Reading/Briefing a Case

Introduction

Your ability to read cases is critical to your success in law school, and there are critical differences between reading in college and reading in law school.

Unlike college, in which texts aim to provide a greater understanding of one subject, in law school, casebooks are assigned to teach the law (i.e., rules), and, at the same time, the process of problem solving (i.e., the application of the rules to a new factual situation).

The first step for a law student approaching the challenge of reading cases in a casebook is to develop a plan that will help you organize the information contained in the cases into predictable, manageable clusters of information.

The process of effectively reading cases involves three, equally important steps:

1) Pre-reading strategies
2) Reading strategies
3) Briefing strategies

Pre-Reading Strategies

The goal of these pre-reading strategies is to make sure your actual reading of the case goes as smoothly as possible.

By engaging in pre-reading activities, you ensure that you have the background knowledge you need to understand what parts of the case are important and what you are supposed to get from a case.

Six pre-reading strategies you should employ:

1) Set a learning goal

Remember, effective goals must meet the following four criteria:

i. They must be concrete. Goals must have explicit criteria for their achievement so that the student can know what she needs to do to achieve it
ii. They must be short-term
iii. They must be challenging
iv. They must be achievable

Goal-setting requires some thought. You cannot simply look at an
assignment in a law school syllabus and set a goal for it because you do not know what it is you must learn. You also want to consider any instructional objectives provided by the instructor.

Healthy people thrive on pursuing activities that are intrinsically rewarding to them – that have some inherent internal value to that person. In contrast, people who pursue activities for external motivations (e.g., for status, or for money, or to avoid a painful consequence) are generally less happy (and less productive).

2) Remember – Court opinions do not state absolute truths

a. Court opinions are really just pieces of persuasive writing in which the author (a judge) is trying to convince his or her audience (lawyers, other judges, and law professors) that the decision he or she is describing is a correct one.
b. Your task in reading a case is not merely to pull information from it, but rather to construct meaning from it for yourself.
c. You must develop an active role/mindset as you prepare to read, preparing to develop for yourself an understanding of what the opinion means.

3) Obtain prior organized knowledge about the subject of the case(s)

a. How do you do this?
   i. Course syllabi and casebook tables of contents
      1. Pay attention to your professor’s directives about what topics and subtopics within the course are important.
      2. Be aware of where your present reading assignments fall in the overall context of the course design (as visualized by your professor).
      3. Casebook authors make careful decisions before they cluster cases together.
         i. The content of the cases that surround a particular case can give you clues about the main idea of the case you’re presently reading.
      4. Think about how a new section of cases you are beginning might fit into what you have learned from past reading assignments.
   ii. Information from the casebook’s topical introductions
      1. Even if this material is not assigned it is worth reading.
2. It may provide an overview of the subject area, and, in some cases, may outline the key legal principles you will be learning.

iii. Information from the questions and notes following the case.

1. Authors of casebooks probably intend that you will consider the questions only after reading the cases, but there is nothing to prevent you from reading the questions beforehand. In fact, doing so makes cases easier to understand and gives guidance as to the key points.

iv. Information from the table of contents and substantive portions of supplemental texts.

1. Some students find it helpful to read about the subject area they are studying in a hornbook or other supplemental text before they read the cases. Doing so helps some students identify the key points in the opinions.

2. This can also help you discern the reasons the casebook authors included the cases in their books.

4) Preview the Case

The point of this is to identify the key topics addressed by the case.

   a. Quickly skim of the whole case.
   b. Identify and read all the headings in the case.
   c. Read the first sentence of each paragraph in the case. In most instances, that sentence is a topic sentence that states the point of the paragraph.
   d. Note the decision.

At this point you should have developed some excellent hypotheses about what you should be getting from the case(s).

5) Note Details

   a. Be sure to note the following:
      i. The date of an opinion
      ii. The names of the parties
      iii. The court issuing the opinion
      iv. The author of the opinion
      v. Are there any concurring opinions? Dissenting opinions?
6) Generate Questions

a. The last and most important step in the pre-reading process
   involves coming up with questions you expect to be answered by
   the case(s).
   i. Coming up with questions improves comprehension
      because it forces you to actively read the material.
   ii. It also assists you with your self-monitoring for
      comprehension by increasing your awareness of whether
      you are getting what you expected to get from the material.

b. Good examples of questions to test comprehension (i.e., whether
   or not you understand what you are learning):
   i. Describe (the facts in the case, the holding, etc.) in your
      own words.
   ii. What does (a concept or term of art used to describe the
      subject area) mean?
   iii. Why is this (case, concept, etc.) important?
   iv. Why did the court decide __________?

c. Good examples of questions to test connection (i.e., link new
   reading to ideas you learned previously in the course or before
   you came to law school):
   i. Why is (this case, this excerpt from a law review article,
      this entire topic, etc.) in this casebook?
   ii. How does this concept tie in to _______ concept (that you
       learned before law school, that you learned in another law
       school class, or that you already learned in this class)?
   iii. How are this case and ______ case similar?
   iv. How are this case and ______ case different?
   v. What is the difference between ______ and _______ (two
      similar concepts that have different legal implications)?
   vi. What are the strengths and weaknesses of the court's
      reasoning?
   vii. What are the benefits and detriments of the court's
      conclusion?

**Reading a Case**

**Introduction**

Expert law students read every court opinion more than once and **avoid marking the case at all (with notes or highlighting) the first time they are reading the opinion**.

During the initial reading, you should simply try to get a feel for the overall story and how the case comes out. In your next reading of the case, you should pay particular attention to the critical aspects of the case.
In addition, expert law students never (or hardly ever) read without being aware of time. A task will expand to fill the time allotted to it. Determine the allotted time limit for your assignment by dividing your available study time by the length of the assignment. Write down the starting time and the finish time for the assignment and try your best to stick to the plan.

Example: If I have three cases to read and an hour and a half in which to read them, I spend no more than thirty minutes reading and taking notes (including briefing) for each case.

However, remember, in your first few weeks of class, reading will take much longer than later in the semester. Be patient with yourself.

There are two other things that distinguish effective case reading from ineffective case reading:

1) The extent of student engagement with the text
2) The degree to which the student pays attention to the details of the opinion
   a. Engaging with Court Opinions
      i. Expert learners are always monitoring for comprehension and asking themselves whether they understand what they are reading.
         1. This evaluation is made on a sentence-by-sentence basis and in terms of the big picture, the two or three major points addressed by the opinion.
      ii. Expert learners are also engaged by the task of finding answers to the questions they posed during the pre-reading stage.
         1. Engage in “text look-back” – After completing their initial reading of the assigned material, expert learners skim the assignment looking for the parts of the reading that answer each of their questions.
      iii. Expert learners develop graphic depictions to help them make sense of difficult aspects of the opinions they are reading.
         1. The graphic depiction you choose will largely depend upon the nature of the facts in a given case.
      iv. Expert learners engage in a dialogue with their cases and court opinions.
         1. As they read, they are evaluating the opinions, looking for flaws in the courts’ reasoning, descriptions of the facts, statements of law, and assertions about what are the public interests implicated by the parties’ dispute.
         2. They even argue with the opinions, making notes on their casebooks indicating their disagreements.
3. Cases are included in casebooks to give law students the opportunity to do what lawyers do in the real world – wrestle with the validity of the conclusions the court has drawn, question the characterization of the facts the court has adopted, and wonder if the rules of law as stated are supported by the authorities cited.

4. When you read cases in your casebook, you can begin to evaluate what you’re reading at four levels:
   a. Evaluate your thoughts and feelings about the reading before you actually start to read.
   b. Evaluate the judge’s writing style as you read, and evaluate language (e.g., choice of words, syntax) as a way of predicting what’s important to a judge, where the judge is going in a case, and how the judge is going to justify a result.
   c. Evaluate the judge’s possible biases, assumptions, and perspectives.
   d. Evaluate the intellectual content of the reading.
      i. Could the case have been decided, rationally, some other way?
      ii. Would a change in the socioeconomic or political environment of the times have brought a different result?

v. Expert learners continue to pose questions while they are reading.

1. Good examples of questions that are particularly applicable to this stage of the case reading process include:
   a. If I changed (a key fact in the case) to (a different fact), would the court have reached the same result?
      i. You should ask this question in multiple forms to generate your own hypothetical questions, both hypothetical questions that would result in the same conclusion the court reached in its opinion and hypothetical questions that would result in the opposite conclusion.
   b. How might I use the facts in the case to argue for a different result?
   c. What must the losing party have argued?
   d. Did the court reach the correct conclusion? Why or why not?

b. Attention to Detail
   i. Mastering terminology
1. Read word-by-word and sentence-by-sentence, making sure that, in addition to getting the big picture and main ideas, you understand everything else.
2. Look up both unfamiliar words and phrases and familiar words and phrases used in an unfamiliar way.

**Reading Strategies**

You should plan to read every case twice. Your first reading of the case is the easy one. Put your pen, pencil, or highlighter down. You will take notes during your second reading.

**Your First Reading**

During your first read, your only task is to **get a general sense of what the case is all about**.

a. Take note of key words in the action of the case.
   i. What happened in the previous court?
      1. Who won? Plaintiff or defendant?
   ii. Why has the case come up again for review?

b. Be alert to structure. Generally, cases are organized in the following way:
   i. Procedural history – a summary of previous legal proceedings
   ii. Issue or dispute
      Note: This is sometimes after the facts
   iii. Facts
   iv. Rationale, or reasoning
   v. Decision
      Note: This is sometimes given before the rationale, in the middle of the rationale, and/or at the beginning of the case)

c. Understand the legal proceedings
   i. Picture the facts.
      1. What happened? To whom? Why?
   ii. Identify the issue.
      1. Why is this case in court again? On what general legal grounds?
      2. What does the court say is the issue?
         a. Since the decision and rule *answer* the issue, sometimes it is easier to frame the issue after finding the decision and rule.
   iii. Find the rule
      1. At the end of the case, the court states its decision (affirmed, etc.). Usually in the paragraph or two preceding this, the rule it applied to the facts of the case is cited. However, in cases involving exceptions to the
rule, the rule may be mentioned earlier, often before the detailed facts.

2. Pay attention to key words and sentences which signal that the court is citing a rule, for example:
   a. “The rule is not disputed...”
   b. “We are asked to hold that...”
   c. “The point involved is...”
   d. The rule is a reasonable and just one that...

**Your Second Reading**

Next, begin your second read. Pay particular attention to the critical aspects of the case, keeping in mind the hypotheses and questions you formed during your pre-reading review.

i. Notice terms and qualifying words.
   1. Important terms central to the issue, decision, and rule must be understood.
      a. First, try to define the word using the context of the passage.
      b. Next check the definition in an American dictionary. If you want more clarification, use a legal dictionary and skim the variations of the definitions until you find the one dealing with the area of law you are studying.
   2. Qualifying words (if, when, only, etc.) can significantly alter the meaning of a sentence. Be alert to any changes.
      a. Distinguish relevant from irrelevant facts.
      b. With the issue, decision, and rule in mind, determine which facts were important to the court's decision.

3. Study the rationale.
   a. Separate the rationale from dicta (other legal rules and statements not directly involved with the decision).
   b. The rationale may contain the reasons for the rule (why it was formed, why it is being modified, why it is socially desirable), and the application of the rule (why the rule is applicable or inapplicable to the facts in this case, how the court reasoned).
   c. Do you approve/disapprove of the judge’s decision? Why?
   d. What did you expect the outcome of the case to be? How would you have decided the case?

4. Synthesize the case.
a. How do all the elements (issue, decision, rule, and rationale) fit together?
b. Why did the editor include this case in your casebook?
c. Why did your professor assign this case?
d. Think about hypothetical situations.
   i. How would this rule apply to different facts?

While additional readings (beyond the two described here) may allow you to extract additional information from the case, you should consider the notion of diminishing returns. Your time is too precious a commodity to allocate in this fashion. The study of law is extremely time-consuming, so it is important to maximize the returns on your studying at every step in the process.

**Case Briefing**

**Introduction**

A case brief is a written summary of your analysis of a case

Case briefing is a skill that is quite difficult to master. Most new law students do not really achieve mastery in their first semester or even their first year of law school. Briefing requires tremendous amounts of practice.

You should brief a case AFTER you have read the case twice.

There are three important things about a case brief you should know:

1) A good case brief starts with a careful, thoughtful, active pre-reading and reading of a case.
2) A case brief is no more and no less than a tool for learning; it is a written record of their understanding of the key components of a case.
   a. A case brief will help you impose structure on a court opinion by reorganizing the narrative of the opinion into sub-categories common to every opinion.
3) Different professors demand different things from student case briefs, and you should adjust your briefing for their classes accordingly.

**Briefing Strategies**

All judicial opinions have five basic components:

- A description of the facts of the case
- A statement of the legal issue (or issues) presented for decision
- The relevant rule or rules of law
- The holding (i.e., the rule of law applied to the particular facts of the case)
- The policies and reasons that support the holding

What are the challenges to understanding a judicial opinion?

- You have to learn to think in reverse
  - The opinion is the end product of a lawsuit. You have to start with this end product and work backward to unravel what the dispute was about, what happened in the trial court and what happened on appeal.
- Understanding the interplay among the basic components of a judicial opinion.
  - All components of a case – facts, issues, rules, holdings, reasons, and policies – are related. One element cannot be understood without understanding the others.
- All of the elements may not be expressed. Because all five elements should be present in any opinion, you must read between the lines to pinpoint an element as precisely as you can when you do not see it identified.

The following briefing format is merely a starting point and framework for your legal analysis. As you gain experience at briefing cases, you will develop a format that suits your particular abilities and needs.

1. Identify the **Holding**.
   a. The holding is the actual decision in the case. It is the answer to the legal question(s) presented to the court (i.e., the issue). Identifying the holding requires you to study the opinion and determine what the court actually decided in the case.
   b. The holding describes the precedential effect of the case as a generalized statement about the legal consequences of a particular action or set of actions by a particular party or set of parties.
   c. To avoid being misled, concentrate on what the court actually did in the case, rather than what is said.

2. Identify the **Issue**.
   a. Cases usually develop because the parties disagree over the application of one or more rules of law to a particular set of facts. The issue is the legal question that must be resolved before a case can be decided.

3. Identify the **Rule**.
   a. The rule is the general legal principle relevant to the particular factual situation presented.
      i. It is important for you to restate the rule in your own words (to paraphrase it). This is a way of monitoring your comprehension. If you cannot state the rule in your own words, you do not understand it and need to either re-read the case,
obtain help from a peer or the instructor, or read more about the rule in a supplemental text.

ii. However, if there are specific words chosen by the court that are significant to its holding, you need to include them.

4. Identify the **Facts**.
   a. Once you understand the rule, holding, and issue, you will be able to identify the **relevant facts** of the case.
      i. You should write the facts in your own words.
   b. You should identify two types of facts:
      i. Legally relevant facts (also called “operative” or “material” facts
         1. Those the court considered important in deciding the case.
         2. These facts are outcome-determinative.
      ii. Procedurally significant facts.
         1. Describe at what stage in the case an error may have occurred in the lower court.
         2. These facts are important because the procedural posture of the case affects what legally relevant facts are available to the appellate court.
         3. The procedural posture of the case also affects what the appellate court can do if it disagrees with the trial court. If the factual record is complete, the appellate court’s decision should end the controversy; if the record is not complete, the appellate court will remand the case for more fact-finding.

5. Identify the **Reasons and Policies**
   a. Reasons are the steps in the logical process a court uses in arriving at its holding.
   b. Policies are the social justifications the court cites for its decision.
      i. Public policy reasons often cited by courts are:
         1. Predictability
         2. Justice
         3. Encouraging competition
         4. Preserving individual rights
         5. Allowing freedom of action
         6. Protecting society
         7. Encouraging economically efficient behavior

6. **Synthesis**
   a. Reconcile the case with other cases you have read.
      i. You may need to wait until you have read several more cases to fully synthesize the case you are currently reading with other cases.
There are five bases for reconciling cases:

1) The courts that decided the conflicting cases may have been located in different jurisdictions.
2) Both cases may describe accurately the law in the same jurisdiction – the conflict may be explained as an historical issue.
   a. One decision may reflect the law as it was in the past and one may reflect the current version of the law.
3) The conflict may derive from factual differences between the two cases and because those factual differences required the courts to adopt a different rule.
4) The two cases may actually be stating and applying identical rules but phrasing those rules in different language.
5) On occasion, two decisions are simply irreconcilable and you will simply need to say so.

7. Your Thoughts
   a. It is a good habit to include any thoughts you may have had as you read the case so that you encourage your creativity and investment in the learning process.
   b. Reading cases is not about passively receiving information contained in the opinion. It's about making meaning by bringing your thoughts to the case, interacting with the author of the opinion, and learning from discussions in class that follow.

Note: In multiple-issue cases, analyze each issue separately

When a case contains several issues, analyze each issue separately. For each issue, you must identify the rule, relevant facts, holding, and reasons and policies supporting the court’s decision.

Note: Concurring and Dissenting Opinions

When confronted with a concurrence or a dissent, you should identify the points of dispute between the majority opinion and the dissent or concurrence and explain the dissenting or concurring view. This needs to be in your words (preserving any “special” or “magic” words that were critical to the opinion).

8. Check for Congruency

Once you have some idea of the important facts, the issue, the rule of law, the holding, and the reasons and policies, check these elements against one another to make sure they are congruent.
<table>
<thead>
<tr>
<th>Facts</th>
<th>What happened?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule</td>
<td>The law</td>
</tr>
<tr>
<td>Issue</td>
<td>Does the law apply to these facts?</td>
</tr>
<tr>
<td>Holding</td>
<td>The law does or does not apply to these facts</td>
</tr>
<tr>
<td>Reasons &amp; Policies</td>
<td>Why the law does or does not apply to these facts</td>
</tr>
</tbody>
</table>

If you are using the same law and the same facts in each element, and they accurately reflect the court’s decision, you have a good case brief.

However, when the court’s holding changes the law, you will find the law described in the holding differs from the law described in the rule. Your case brief should reflect that change.