided, is set forth below the case name. The case citation identifies the book in the law library in which the case may be found. For example, the case in the above citation may be found in Volume 113 of the *Supreme Court Reporter* at page 774. The name of the court that decided the case should be set forth below the case name for the case.

2. Summary of the Key Facts in the Case

The important facts of a case should be stated briefly. Extraneous facts and facts of minor importance should be omitted from the brief. The facts of the case are usually set forth at the beginning of the case, but not necessarily. Important facts may be found throughout the case.

3. Issue Presented by the Case

It is crucial in the briefing of a case to identify the *issue* presented to the court to decide. The issue on appeal is most often a legal question, although questions of fact are sometimes the subject of an appeal. The issue presented in each case is usually quite specific, and should be asked in a one-sentence question that is answerable only by a “yes” or “no.” For example, the issue statement, “Is Mary liable?” is too broad. A more proper statement of the issue would be, “Is Mary liable to Joe for breach of the contract made between them based on her refusal to make the payment due on September 30?”

4. Holding

The “holding” is the decision reached by the present court. It should be “yes” or “no.” The holding should also state which party won.

5. Summary of the Court’s Reasoning

When an appellate court or supreme court issues a decision, which is often called an “opinion,” the court will normally state the reasoning it used in reaching its decision. The rationale for the decision may be based on the specific facts of the case, public policy, prior law, and other matters. In stating the reasoning of the court, the student should reword the court’s language into the student’s own language. This summary of the court’s reasoning should pick out the meat of the opinions and weed out the nonessentials.

ONLY WORK THAT CONFORMS TO THESE GRAMMATICAL STANDARDS IS ACCEPTABLE:

1. Every sentence must be complete with subject and predicate and must be followed by the correct terminal punctuation. Note that by this rule the following are prohibited: incomplete sentences, comma splices, and run-on sentences. (Elliptical sentences, in which the omitted parts are clearly understood, are permitted.)

2. A verb must agree with its subject in number. Determine carefully the word or words that govern the number of each verb.

3. A pronoun must [a] have definite reference to a specific antecedent (a noun or another pronoun), [b] agree with its antecedent in number, gender, and person, and [c] be in the proper case. A pronoun does not necessarily agree with its antecedent in case. Without exception, all subjects, including subjects of noun clauses, are in the nominative case; objects of verbs and prepositions, as well as subjects or complements of infinitives, are in the objective; and adjectival modifiers are in the possessive.

4. Sentences must be unified and coherent; they must give reasonably clear and exact expression to the thought of the writer. To attain this requirement, the writer must observe the following principles: [a] Sentence elements that are parallel in thought must be parallel in form. [b] Dangling or misplaced modifiers must be avoided. [c] Upside-down subordination must be avoided. That is, a principal idea should be expressed in an independent clause; a subordinate idea should be expressed in a dependent clause (or, often preferably, in a phrase or word). [d] Awkward shifting of person, number, tense, point of view, or construction must be avoided. [e] A question, exclamation, command, and simple declaration or statement (or any combination of these) must not be united in one sentence.

5. Style must be reasonably clear, smooth, and direct. [a] Avoid the primer style. [b] Avoid awkward or excessive use of the passive voice or the participial phrase.

6. Use the right word. [a] Diction should be clear and exact. Decide what you mean; then choose the word or words that precisely convey your meaning. Avoid wordiness, trite expressions, clichés, awkward repetition, jargon, clumsy circumlocutions, vague abstractions, and unsupported generalizations. [b] Diction should be literate. Avoid such illiteracies as *alright* for *all right*; *like* for *as*; *there* for *their*; *it's* for *its*; *its'* (for anything); *lay* for *lie*; *set* for *sit*; *most* for *almost*; *who's* for *whose*; *so* for *very*; *due to* for *because of*; *the reason is because* for *the reason is that*; and the like.

7. Independent clauses must be separated in one of three ways: [a] by one of the marks regularly used at the end of a sentence (avoid careless omission of periods, exclamation points, and question marks); [b] by a comma and a coordinating conjunction (coordinating conjunctions are *and*, *but*, *for*, *or*, and *nor*), or by a comma and a subordinating conjunction (*although*, *because*, *since*, etc.); or [c] by a semicolon. Do not confuse coordinating conjunctions with conjunctive adverbs such as *however*, *hence*, *nevertheless*, *then*, *moreover*, *therefore*, *furthermore*, *consequently*, *so*, *still*, or *thus*.

8. Non-restrictive or merely parenthetical elements must be set off by commas; restrictive elements must not be thus set off. If a part of a sentence (a word, a phrase, or a clause) is essential (that is, restrictive), its logical connection with the word it modifies is so close that the element cannot be omitted without materially altering the sense of the sentence.

9. In each paragraph, express one idea either implicitly or explicitly; omit all irrelevant material; and show clearly the thought connection between sentences.

(SIDE #2)

TESTS FOR WRITTEN SUBMISSIONS:

Before handing in papers, test them by asking and satisfactorily answering all of the following questions.

1. Appearance: [a] Is the general appearance neat? [b] Are the margins pleasing? [c] Is the typing neat and easily read? [d] Is only one side of the paper used? [e] Are the name and date on the upper right-hand corner?

2. Title: [a] Is the title correctly capitalized and spaced? [b] Is it worded for appeal to the reader you wish to attract?

3. Organization: [a] In your first paragraph or paragraphs, have you told your reader all that is needful of who, where, what, and why, and have you made him want to read the rest of the paper? [b] In your paragraph or paragraphs of discussion, is your material in logical order and have you sufficiently directed your reader from one thought to the other? [c] In your final paragraph or paragraphs, have you emphasized, illustrated or summarized so that your reader will feel a sense of completeness?

4. Paragraphs: [a] Are you sure that every paragraph has a topic? [b] Has every paragraph a topic sentence? [c] Are the sentences inside every paragraph arranged in logical order? [d] Are you sure the logical order is clear to the reader? [e] Can you explain and can the reader see how you made connections between your paragraphs?

5. Sentences: [a] Can you analyze every sentence? This means, can you point out the subject, predicate, complement and modifiers, and can you see how the various phrases and clauses are related to each other? [b] Have you paid sufficient attention to variety in sentence structure? That is, have you considered such matters as the relative number of long and short sentences and why you used them? Have you considered the effects of loose, periodic and balanced sentences? [c] Have you considered your reasons for using complex and compound sentences? [d] Have you considered the effects produced by verbals? [e] Have you carefully examined every use of the passive voice? [f] Does every sentence say precisely and exactly what you intend to say? [g] Have you used indirect discourse correctly?

6. Diction: [a] Is your use of words grammatically correct? For instance, do all subjects and predicates agree in person and number? Does every pronoun clearly stand for its antecedent and agree with it in person, number, and gender? Is the case of every pronoun clear? [b] Are logical parallels expressed in parallel diction? [c] Are you sure that you have used vigorous, vivid, clear, and colorful words? [d] Have you weeded out meaningless generalities, slang, jargon, and other objectionable combinations? [e] Are you sure you have not switched from one person to another? [f] Have you eliminated wordiness? [g] Is your sequence of tenses correct? [h] Have you used connectives, that is, conjunctions, conjunctive adverbs, and relative pronouns correctly? [i] Are there any misspelled words? [j] Are all words properly capitalized?

7. Total effect: [a] Would anyone read this paper unless compelled to do so? [b] If he did read it, would he enjoy it or profit by it?