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Last Updated: 16 August 2024 | Blog Author: Eddard Theroux Are you interested in becoming a law professional? Then you need to learn all the steps involved in briefing cases. A case brief is a summary of a case. Learning case briefing is integral to learning the law and will help you understand all the facts that trigger a specific rule. A big part of a law professional's job is to produce documents for their cases. Each document follows a specific format and guideline to efficiently and effectively present a lawsuit in court. So if you want to be good at your job, your case brief should be well-written and point out all the critical elements and facts of the case. This guide will teach you all the steps to writing the perfect case brief, the IPS you should follow, and an example. Keep reading. What is a Case Brief? Before dividing into what a case brief is, you must first understand how law school is taught. Generally, law school is taught through the "Socratic" or case teaching method. This is the inductive method of studying and learning the law by reviewing cases that have already applied the law. Professors will assign several cases for law students to review for class discussion. They do not explain the law by lecturing; instead, they engage students in discussions about earlier assigned cases. The profession will ask detailed questions about these cases to instill critical reading and analysis skills. This type of learning will also aid your memory and help you remember the case you have read, thus helping you in your examinations and writing and analyzing problems. So what exactly is a case brief? When reviewing a case in law school, you are going through an appellate opinion. That is to say, once the court has issued a judgment, one of the parties involved in the case (plaintiffs and defendants) may claim that the court was wrong and appeal the case to the court of appeals. Usually, the plaintiff is the first to file the brief, and the defendant has a specified amount of time to respond by filing a reply to the brief. The factual case will be set; you can't call in additional witnesses or other evidence. These parties will write legal briefs, and once the appellate court has reviewed them, they will issue an opinion in writing. So in law school, a case brief is a summary of an appellate decision and contains the essential components of that decision. These documents are public records, meaning they can be accessed by anyone who wishes to view them. Types of Case Brief There are two types of Case briefs you should know. Appellate Brief Lawyers submit a written legal argument to the court of appeal for their party explaining why they should affirm or reverse the decision from the trial court based on the legal precedents to the controlling cases. In other words, the brief provides arguments that the court should rule based on controlling the court's previous decisions. This brief is intended to convince the appellate court to reverse the trial court's decision by presenting central issues from a one-sided perspective. The brief could also include policy or social statistics when necessary. Appellate briefs are necessary because they help assess legal issues that impact a matter. However, these briefs are rarely published, and only the supreme court has the authority to provide access in printed form. Student Brief Law students learn the fundamentals of guiding their practices through case briefs. These documents are student briefs and reflect the summary and analysis of a problem the professor introduced during class. This type of case brief helps law students to: Sort out who the patties in the case are Identify the issues that led to the dispute Ascertain the judge's decisions Determine the reasoning behind that decision Even though the appellate and student briefs contain similar information items, they differ in how this information is presented. Structure of a Case Brief Even though each case is unique and includes varied versions of the outline, the brief should have only the most important points of the case. It should look like this: Title and Citation Facts of the Case Issues Holdings Analysis Concurring/ Dissenting There are several different ways of formatting a case brief. So you should find one that works for you and, of course, your professor. A lot of case briefs include the following information: Facts of the case Legal information The legal principle that was applied in the particular case the majority's holding and reasoning concurrences and dissents summary Items to Consider When Writing a Case Brief There are some key issues you must consider when writing a case brief. Set out a statement of facts- Do your research well to determine what events influenced Capture the procedure history of the case- Answer the key questions, for instance, the court which issued the final opinion. Take note of the key opinion when the court arrives at its decision. Take note of the law the court used to judge the matter. State the rule of application and the court's reasons for their decisions. Write concluding remarks about how the court affirmed or reversed the case and ruled in favor of the defendant. Steps to Write a Case Brief Here are the steps you should follow when writing a case brief. Select the Right Case Brief Format As mentioned earlier, there are several types of case brief formats, but they all lead to the same thing. So you should select one that will serve you well. Read Through the Case Before you begin writing, read through the case to understand the story. This will also help you identify what to look for the next time. As you do this, please pay attention to all the facts listed and highlight them. Title and Citation Write the name of the parties involved in the case. This is simply a heading and will make it easy to identify the brief. The respondent should first follow the name of the person who instigated the legal action petitioner (loser in the case). Ensure that the heading citation is in a legal citation manual. This is usually something like Zane vs. Stevens. Zane here The citation should have the following: Publisher of that case, Reporter in which the case can be found in The court which issued the judgment The date on which the judgment was published as it appears in the case book Page number where the case can be found All this information can be found at the beginning of the judicial opinion. Identify the Facts of the Case This is one of the most critical parts of the brief. You must state the facts of that particular case in your own words. In other words, write the "who, when, what, where, and why" of the case. Briefly describe the history of the dispute and all the events that led to the suit. Also, describe the legal claims and the defenses each party used in the court. Don't just copy or repeat what the judges said. Be brief. Not everything is relevant, so identify what is. In most cases, pointing out the relevant facts is a sign that you read and understood the case. Some cases may have extraneous facts that are unnecessary in the case brief. Some facts are more important than others, so identify them. Relevant facts show what happened before the two parties entered the judicial system. Also, check for repeated ones, which indicates they are essential. You could ask whether the court's decision would have been different had a particular fact been present. In addition, check for procedurally significant facts. What this means is, set out that, Cause of action Any law that the plaintiff says was broken What kind of relief is the plaintiff asking for? Defenses that the defendant raised The facts of the case are usually conveniently summarized at the beginning of the judicial opinion. Sometimes, you can also find the best statements of facts in the dissenting or concurring opinion. Substantive Issue You must identify the issues that led to the dispute the judicial opinion addresses. For example, facts that detail two people claiming ownership of a vehicle will highlight the issue of ownership of personal property. Often, cases highlighted in the casebook summarize a much longer judicial opinion to make the issue apparent. You can identify this in the facts of the cases or where the case is in the casebook. For instance, if a particular case appears on negligence in tort law, there is a high chance that the issue will be negligence, even if the court mentioned causation and damages. Keep in mind that a substance issue includes the following: The point of law in the specified dispute The legally relevant facts relating to the point of law in the dispute What the aggrieved party claimed that the lower court did not do right (for example, did they fail to rule on the evidence or instruct the jury correctly, etc.) Rule/ Legal Principle A court resolves cases by applying facts to a legal rule. The issue in the dispute determines the choice of the rule. In most cases, the rule of law will be obvious, but other times, some judges don't clearly state what it is, or they may talk about the different versions of the rule. In these instances, you may be forced to extract it yourself by clearly reading the document. Ask yourself this, "What does this legal principle stand for?" If the rule is clearly stated, copying it straight into your case brief from the judicial opinion is important. If there is more than one issue in the case, there should be a rule for each. Please note that these rules are sourced from the primary source: Federal & State Constitutions; Statutes; Regulations; Case Law. Holding Holding is the decision of the court. This is brought about by considering all the preexisting laws, often called the rule of the case. If a trial court issued the judgment, the result would be that the plaintiff either proved their argument and won or failed to prove their arguments and lost. Once the case reaches the appellate court, they may uphold or overrule the judgment. Alternatively, they may decide to remand. This means that they cannot decide on that single case and instead returns to the lower courts for them to decide on a factual matter. However, if many instances are appealed, the court can decide on some of them and remand the rest. Analysis The judge will have to apply the facts to arrive at a holding, and this is referred to as analysis. In simpler terms, analysis is how the facts interrelate with the relevant rules of law. The court that decided on the matter will spend time explaining how it applied the law to each of the facts resulting in their decisions. So in your brief, you have to explain each of the processes on how the court applied its analysis which led to its decision. So you won't be rewriting the analysis, just outlining it. Concurring/ Dissenting This part of the brief is only necessary when their specific case has concurring or dissenting opinions from the judge. Typically, judges don't mutually agree about a particular matter in court; therefore, a dissenting opinion is written by a judge who didn't agree with the others about the case. You have to pay attention to this section because: Usually, judges who give dissenting opinions provide counterarguments, which can be helpful to lawyers arguing a similar case in the future. Show which judges disagreed with the majority opinion and provide the reasons for their disagreement. Sometimes, the judges may agree with the case's outcome but disagree on the arguments leading to the conclusion. Other times, a judge may agree with both the reasoning and the arguments but may have something else to add. In this case, the judge will give a concurring opinion. When writing the brief, indicate which judge wrote the concurring opinion and the reasons given. Elements for Writing a Case Brief You may want to consider other additional elements when writing a case brief. These include: Personal Comments Law professionals can include personal comments when writing a case brief. But this is if they have any comments to add, especially about a problem that doesn't fit anywhere. In essence, making personal comments enables students and law practitioners to label cases as specific kinds or note what stands out as odd in a specific case. Procedural History Legal professionals consider procedural history minimal and irrelevant when writing case briefs, but this isn't true. Procedure history is vital in civil cases. You have to discuss the judgment of the case and then distinguish it from the holding element. The judgment is the decision of the court based on the factual matter. You should use the following terms when writing about the judgment in your case brief: affirmed, reversed, or remanded. Annotations or Highlights Another element that aids in writing the perfect case brief is annotations, also known as highlights. These help law professionals recall pertinent matters and random thoughts and serve as a medium for personal comments. If you want to write your case brief a lot easier, ensure you make annotations on the first review. Making adequate highlights will help you distinguish the most important issues you are trying to summarize. The dense material of a case is hard to recall, no matter how long you take to review it. For these reasons, annotations and highlights in the margins will help direct you to pertinent sections, and it will also help jog your memory while reading this section. In essence, annotations and highlights will help note the significant points in a paper. These are Facts, Issues, Holding, and Analysis. One can argue that these elements act as a plot to the case and help individuals understand the dynamics of play in the dispute between the two parties. Put simply, these elements are a piece of a puzzle, and when you put these pieces together, people can get the full picture and understand the law. Writing a Short Brief The key feature when writing any case brief is the length. A case brief should be short to pass its message and be effective. Overly long messages will be cumbersome and make it hard for the law professional to skim through to extract the information when necessary. Despite that, a case brief that is too short won't be of much help to law professionals as it won't contain sufficient information. Therefore, the key to writing the perfect case brief is not to be too short or long. Just limit the words to one page. Doing this will help you take note of every word, phrase, and sentence so that you write only that which matters. Limiting your case brief to only one page allows you to organize and reference only the most critical case details. Things to Remember Before Writing a Case Brief For you to write the perfect case brief, you have to remember the following things: Carefully read the whole case to understand it. Create an outline for the brief Make sure you capture all the basic elements Use active voice when necessary Avoid nominalization, including using verbs in place of nouns Use pronouns sparingly Elaborate on all these elements Use basic language to write Proofread and edit when you finish writing Use annotations and highlighters to help remember all the major sections Capture all the essential technical requirements Include all the non-essential elements but only if necessary What is the Most Important Part of a Case Brief? The most important part of the case brief is the holding analysis, which explains how the court arrived at its decision. To determine this, ask yourself, "how did the court arrive at the holding?" Case Brief Formats As a law student or a legal practitioner, it is important to note that there are different formats to structure a case brief. The two most commonly preferred formats are IRAC and CREAC. Let’s explore what each entails so that you are aware and can choose either for your case brief assignment. The IRAC Format IRAC is an acronym that stands for Issue, Rule, Analysis, and Conclusion. It is a popular case brief structure preferred by most law schools and a framework for organizing exam answers to business law essay questions. Issue: Issues of the case refer to the legal questions that the court will determine. It should be written in question form. Usually, the issue presented by the essay question should be specific. An example is “Is an agency created whenever there is an employment relationship?” or “Does contact occur when one inhales second-hand smoke created by another?” Legal memos replace this by first stating the conclusion in case the reader is too busy to read the entire analysis. Some professors will also prefer it that way. Rule: The rules in a case are the laws used to make a determination on the case. These include case precedence, regulations, statutes, and laws that judges use to determine a case. While you can sometimes state the rule or the legal principle, some professors prefer when it is implied. For example, instead of writing, “The prima facie case for battery requires the following elements: an act, intent, contact, causation, and harm,” they might prefer if you wrote, “The offense of battery requires contact with the plaintiff’s person.” Analysis: In this part of the case brief, you apply the rules to the case's unique facts. It is the most critical part of the case brief as it shows the comprehension of the rules and their applications. For example, "In Howe v. Ahn, the court held that noxious bus fumes inhaled by a passerby constitute harmful and offensive contact. Although the court has not extended this holding to a case involving second-hand smoke, numerous cases have likened second-hand smoke to air pollution (for example, Fox v. Abernathy). Policy considerations also favor finding a contact in the present case. If one can prove harm from inhaling second-hand smoke, the smoker should compensate the victim than burden the state.” Conclusion. The conclusion comes last in a case brief and entails restating the vital issue and answering the issues. It entails the results of the analysis and answers to the issue. If there are multiple issues, there must be multiple conclusions too. Below is a sample conclusion “The court is likely to find that harmful contact occurs when a smoker releases second-hand smoke into the air, and a bystander inhales that air.” The CREAC Format The CREAC format is mostly applied in legal memos and is sometimes preferred by law professors for law class case brief assignments. It is an acronym for Conclusion, Rule, Explanation, Application, and Conclusion. Conclusion. As indicated earlier, the assumption of stating the conclusion upfront is that the reader is too busy to read the entire case brief. Therefore, you commence the brief by highlighting the summary of the overall conclusion. The summary captures the issue that was determined and the determination. Rule. In your CREAC format case brief or legal memo, you should indicate the rule applied to get to a conclusion. When writing this section, consider the building blocks for writing the rule of law, including elements, definitions, exceptions to the general rule, limitations to the rule, and defenses. As you write, also consider the hierarchy of concepts by moving from general to specific and defining each legal term. You should highlight the consequences of applying the rule and the specific consequences if the rule is applied to the current situation. Explanation. In this section, you should capture the past uses of the rule in other cases and its significance or application in the current case. You set the stage for the analysis. Analysis. This section is where you detail how the rule applies to the current case and prove how the conclusion you provided was reached. Conclusion. This comprises the summary of the brief's rule, explanation, and analysis sections. With knowledge of the two formats, you can confidently write a top-class case brief or legal memo for your business, constitutional, and criminal law classes. The Do's of Case Briefing Here are some of the Do's case briefing: Follow a Road Map When Reading Your Assignments Before reading your assigned cases in the casebook, skim through the chapter headings and the table of contents. This will give you an idea of which the assigned cases relate to and where the topic will fit in the overall course. Keep a Law Dictionary Close It's crucial to use legal terms when writing a case brief. Legal terms use technical language and meanings. When you encounter a word you don't understand, look it up in the dictionary. Then use that word in your case brief to recall the context and its meaning the next time you read through the text. Go to Class Well-prepared Professors assign case-stop students so that they can discuss it in class. If you go unprepared, you will miss a lot. So it's crucial to learn to brief cases efficiently. Put Case Briefing in Your Study Routine Time is important in law school, so you shouldn't waste it. If you fail to study and learn more about case briefing, you won't be ready for the final exam. Briefing cases thought-out the year will ensure you are prepared to face whatever kind of exams are presented to you in law school. An Example of a Case Brief Citation Case Name: SL v COMMISSION SCOLAIRE DES CHÊNES, 2012 SCC 7 Date: 2012-02-17 Report: [2012] 1 SCR 235 Court: Quebec Superior Court Case Number: 33678 Facts There was a mandatory introduction of the Ethics and Religious Culture (ERC) program in Quebec elementary and secondary schools in 2008, replacing existing Catholic and Protestant religion programs. It also gave students general instructions on ethics, morality, and world religious traditions, including Christianity, Hinduism, Islam, and Judaism. In the same year, two parents asked the school board to exempt their children from the program because it infringed on their and their children's right to freedom of conscience and religion. They also argued that the program exposed them to different religious ideas, which was confusing and disrupting. Ultimately, the parents were denied this request resulting in them seeking a declaration from the Quebec Superior Court that the program infringed their freedom of conscience and religion. Issue Does forcing students to be exposed to religious diversity affect their freedom of conscience and religion? Is there a sincere belief that such exposure to the program threatens the ability of the parents to pass on their faith to their children enough evidence that it does so? Rule The Supreme Court of Canada (SCC) considered section 2(a) of the Canadian Charter of Rights and Freedoms on whether the program undermined their freedom of conscience and religion. This rule clarified what is necessary to undermine the freedom of conscience and religious rights. To prove that this rule was violated, the claimant should demonstrate that they cannot actually practice their religion or exercise their beliefs. The mere belief that religious practices or beliefs have been violated is insufficient to warrant an infringement. Holding The SCC unanimously concluded that the claimant did not manage to show ERC program had violated their own or children's right to religion or conscience. Analysis The SCC agreed that although exposure to different religious facts can cause friction, exposing children to different religious practices does not violate the freedom of conscience and religion of other parents or children. Concurring/ Dissenting Two of the judges found out that Superior Court erred in failing to consider the ERC content in assessing the impact on the ability of the parents to fulfill their religious obligations. Nevertheless, the two judges concurred with the other judges that the claimant had failed to show that their freedom of religion and conscience had been violated because the program material filed as evidence did not provide insight into how the program would be implemented or taught in school. As a result, these two SCC judges added that there was a possibility that the ECR program and the teaching methods used to implement it may infringe on individuals' freedom of conscience and religion in the future. Final Word On Case Briefing Case briefing is an integral part of learning studying in law schools, and it aims to help you in your exams and your professional career as a lawyer. In law school, studying cases will help you digest the large amount of study material that you have to study. If you follow the above step-by-step guide and the tips, you will succeed in writing the perfect case brief. We offer law essay and assignment writing services at an affordable fee. Place your order today and get instant assistance around the clock. All our papers are 100% original, non-AI generated (written by humans who are themselves trained legal practitioners), and well-cited. We can write papers in AGLC, OSCOLA, Bluebook, and any other law paper writing format of your choice. Place an order, and let us assist you. The previous section described the parts of a case in order to make it easier to read and identify the pertinent information that you will use to create your briefs. This section will describe the parts of a brief in order to give you an idea about what a brief is, what is helpful to include in a brief, and what purpose it serves. Case briefs are a necessary study aid in law school that helps to encapsulate and analyze the mountainous mass of material that law students must digest. The case brief represents a final product after reading a case, rereading it, taking it apart, and putting it back together again. In addition to its function as a tool for self-instruction and referencing, the case brief also provides a valuable “cheat sheet” for class participation. Who will read your brief? Most professors will espouse the value of briefing but will never ask to see that you have, in fact, briefed. As a practicing lawyer, your client doesn’t care if you brief, so long as you win the case. The judges certainly don’t care if you brief, so long as you competently practice the law. You are the person that the brief will serve! Keep this in mind when deciding what elements to include as part of your brief and when deciding what information to include under those elements. What are the elements of a brief? Different people will tell you to include different things in your brief. Most likely, upon entering law school, this will happen with one or more of your instructors. While opinions may vary, four elements that are essential to any useful brief are the following: (a) Facts (name of the case and its parties, what happened factually and procedurally, and the judgment) (b) Issues (what is in dispute) (c) Holding (the applied rule of law) (d) Rationale (reasons for the holding) If you include nothing but these four elements, you should have everything you need in order to recall effectively the information from the case during class or several months later when studying for exams. Because briefs are made for yourself, you may want to include other elements that expand the four elements listed above. Depending on the case, the inclusion of additional elements may be useful. For example, a case that has a long and important section expounding dicta might call for a separate section in your brief labeled: Dicta. Whatever elements you decide to include, however, remember that the brief is a tool intended for personal use. To the extent that more elements will help with organization and use of the brief, include them. On the other hand, if you find that having more elements makes your brief cumbersome and hard to use, cut back on the number of elements. At a minimum, however, make sure you include the four elements listed above. Elements that you may want to consider including in addition to the four basic elements are: (e) Dicta (commentary about the decision that was not the basis for the decision) (f) Dissent (if a valuable dissenting opinion exits, the dissent’s opinion) (g) Party’s Arguments (each party’s opposing argument concerning the ultimate issue) (h) Comments (personal commentary) Personal comments can be useful if you have a thought that does not fit elsewhere. In the personal experience of one of the authors, this element was used to label cases as specific kinds (e.g., as a case of vicarious liability) or make mental notes about what he found peculiar or puzzling about cases. This element allowed him to release his thoughts (without losing them) so that he could move on to other cases. In addition to these elements, it may help you to organize your thoughts, as some people do, by dividing Facts into separate elements: (1) Facts of the case (what actually happened, the controversy) (2) Procedural History (what events within the court system led to the present case) (3) Judgment (what the court actually decided) Procedural History is usually minimal and most of the time irrelevant to the ultimate importance of a case; however, this is not always true. One subject in which Procedure History is virtually always relevant is Civil Procedure. When describing the Judgment of the case, distinguish it from the Holding. The Judgment is the factual determination by the court, in favor of one party, such as “affirmed,” “reversed,” or “remanded.” In contrast, the Holding is the applied rule of law that serves as the basis for the ultimate judgment. Remember that the purpose of a brief is to remind you of the important details that make the case significant in terms of the law. It will be a reference tool when you are drilled by a professor and will be a study aid when you prepare for exams. A brief is also like a puzzle piece. The elements of the brief create the unique shape and colors of the piece, and, when combined with other pieces, the picture of the common law takes form. A well-constructed brief will save you lots of time by removing the need to return to the case to remember the important details and also by making it easier to put together the pieces of the common law puzzle. So now that you know the basic elements of a brief, what information is important to include under each element? The simple answer is: whatever is relevant. But what parts of a case are relevant? When you read your first few cases, you may think that everything that the judge said was relevant to his ultimate conclusion. Even if this were true, what is relevant for the judge to make his decision is not always relevant for you to include in your brief. Remember, the reason to make a brief is not to persuade the world that the ultimate decision in the case is a sound one, but rather to aid in refreshing your memory concerning the most important parts of the case. What facts are relevant to include in a brief? You should include the facts that are necessary to remind you of the story. If you forget the story, you will not remember how the law in the case was applied. You should also include the facts that are dispositive to the decision in the case. For instance, if the fact that a car is white is a determining factor in the case, the brief should note that the case involves a white car and not simply a car. To the extent that the procedural history either helps you to remember the case or plays an important role in the ultimate outcome, you should include these facts as well. What issues and conclusions are relevant to include in a brief? There is usually one main issue on which the court rests its decision. This may seem simple, but the court may talk about multiple issues, and may discuss multiple arguments from both sides of the case. Be sure to distinguish the issues from the arguments made by the parties. The relevant issue or issues, and corresponding conclusions, are the ones for which the court made a final decision and which are binding. The court may discuss intermediate conclusions or issues, but stay focused on the main issue and conclusion which binds future courts. What rationale is important to include in a brief? This is probably the most difficult aspect of the case to determine. Remember that everything that is discussed may have been relevant to the judge, but it is not necessarily relevant to the rationale of the decision. The goal is to remind yourself of the basic reasoning that the court used to come to its decision and the key factors that made the decision favor one side or the other. A brief should be brief! Overly long or cumbersome briefs are not very helpful because you will not be able to skim them easily when you review your notes or when the professor drills you. On the other hand, a brief that is too short will be equally unhelpful because it lacks sufficient information to refresh your memory. Try to keep your briefs to one page in length. This will make it easy for you to organize and reference them. Do not get discouraged. Learning to brief and figuring out exactly what to include will take time and practice. The more you brief, the easier it will become to extract the relevant information. While a brief is an extremely helpful and important study aid, annotating and highlighting are other tools for breaking down the mass of material in your casebook. The remainder of this section will discuss these different techniques and show how they complement and enhance the briefing process. Annotating Cases Many of you probably already read with a pencil or pen, but if you do not, now is the time to get in the habit. Cases are so dense and full of information that you will find yourself spending considerable amounts of time rereading cases to find what you need. An effective way to reduce this time is to annotate the margins of the casebook. Your pencil (or pen) will be one of your best friends while reading a case. It will allow you to mark off the different sections (such as facts, procedural history, or conclusions), thus allowing you to clear your mind of thoughts and providing an invaluable resource when briefing and reviewing. You might be wondering why annotating is important if you make an adequate, well-constructed brief. By their very nature briefs cannot cover everything in a case. Even with a thorough, well-constructed brief you may want to reference the original case in order to reread dicta that might not have seemed important at the time, to review the complete procedural history or set of facts, or to scour the rationale for a better understanding of the case; annotating makes these tasks easier. Whether you return to a case after a few hours or a few months, annotations will swiftly guide you to the pertinent parts of the case by providing a roadmap of the important sections. Your textual markings and margin notes will refresh your memory and restore specific thoughts you might have had about either the case in general or an individual passage. Annotations will also remind you of forgotten thoughts and random ideas by providing a medium for personal comments. In addition to making it easier to review an original case, annotating cases during the first review of a case makes the briefing process easier. With adequate annotations, the important details needed for your brief will be much easier to retrieve. Without annotations, you will likely have difficulty locating the information you seek even in the short cases. It might seem strange that it would be hard to reference a short case, but even a short case will likely take you at least fifteen to twenty-five minutes to read, while longer cases may take as much as thirty minutes to an hour to complete. No matter how long it takes, the dense material of all cases makes it difficult to remember all your thoughts, and trying to locate specific sections of the analysis may feel like you are trying to locate a needle in a haystack. An annotation in the margin, however, will not only swiftly guide you to a pertinent section, but will also refresh the thoughts that you had while reading that section. When you read a case for the first time, read for the story and for a basic understanding of the dispute, the issues, the rationale, and the decision. As you hit these elements (or what you think are these elements) make a mark in the margins. Your markings can be as simple as “facts” (with a bracket that indicates the relevant part of the paragraph). When you spot an issue, you may simply mark “issue” or instead provide a synopsis in your own words. When a case sparks an idea — write that idea in the margin as well — you never know when a seemingly irrelevant idea might turn into something more. Finally, when you spot a particularly important part of the text, underline it (or highlight it as described below). With a basic understanding of the case, and with annotations in the margin, the second read-through of the case should be much easier. You can direct your reading to the most important sections and will have an easier time identifying what is and is not important. Continue rereading the case until you have identified all the relevant information that you need to make your brief, including the issue(s), the facts, the holding, and the relevant parts of the analysis. Pencil or pen — which is better to use when annotating? Our recommendation is a mechanical pencil. Mechanical pencils make finer markings than regular pencils, and also than ballpoint pens. Although you might think a pencil might smear more than a pen, with its sharp point a mechanical pencil uses very little excess lead and will not smear as much as you might imagine. A mechanical pencil will also give you the freedom to make mistakes without consequences. When you first start annotating, you may think that some passages are more important than they really are, and therefore you may resist the urge to make a mark in order to preserve your book and prevent false guideposts. With a pencil, however, the ability to erase and rewrite removes this problem. Highlighting Why highlight? Like annotating, highlighting may seem unimportant if you create thorough, well-constructed briefs, but highlighting directly helps you to brief. It makes cases, especially the more complicated ones, easy to digest, review and use to extract information. Highlighting takes advantage of colors to provide a uniquely effective method for reviewing and referencing a case. If you prefer a visual approach to learning, you may find highlighting to be a very effective tool. If annotating and highlighting are so effective, why brief? Because the process of summarizing a case and putting it into your own words within a brief provides an understanding of the law and of the case that you cannot gain through the process of highlighting or annotating. The process of putting the case into your own words forces you to digest the material, while annotating and highlighting can be accomplished in a much more passive manner. What should you highlight? Similar to annotating, the best parts of the case to highlight are those that represent the needed information for your brief such as the facts, the issue, the holding and the rationale. Unlike annotating, highlighting provides an effective way to color code, which makes referring to the case even easier. In addition, Highlighters are particularly useful in marking off entire sections by using brackets. These brackets will allow you to color-code the case without highlighting all the text, leaving the most important phrases untouched for a more detailed highlight marking or underlining. Highlighting is a personal tool, and therefore should be used to the extent that highlighting helps, but should be modified in a way that makes it personally time efficient and beneficial. For instance, you might combine the use of annotations in the margins with the visual benefit of highlighting the relevant text. You may prefer to underline the relevant text with a pencil, but to use a highlighter to bracket off the different sections of a case. Whatever you choose to do, make sure that it works for you, regardless of what others recommend. The techniques in the remainder of this section will describe ways to make full use of your highlighters. First, buy yourself a set of multi-colored highlighters, with at least four, or perhaps five or six different colors. Yellow, pink, and orange are usually the brightest. Depending on the brand, purple and green can be dark, but still work well. Although blue is a beautiful color, it tends to darken and hide the text. Therefore we recommend that you save blue for the elements that you rarely highlight. For each different section of the case, choose a color, and use that color only when highlighting the section of the case designated for that color. Consider using yellow for the text that you tend to highlight most frequently. Because yellow is the brightest, you may be inclined to use yellow for the Conclusions in order to make them stand out the most. If you do this, however, you will exhaust your other colors much faster than yellow and this will require that you purchase an entire set of new highlighters when a single color runs out because colors such as green are not sold separately. If instead you choose to use yellow on a more frequently highlighted section such as the Analysis, when it comes time to replace your yellow marker, you will need only to replace your yellow highlighter individually. In the personal experience on one of the authors, the sections of cases that seemed to demand the most highlighter attention were the Facts and the Analysis, while the Issues and Holdings demanded the least. Other Considerations and Procedural History required lots of highlighting in particular cases although not in every case. Experiment if you must, but try to choose a color scheme early on in the semester and stick with it. That way, when you come back to the first cases of the semester, you will not be confused with multiple color schemes. The basic sections of a case for which you should consider giving a different color are: (a) Facts (b) Procedural History (c) Issue (and questions presented) (d) Holding (and conclusions) (e) Analysis (rationale) (f) Other Considerations (such as dicta) Not all of these sections demand a separate color. You may find that combining Facts and Procedural History or Issues and Holdings works best. Furthermore, as mentioned above, some sections may not warrant highlighting in every case (e.g., dicta probably do not need to be highlighted unless they are particularly important). If you decide that a single color is all that you need, then stick to one, but if you find yourself highlighting lots of text from many different sections, reconsider the use of at least a few different colors. Highlighters make text stand out, but only when used appropriately. The use of many colors enables you to highlight more text without reducing the highlighter’s effectiveness. Three to four colors provides decent color variation without the cumbersomeness of handling too many markers. Once you are comfortable with your color scheme, determining exactly what to highlight still may be difficult. Similar to knowing what to annotate, experience will perfect your highlighting skills. Be careful not to highlight everything, thus ruining your highlighters’ effectiveness; at the same time, do not be afraid to make mistakes. Now that we have covered the basics of reading, annotating, highlighting, and briefing a case, you are ready to start practicing. Keep the tips and techniques mentioned in this chapter in mind when you tackle the four topics in the remainder of this book. If you have difficultly, refer back to this chapter to help guide you as you master the case method of study and the art of using the common law. A Case in Brief is a short summary of a written decision of the Court, drafted in plain language. These summaries are prepared by communications staff of the Supreme Court of Canada. They do not form part of the Court’s reasons for judgment and are not for use in legal proceedings. Date modified: 2025-05-08