

*Ten Instructions for Briefing Cases*¹

Copyright ©1999 by Paul Bateman²

Paul Bateman
Director, Academic Support Program
Southwestern University School of Law, Los Angeles

Introduction

Being totally engaged in the study of law means attending every class you have paid for. By attending classes regularly, you stay current with the material and you become attuned to each professor's bent toward a particular subject, which in turn increases your chances of success on the final examination. But showing up to class without the tools to enable you to benefit from the classroom experience is counter-productive. To participate fully in that experience, the tool you need is a thoughtful brief to navigate through the day's discussion. Furthermore, since comfort level in class is essential to your socialization to the study of law, a good set of case briefs for each class becomes an essential component for providing that comfort level. Moreover, your comfort level can be raised further once your briefs allow you to overcome one of the major causes of law student stress—lack of concrete feedback.³ A case brief provides a self-assessment tool that can help you monitor class discussion, and so provide you with feedback about your understanding of the legal concept being discussed.

However, students often feel frustrated by the briefing experience when they lose sight of the relationship between their case brief notes, the discussion in the professor's classroom, and the end-of-the-semester examination. Part of the problem comes from relying on and worrying about format. For a beginning law student to rely on format is understandable: it's

¹ A shorter version of this article appeared in CALIFORNIA LAW STUDENT JOURNAL (August 1996) at 6.

² This article last revised July 2003.

³ Ronald M. Pipkin, *Legal Education: The Consumers' Perspective*, AM. B. FOUND. RES. J. AT 1161, 1163 (Fall 1976).

easier to grasp than difficult content. That misplaced reliance on format often reappears when even an experienced student or lawyer faces a task for the first time—ask any lawyer about the first time he or she had to write a motion in limine to exclude evidence! But the mark of an expert—and that is what you are striving to become—is recognizing format as merely a framework to be manipulated as the topic deserves. The novice who relies on format often does not get much beyond that, mistakenly placing content—which should drive format—into a secondary role.

New law students often focus on the format of the brief without ever using the brief. To overcome that tendency students can use various commercial briefing aids, including briefing software, that can free the student from the tyranny of formats and instead allow the student to focus on the point of the case. Students should remember that the brief is a tool whose design should reflect its purpose. That purpose is to provide a quick reference point against which a student can measure his or her understanding of the case and concept under discussion in class, and as a tool for creating the examination review document known as the course outline.

The format of a brief—that is, its headings and contents—is comprehensively discussed in several introductory law school texts. In fact, format descriptions in these texts are often so comprehensive and the suggested briefing methods so complete that case briefing becomes an end in itself—and there lies the problem. Unfortunately, most beginning students focus on the brief's format and overlook the process that the brief should support.⁴

Commentators agree that the brief should include the caption, date and jurisdiction of the case; the issues; the key facts; the decision and the reasons for the decision.⁵ While the “how-to” books describe the generic ingredients of the brief, they cannot anticipate the kinds of questions your professor is going to ask about a case, nor can they adequately anticipate the

⁴ For an excellent discussion of process-oriented or active learning strategies for law study, see Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REVIEW 471 (1988).

⁵ Several texts contain instructions for briefing cases including WILLIAM STASKY AND R. JOHN WERNET, JR., *CASE ANALYSIS AND FUNDAMENTALS OF LEGAL WRITING* (3rd ed. 1989); MARJORIE DICK ROMBAUER, *LEGAL PROBLEM SOLVING: ANALYSIS, RESEARCH AND WRITING* (5th ed. 1991); and HELENE S. SHAPO, MARILYN R. WALTER, AND ELIZABETH FAJANS, *WRITING AND ANALYSIS IN THE LAW* (2nd ed. 1991). In addition, several “how-to-succeed-at-law school” books contain briefing instructions including Ira SHAFIROFF’s excellent *INTENSIVE EXAM WRITING (ESSAY) SEMINAR* (1992); and HELENE SHAPO AND MARSHALL SHAPO, *LAW SCHOOL WITHOUT FEAR: STRATEGIES FOR SUCCESS* (1996).

overall approach a professor may take to a particular concept or course as a whole.⁶

At the end of each class, your brief should be covered with additional notes and jottings prompted by class discussion. In those classes where the Socratic method prevails⁷—probably most first year classes—a good case brief can keep you tuned to class discussion even on those days when you are not called on, since if used properly, your brief and its new jottings will prove an invaluable review tool before the next class. Consider how your briefs helped or hindered your participation in class that day. If you were stumped by a question, should the answer or a clue to the answer have been contained in your brief? Often the answer to a professor’s hypothetical question lies in the analysis of the case under discussion. When a professor asks a particular question, did the brief reflect why the question was important? If you can anticipate where a line of questions is heading, then your brief is becoming useful. Begin to fine tune your briefs to reflect the kinds of questions and themes that each professor uses as the framework for the class.

Students usually report that their professors are all very different in their approach to their material. This comment is often meant negatively. Recognize, however, that it is to be expected that each professor is different just as each student is different. Furthermore, each professor is teaching a different subject, so we should expect some differences in teaching style associated with the subject being taught, the concept under examination, and the individual professor’s personality. With experience, you will focus less on those differences and more on the similarities of the nature of the concepts that you study. Also recognize that professors conduct their classes at several levels of sophistication. The most basic approach, and one encountered in the first few weeks of first year courses, is one that discusses cases on a case-by-case level. As a class becomes more sophisticated through its reading and exposure to the law school classroom, the level of discussion rises with hypothetical questions, with case synthesis, and eventually with discussion about how cases fit into the broad framework of the topic as a whole. Rather than being confused by these differences, use your brief to recognize the level of discussion you are hearing and note how similar concepts, say intent in criminal law and intent in tort law, are treated in each

⁶ The top of my briefs include a “sentence tag” (discussed below in this chapter); the case name and reporter citation, so that at a glance I know its date and jurisdiction and if need be I can easily check the case in its reporter to see the full case later on—remember that case books usually edit the cases you read; the page number the case is found in the case book.

⁷ I have discussed the impact of the Socratic method in *Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row*, 17 QUINNIPIAC L. REV 397 (1998).

course. Annotations such as these on your brief will help keep the big picture in view in spite of all the details.⁸

Law professors are notorious for not using much technology in the classroom, and that includes not using the board.⁹ Therefore, when a professor writes something on the board, write it down: has the professor set out the elements of the rule the way that professor expects to see it on an examination answer? Has the professor outlined a duty issue analysis? Pay attention to these doodlings on the board because they are often a concrete example of the way the professor wants students to analyze issues that may appear on the final examination.

Now here is my top ten list

1. **Appreciate the genre and devise a reading system.** A common question asked at law school orientation sessions is “how much time will I need for studying?” This is a difficult question to answer without knowing a lot about an individual student’s reading and study habits. Reading and briefing cases calls upon your ability to read analytically and efficiently. Since this is a solitary endeavor, it can be discomfoting in the first few weeks as you encounter not only unfamiliar legal concepts, but concepts that are often couched in dense terminology or in archaic English, or both. Some students read and comprehend more quickly than other students; some students can read and comprehend some kinds of material faster than others; and some can read and comprehend certain cases faster than other students.¹⁰ The more you know about your own study strengths and weaknesses, the better equipped you are to read and study legal material. Therefore, you may want to adopt different reading and studying strategies depending on the material you are working with in any particular hour of the day. Using the same approach to all the material can be a major mistake because it assumes that you need the same learning techniques for memorization, for example, as you need for comparing and contrasting material, which is untrue.

As a law student, you will read thousands of pages of cases. You will quickly see how different the law school case book is from the kinds of text books you have studied before coming to law school. For example, case

⁸ Generally speaking, the big picture is useful in helping you plan how to review a course before the final exam.

⁹ *But see* CORINNE COOPER, GETTING GRAPHIC: VISUAL TOOLS FOR TEACHING AND LEARNING LAW (1994).

¹⁰ See Dorothy H. Deegan, *Exploring Individual Differences among Novices Reading in a Specific Domain: The Case of Law*, 30 READING RESEARCH QUARTERLY 154 (1995).

books¹¹—the classroom text for law students— contain few, if any, illustrations, and the format of the case book is often uninviting.¹² Reading the case book will be difficult for several reasons: cases are often old, with unfamiliar legal terms; and, despite the case book editor’s cuts, the cases are often long with archaic language to lull you into unconsciousness. This unfamiliar genre will be required reading for most of your law school courses.

The most important thing about reading any kind of unfamiliar text is to devise a reading strategy. Most students read an easy-to-read case the same way they read a difficult-to-read case: they start at the first line and move forward. However, reading a case as if it were a mystery novel, whose ending would be ruined if you jumped to the last page, is an inefficient process. Although some decisions are in themselves wonderful pieces of story telling,¹³ appellate courts do not write with busy law students in mind. Many students who experience difficulty reading legal text (and ultimately experience difficulty with law school exams) tend to read each case like a novel. While that desire for the aesthetic sense of a case is admirable, it can get you lost quickly until you become more expert. In fact, reading researchers identify two stances in reading text: the “aesthetic” and the “efferent,” where the aesthetic stance focuses on what most beginning readers will feel in reading a difficult text, and the efferent stance focuses on studying

¹¹ Case books are a relatively new phenomenon in law teaching. When law schools were still developing, most students became lawyers through an apprenticeship system. Law schools first appeared in the United States by the end of the eighteenth century. Instruction was, for the most part, through the lecture method, whereby students would write down information provided in these lectures. The text was often a learned discussion of a concept, not a case. The case method was introduced in part to promote intellectual stimulation that the lecture method lacked. Once the case method of instruction took hold—it was introduced by Langdell at Harvard in 1870 in his Contracts class—then the need for case books arose. By the twentieth century, most law schools were using case books. However, until the 1950s, case books rarely featured recent opinions and while there has been an increase in the number of recent opinions appearing in case books since the 1960s, those cases are still a minority of the cases you will read. Over 30,000 new cases are published each year, but only a few of those new cases ever appear in a case book. Michael L. Closen, *Teaching With Recent Decisions: A Survey of Past and Present Practices*, 11 FLA. ST. U. L. REV., 289, 289-290 (1983). For a history of the case book, see Ehrenzweig, *The American Casebook: “Cases and Materials,”* 32 GEO. L. J. 224, 228 (1944); Parma, *The Origin, History and Compilation of the Casebook*, 4 AM. L. SCH. REV. 741 (1922); Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1 (1951); Russell L. Weaver, *Langdell’s Legacy: Living With the Case Method*, 36 VILL. L. REV. 517, 522-527, 531, 542 (1991). For a brief description of Langdell’s goals and methods, see Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943, 945-946 (1995-1996).

¹² Paul R. Baier, *What is the Use of a Law Book without Pictures or Conversations?* 34 J. LEGAL EDUC. 619 (1984).

¹³ See Justice Carlin’s opinion in *Cordas v. Peerless Transportation Co.*, 27 N.Y.S.2d 198 (1941).

the text to gather information.¹⁴ For beginning law students, the aesthetic stance usually overcomes the efferent stance because of the unfamiliarity of the genre of legal discourse, with the result that while a student may have assiduously read every line—and “felt” every line—the student has been unable to corral the legal points contained within the text.

Research in reading indicates that the best way to read difficult text is to break the process into five steps.¹⁵ Those five steps apply equally to reading cases: preview the case looking for clues to its organization as well as its components (issue, holding, etc.); formulate questions about the case based on this preview; read the case, take notes and address those questions; and then review your notes. Indeed, the little research that has been done on the way experts read legal text comes to the same findings.¹⁶ Experts flip through the document for organizational clues about the document’s structure. They also look for textual clues such the words “it is important.” Experts also spend more time studying the facts than a novice does, but experts read the rest of the case twice as quickly as a novice. Therefore, skim the entire case first—look for the decision, note whether the opinion includes a dissent, and note whether the opinion contains headings or any other clues to the opinion’s organization or main points.¹⁷ By breaking the process into several smaller pieces, reading difficult cases becomes less daunting and more manageable.

Knowing the court’s decision before you begin reading the case will provide you with focus and context. In the following example, the court has considerably supplied us with its decision in the first paragraph:

¹⁴ Dixie Lee Spiegel, *Reader Response Approaches and the Growth of Readers*, 76 LANGUAGE ARTS 41, __ (No. 1, Sept., 1998). The aesthetic stance “focuses on what the reader feels during reading. . . . [while] the efferent stance carr[ies] information away from the text, to learn something rather than to experience something. When individuals read literature efferently, they are reading to study it, not to experience it.” *Id.*

¹⁵ Professor Frank Robinson at The Ohio State University studied this reading technique in the 1940s. It is known as the SQ3R system (Survey, formulate Questions, Read, Recite, Review). Recitation requires the reader to summarize (from memory) what has been read. FRANK ROBINSON, *EFFECTIVE STUDY* (4th. ed., 1970). Although this approach has been around since the 1940s, it still receives recommendations from diverse sources. See, for example, Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471 (1988)), and ROLLING STONE, 23 March 1995.

¹⁶ Peter Dewitz, *Legal Education: A Problem of Learning From Text*, 23 REVIEW OF LAW & SOCIAL CHANGE 225, 231 (1997).

¹⁷ This is the way experts read opinions. “The expert began the reading of a text by reading the headings, noting the parties involved in the case, the type of court, the date, and the name of the judge. Novices did attend to the parties, but ignored the rest of the contextual information.” Peter Dewitz, *Legal Education: A Problem of Learning From Text*, 23 REVIEW OF LAW & SOCIAL CHANGE 225, 230 (1997) describing the findings of Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407-32 (1987).

C & J Fertilizer, Inc. , Appellant
v.
Allied Mutual Insurance Company, Appellee
No. 2-56355

Supreme Court of Iowa
March 19, 1975.

Rehearing Denied May 16, 1975.

REYNOLDSON, Justice.

This action to recover for burglary loss under two separate insurance policies was tried to the court, resulting in a finding plaintiff had failed to establish a burglary within the policy definitions. Plaintiff appeals from judgment entered for defendant. We reverse and remand.¹⁸

The first thing to note in this case is the decision stated in the last two lines of the first paragraph: “Plaintiff [the fertilizer company] appeals from judgment entered for defendant [insurance company]. We reverse and remand.” This indicates that the fertilizer company wins the appeal, and the case is sent back to trial for further proceedings. Understanding this makes it easier to comprehend the court’s opinion. If you have to turn to the end of the opinion to find the decision, which is common, be careful; the last pages may actually be the dissenting opinion, not the majority’s conclusion.

After you have noted the outcome and after you have skimmed the case for headings or sections that will give you some clues to the structure of the opinion, formulate some questions and then answer them as you carefully read the case. Although this will not give you a quicker read of the opinion, it will be a more efficient read of the opinion because of the focus this process provides, and will free you from later re-readings of the case. Do it once, do it right, and move on.

Another approach that will help focus your reading of a case is to use a technique called “Technicolor Briefing,”¹⁹ which is a variation on “book

¹⁸ 227 N.W.2d.169 (Iowa 1975).

¹⁹ This technique has been developed at the University of Denver College of Law by the late Professor Thompson Marsh. Professor Burton F. Brody and Daniel J. Wilson, also of the University of Denver College of Law, have developed this technique and have added the

briefing” and is one way to systematically reinforce your reading of a case. “Book briefing”—which I don’t recommend—refers to a method of recording your brief within the case itself. That is, rather than write out a brief of the case, the student annotates the case itself with notes in the margin, etc. Some students find this a major time-saver. However, your view of a case briefed this way can often be fragmentary, in that you won’t have pulled the notes together, and you will have been more likely to quote the court rather than to have put the ideas into your own words, which is the better approach. Furthermore, creating a review document in preparation for your exams will be far more difficult to complete if you have to return to the case book itself for your notes. So while time may have been saved when you initially read the case, greater time is lost when you try to create a course review tool.

However, “Technicolor Briefing” may be a useful compromise since it requires you to evaluate the court’s language although you may not have written a brief, at least not at first. The method is simply to assign a color to the important components of a case: red for legal facts, rulings and conclusions; green for the facts; blue for the issues; and black for the law. This method also includes noting passages in the case that indicate what the court thinks the case is about. These statements provide the reader with guidance about what the court thought was important in reaching its decision. To fully benefit from this technique, it is best to then brief the color codes into a written brief of the case. If you don’t put the “colors” into your own words, then you have merely “highlighted” the text without absorbing what it stands for. Again, remember that the brief is the first stage in creating a review document to help you study for exams, so the more you brief in your own words, the easier it will be to assimilate and then access that information as examinations approach.

If you use highlighters, you will need about seventy of them before earning your law degree.²⁰ Some students find that highlighting the text of their case books helps them learn the material. (So why not buy a used book with the text already highlighted?) Highlighters are useful, but not in the way students think they are useful. For example, if you are using a case for its precise statement of the rule which you later want to capture for your notes, then highlighting is an efficient way for you to quickly see the relevant text that you want to incorporate into your study outline. Beyond that, the technique is misleading. When you highlight text in the case book, you are saying “that’s important—I’ll mark it now and study it later.” But later never comes and so you have delayed learning the material. More often than

“ribspreader,” which, like the medical instrument, opens up the case via a statement by the court about what it thinks the case is about.

²⁰ A 1990 Southwestern graduate actually kept all his used highlighters—sixty-nine yellow highlighters—and presented them to the Dean at graduation.

not, by highlighting text we have avoided absorbing its meaning. It is much better to write a note that captures the meaning in your own words that can then be incorporated into a useful brief. By writing notes instead of highlighting, you have made the information your own by putting it into your own words. Write down observations and questions to reinforce your understanding and to show where your understanding breaks down. Class discussion may clarify this understanding and if it does not, then you have a useful question for your study group or for the professor. Furthermore, by compiling a list of questions as you study the cases, you are more likely to use your study time efficiently rather than to spend an inordinate amount of time struggling with a concept when it first arises. In effect, you can now move on to the next reading even though you may not have fully understood the first case. There is always a good chance that the next opinion will clarify some of your questions.

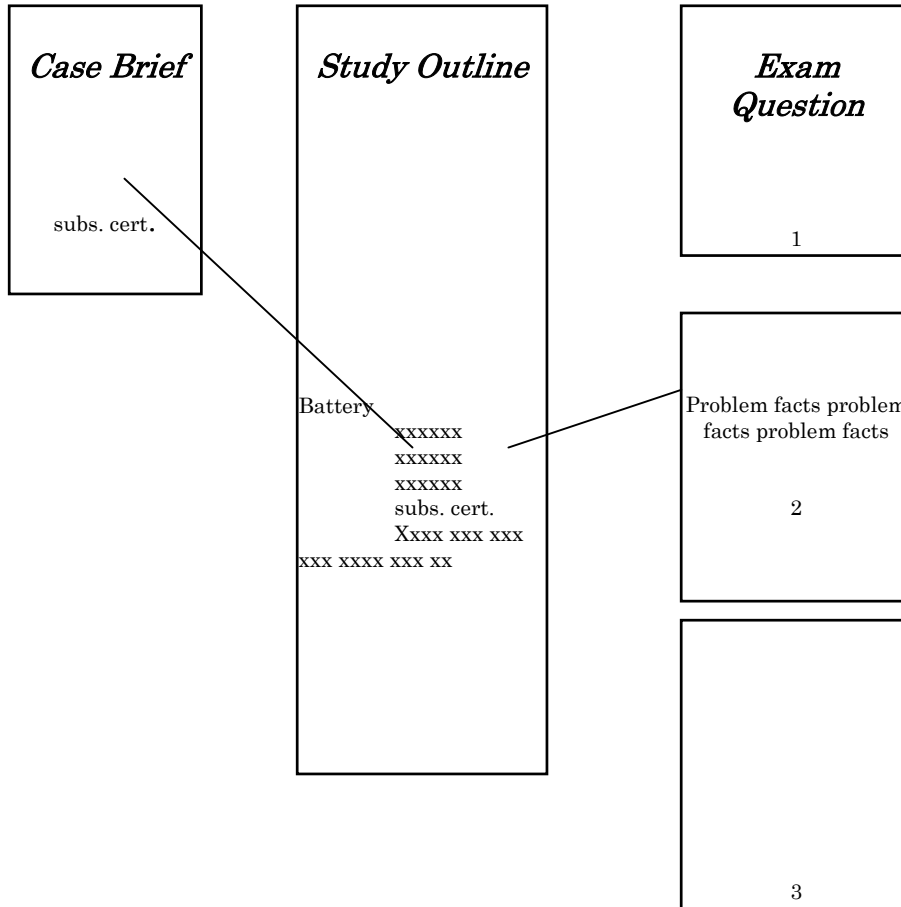
2. Use a horn book. If you are struggling to discern the point of a case, use a hornbook²¹ for a one-sentence description of the case to focus your reading. All cases cited by the hornbook are listed in a Table of Cases usually found at the back of the hornbook, just before the index. Although a hornbook will not include all the cases you will read, a good number of them will be included. However, two caveats are in order. First, some cases have several main points; the hornbook may refer to one only. Second, hornbooks sometimes fail to convey a sense of developing trends in the law because the authors have based their comments upon decided cases and because by its very nature, the hornbook's publication schedule cannot anticipate current trends. However, hornbooks in areas such as torts and contracts tend to predict the law and spot developments relatively well. When a case is absent from the hornbook, (e.g., the Cunningham property hornbook does not include Pierson v. Post—the fox case) examine how that hornbook is organized compared to the way your course and case book are organized to help you develop a better understanding of how to construct a study outline for your professor's course and examination. I would recommend this strategy for reading all your cases; however, it is unlikely you will have the time to prepare each case this way. I prefer hornbooks over all other supplementary materials and one is usually recommended in your professor's syllabus.

²¹ A "hornbook" is a legal treatise that "explains" legal concepts with only marginal reference to cases. They are not case books and read more like a traditional text book. The term "hornbook" comes from the tradition of covering a basic text—often a single sheet or board containing the alphabet or other rudimentary information, and held by the teacher as a visual aid—with a protective covering, usually of animal horn, much like today we might use a plastic sheet to protect a page. Since these visual aids were often basic primers, the term has been attached to law books that provide a scholarly treatise on a particular area of the law.

3. Read with anticipation and awareness. Do not read cases as if they stand alone. There is only one time you will do that: when you read your first case on your first day of law school. After that, each case should be read for the contribution it makes to your developing understanding of the concept under discussion. When you read a case, ask yourself, why has this case been included in the case book and why has the professor selected it for today's class? The answers to these questions will drive you on your way to a course review and an appreciation of the "big picture," something often lost on beginning law students. *Figure 2* shows the parts of that big picture: the brief you have prepared, the course study outline to which the brief contributes a few lines, and the several lines on an examination that may test your understanding of those concepts on an examination.

Also remember to include concurring and dissenting opinions in your brief because not only will you be asked about them, but they will often illuminate the majority opinion. Dissenting opinions are often better reasoned than the majority opinion because dissenting opinions, by their very nature, have the harder task of justifying a view already rejected by the majority.

Be conscious of the procedural stance of a case. For example, if a case is remanded by the reviewing court to the trial court, it usually means that the reviewing court's opinion—the one you read for class—did not decide liability or guilt. It only decided on the appropriate standard to be applied in that case. It is then up to the trial court to apply that standard, as directed by the reviewing court, to the facts of the case. Therefore, unless your case book contains a note to the trial court's eventual decision, the opinion you have read may not give you a concrete illustration of the rule in action; it will only have given you the rule to be used on those particular facts.



Relationship between the brief, the study outline, and the examination

Figure 2

4. Use a one-sentence or phrase tag line. For each case you read, write a sentence or phrase that helps you remember the case and place it at the top of the brief above the caption for the case. Given the large number of cases you will read in one semester, the name of a case will not mean much

after a week or two, but a line that says “the hunted fox case” (Pierson v. Post) or “the fish and the open net case” (Young v. Hichens) will do a better job of jogging your memory in your Property review than merely relying on the name of the case. Similarly, you can more easily remember a case and what it stands for in Torts if you remember “right ear, wrong ear” (Mohr v. Williams), or “kid kicks classmate” (Vosburg v. Putney). However, even in Torts, some cases do take on “name brand” status as with Tarasoff, the California decision that provides an exception to doctor-patient confidentiality. Similarly, in courses such as Criminal Procedure, case names often become shorthand for a particular concept (e.g., a Terry stop), and in Constitutional Law classes, you should know the names of landmark cases and the concepts that they illustrate (e.g., Roe v. Wade.) A Constitutional Law multiple choice examination question might call for the student to identify a concept derived from such a landmark case. However, given the number of times landmark cases are discussed, and the amount of coverage they receive in class, it is likely that you will have memorized them through working with them so much during a course.

5. Treat your brief as a tool, not as a holy manuscript. Use oversized margins to the side and below the text of your brief. During class discussion, annotate your brief using the space in the margins. By typing your brief, your handwritten class notes will dramatically reflect how your understanding of the case changed, or remained the same, as a result of class discussion. Review these notes for several minutes immediately after each class. The small amount of time spent reviewing these notes will help solidify your understanding of the material and may be ten of the most important minutes you spend in law school.

6. Write down the important points raised during class. Since law school includes little feed-back until examination grades are posted, use the brief as a check against your understanding of the material. Points that need clarification will then be obvious to you. Take care of that clarification as soon as possible by talking with your classmates, your professors, or by checking the material in a hornbook. Furthermore, when you begin to synthesize the information found in your briefs, you will be more aware of the amount of time each professor has spent on particular concepts and issues. This in turn will allow you to recognize those topics your professor considers important enough to include on an examination.²²

²² Professor Charles H. Whitebread recognizes that law school classes have “much variation from section to section and teacher to teacher within a given course. . . . One professor may spend three weeks on the issue of consideration while the other section’s professor may gloss over the topic in two class sessions. For this reason it is up to you to tailor the overall system to the particular needs of your experience. You must discover prior to the exam what your professor finds especially significant and therefore likely to be covered on your exam.” WHITEBREAD, SUCCESS IN LAW SCHOOL: EXAM TAKING TECHNIQUES (1989) at 52. One way to

7. Review briefs and notes regularly. After a week or so, and when you have completed reading cases for a particular concept, review your briefs and the notes you have added. Rather than be left with several hundred unrelated briefs, your task should now be to synthesize the information contained within those briefs and notes. Often, it is only after having read several cases on a topic that you will have fleshed out the rule of law on a particular point, including its elements, definitions of the elements, exceptions to the rule, and any counter-rules. Only by synthesizing the material can you derive the “fully loaded” rule that you will need for exams. By synthesizing the information, you will have a better understanding of the big picture, and a more easily assimilated examination review tool. Reviewing the notes you have added to your briefs will help this task considerably.

8. Look for the underlying principles to be derived from the cases. Early property cases about wild animals provide principles applicable to contemporary issues like cable transmissions, the sale of body parts, ownership of copyright, or issues related to the Internet. Don’t be surprised by an examination question that uses twenty-second century facts. Its solution might lie in the concepts developed by a series of nineteenth century cases.

9. Look for themes and common threads that arise during discussion and write them down. Professors often indicate on the first day of class an overall framework for analyzing legal problems in their courses. The statement that property issues involve “claim, boundary, and control,” for example, will often be overlooked by students unfamiliar with the subject, yet may be the theme that a professor returns to continually during the course. In later readings of other cases, you can use these themes and common threads to provide an overall framework for the concept being discussed. Return to these major themes as the semester progresses. Also rely on these themes and common threads to help you address the kinds of examination questions I’ve indicated in point 8 above.

10. Keep a record of the kinds of questions each professor asks about a case. They often begin each session with the same kinds of questions, for example, what was the procedural stance of the case? Many professors will be interested in the respective arguments that each side brings to the table and the reasons for the court accepting one argument, but rejecting another. Be sure to write down each hypothetical question raised in class. Those questions can often be the seed for questions on a final examination.

tailor your exam preparation is to scrutinize the class notes you have added to your brief for clues to possible exam topics.

Also include a list of all the new terms that appear in a case; some will relate to procedural matters (types of pleadings, etc.), while other terms will refer to legal concepts, some of which may be in Latin. Check all the words you don't understand in Black's Dictionary of Legal Terms. You will encounter hundreds of new terms in the first few months of law school, and unless you look them up, you will always be at a disadvantage in class. While looking up each term can interrupt the flow of reading a case, the reward is that you will be far more confident in your understanding of the case and you will have demystified many legal terms.

In addition, list and become comfortable with those key terms associated with a particular area of, say, negligence. For example, in reading *Daniel v. Ford Motor Co., Inc.*,²³ you will encounter the following key terms and phrases in just a few pages: *design defect, failure to warn, strict products liability, unreasonably dangerous, not reasonably anticipated, duty to warn, known dangers, potential efficacy of any warning, warranty of merchantability, warranty of fitness for a particular purpose, reliance by consumer*. List and master these terms because you will be expected to use them appropriately on an examination.

Conclusion

Don't be surprised if your briefs in the first week or so are long. You will have the natural tendency to be over inclusive. However, as you become more experienced and once you begin to recognize the kinds of things that your professor stresses in class, you will become more selective in the way you brief a case. The brief is not an end in itself but, like a hammer, is a tool that lets you nail down a legal concept.

²³ 581 F. Supp. 782 (D. N.M. 1984).