

A SHORT SUMMARY ON HOW TO BRIEF CASES*

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If you are learning how to brief a case for the first time, remember that there are several ways to brief a case. There is not one “right” way to do it. As you brief more and more cases throughout your first weeks in law school, you will find a brief format that works best for you; so right now, do not worry about the “perfect” way to set up your case brief.

When preparing your case briefs, keep in mind that briefs have several purposes. Good case briefs will help you to better understand the case, prepare you for class discussion, and assist you when you begin making outlines. Therefore, include information that will help you achieve these goals. The following is a typical format for a case brief (note that the case below is fictitious):

Doe v. Doe, 123 Cal. Rptr. 2d 456 (Ct. App. 2004).

ISSUE(S): The Issue is the question that the court must answer in order to resolve the dispute between the parties. Frame the Issue by identifying the rule of law that the court must apply and the key fact(s) that will bear on the court’s resolution of the Issue. (*For example: “Does the attorney-client privilege apply to communications between a ‘jailhouse lawyer’ and his inmate--client when the client did not believe that he was speaking to a lawyer?”*)

FACTS: There are two types of facts to include here: (1) Procedural history. This is the “story” of the case’s progress in the courts, from the time the plaintiff filed its complaint in court, to the appeal to the court that made the final decision in the case. Ask yourself at what point in the litigation did the disputed issue arise (e.g., in a pretrial motion, a post-verdict motion, etc.)? Also identify who the plaintiff (π) and the defendant (Δ) are (their names and/or their roles, such as customer and merchant). (2) Legally relevant facts. These are the events giving rise to the parties’ dispute that the court found necessary to its decision. Omit other facts. HINT: You will probably not know which facts are legally relevant until you have read the entire case and understand its holding. Therefore, to avoid an overly long Facts section, write the Facts portion of your case brief last.

RULE(S): The Rule is the law that the court applied in the case to achieve the holding. The Rule is usually a preexisting statement of the law that most often comes from a constitutional provision, statute, and/or case precedent. (*For example: “For purposes of the attorney/client privilege, a ‘lawyer’ is ‘a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation. Cal. Evid. C. § 952.”*).

HOLDING(S): The Holding is the court’s answer to the Issue posed in the case. A weak statement of the holding to the sample Issue above would be “no.” Although a “yes” or “no” holding might be technically correct, it may not be helpful. For example, if your professor asks you for the holding of Doe v. Doe, she is not asking for a simple “no” answer. Instead, incorporate into your Holding the language of your Issue and the main factual reason why the court answered the Issue the way it did. Your Holding should stand on its own. (*For example, a good Holding to the above Issue would be, “The attorney-client privilege does not apply to the inmate’s communications with the ‘jailhouse lawyer’ because the inmate did not believe that the ‘jailhouse lawyer’ was an actual attorney.”*)

REASONING: Probably the most important part of the case brief, the Reasoning section describes how the court resolved the Issue. Make sure to summarize all the logical steps the court took in reaching its Holding. Keep in mind that the court’s rationale can come from several different sources, including case precedent, something particular in the facts, and/or public policy.

One Last Point: Once you get a feel for the types of questions that your professors ask during class, consider whether you should reformulate the case brief format discussed here and whether you should include some additional headings in your briefs, e.g., the **parties** to the litigation; the **objectives** of the parties; the **cause of action/defense**; the **disposition** (what type of order was entered by the court as a result of its holdings); **public policy**; and **commentary** (anything that you think should be added to your case brief, including concurring and dissenting opinions, or just your own personal observations of the decision). GOOD LUCK!

*To be read in conjunction with Ten Instructions for Briefing Cases by Paul Bateman, available at <http://www.swlaw.edu/pdfs/briefingcases.pdf>.