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How to brief a case

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How to Brief a Case

Confusion often arises over the term "legal brief."
There are at least two different senses in which the term is used.

Appellate brief

An appellate brief is a written legal argument presented to an appellate court. Its purpose is to persuade the higher court to uphold or reverse the trial court's decision. Briefs of this kind are therefore geared to presenting the issues involved in the case from the perspective of one side only.

Appellate briefs from both sides can be very valuable to anyone assessing the legal issues raised in a case. Unfortunately, they are rarely published. The U.S. Supreme Court is the only court for which briefs are regularly available in published form. The ***Landmark Briefs*** series (**REF. LAW KF 101.9 .K8**) includes the full texts of briefs relating to a very few of the many cases heard by this court. In addition, summaries of the briefs filed on behalf of the plaintiff or defendant for all cases reported are included in the ***U.S. Supreme Court Reports. Lawyer's Ed., 2nd.*** series (**REF. LAW KF 101 .A42**).

Student brief

A student brief is a short summary and analysis of the case prepared for use in classroom discussion. It is a set of notes, presented in a systematic way, in order to sort out the parties, identify the issues, ascertain what was decided, and analyze the reasoning behind decisions made by the courts.

Although student briefs always include the same items of information, the form in which these items are set out can vary. Before committing yourself to a particular form for briefing cases, check with your instructor to ensure that the form you have chosen is acceptable.

THE PARTIES AND HOW TO KEEP TRACK OF THEM

Beginning students often have difficulty identifying relationships between the parties involved in court cases. The following definitions may help:

Plaintiffs sue **defendants** in **civil suits** in trial courts.

The **government** (state or federal) prosecutes **defendants** in **criminal cases** in trial courts.

The losing party in a criminal prosecution or a civil action may ask a higher (appellate) court to review the case on the ground that the trial court judge made a mistake. If the law gives the loser the right to a higher court review, his or her lawyers will appeal. If the loser does not have this right, his or her lawyers may ask the court for a writ of certiorari. Under this procedure, the appellate court is being asked to exercise its lawful discretion in granting the cases a hearing for review.

For example, a defendant convicted in a federal district court has the right to appeal this decision in the Court of Appeals of the circuit and this court cannot refuse to hear it. The party losing in this appellate court can request that the case be reviewed by the Supreme Court, but, unless certain special circumstances apply, has no right to a hearing.

These two procedures, **appeals** and petitions for **certiorari**, are sometimes loosely grouped together as "appeals." However, there is, as shown, a difference between them, and you should know it.

A person who seeks a **writ of certiorari**, that is, a ruling by a higher court that it hear the case, is known as a **petitioner**. The person, who must respond to the petition, that is, the winner in the lower court, is called the **respondent**.

A person who files a formal **appeal** demanding appellate review as a matter of right is known as the **appellant**. His or her opponent is the **appellee**.

The name of the party initiating the action in court, at any level on the judicial ladder, always appears first in the legal papers. For example, Arlo Tatum and others sued in Federal District Court for an injunction against Secretary of Defense Melvin Laird and others to stop the Army from spying on them. Tatum and his friends became **plaintiffs** and the case was then known as *Tatum v. Laird*. The Tatum group lost in the District Court and appealed to the Court of Appeals, where they were referred to as the **appellants**, and the defendants became the **appellees**. Thus the case was still known at *Tatum v. Laird*.

When Tatum and his fellow appellants won in the Court of Appeals, Laird and his fellow appellees decided to seek review by the Supreme Court. They successfully petitioned for a **writ of certiorari** from the Supreme Court directing the Court of Appeals to send up the record of the case (trial court transcript, motion papers, and assorted legal documents) to the Supreme Court.

At this point the name of the case changed to *Laird v. Tatum*: Laird and associates were now the **petitioners**, and Tatum and his fellows were the **respondents**. Several church groups and a group of former intelligence agents obtained permission to file briefs (written arguments) on behalf of the respondents to help persuade the Court to arrive at a decision favorable to them. Each of these groups was termed an **amicus curiae**, or "friend of the court."

In criminal cases, switches in the titles of cases are common, because most reach the appellate courts as a result of an appeal by a convicted defendant. Thus, the case of *Arizona v. Miranda* later became *Miranda v. Arizona*.

STUDENT BRIEFS

These can be extensive or short, depending on the depth of analysis required and the demands of the instructor. A comprehensive brief includes the following elements:

1. Title and Citation
2. Facts of the Case
3. Issues
4. Decisions (Holdings)
5. Reasoning (Rationale)
6. Separate Opinions
7. Analysis

1. Title and Citation

The **title** of the case shows who is opposing whom. The name of the person who initiated legal action in that particular court will always appear first. Since the losers often appeal to a higher court, this can get confusing. The first section of this guide shows you how to identify the players without a scorecard.

The **citation** tells how to locate the reporter of the case in the appropriate case reporter. If you know only the title of the case, the citation to it can be found using the **case digest** covering that court, or one of the computer-assisted legal research tools (*Westlaw* or *LEXIS-NEXIS*).

2. Facts of the Case

A good student brief will include a summary of the pertinent facts and legal points raised in the case. It will show the nature of the litigation, who sued whom, based on what occurrences, and what happened in the lower court/s.

The facts are often conveniently summarized at the beginning of the court's published opinion. Sometimes, the best statement of the facts will be found in a dissenting or concurring opinion. WARNING! Judges are not above being selective about the facts they emphasize. This can become of crucial importance when you try to reconcile apparently inconsistent cases, because the way a judge chooses to characterize and "edit" the facts often determines which way he or she will vote and, as a result, which rule of law will be applied.

The fact section of a good student brief will include the following elements:

A one-sentence description of the nature of the case, to serve as an introduction.

A statement of the relevant law, with quotation marks or underlining to draw attention to the key words or phrases that are in dispute.

A summary of the complaint (in a civil case) or the indictment (in a criminal case) plus relevant evidence and arguments presented in court to explain who did what to whom and why the case was thought to involve illegal conduct.

A summary of actions taken by the lower courts, for example: defendant convicted; conviction upheld by appellate court; Supreme Court granted certiorari.

3. Issues

The issues or questions of law raised by the facts peculiar to the case are often stated explicitly by the court. Again, watch out for the occasional judge who misstates the questions raised by the lower court's opinion, by the parties on appeal, or by the nature of the case.

Constitutional cases frequently involve multiple issues, some of interest only to litigants and lawyers, others of broader and enduring significant to citizens and officials alike. Be sure you have included both.

With rare exceptions, the outcome of an appellate case will turn on the meaning of a provision of the Constitution, a law, or a judicial doctrine. Capture that provision or debated point in your restatement of the issue. Set it off with quotation marks or underline it. This will help you later when you try to reconcile conflicting cases.

When noting issues, it may help to phrase them in terms of questions that can be answered with a precise "yes" or "no."

For example, the famous case of *Brown v. Board of Education* involved the applicability of a provision of the 14th Amendment to the U.S. Constitution to a school board's practice of excluding black pupils from certain public schools solely due to their race. The precise wording of the Amendment is "no state shall... deny to any person within its jurisdiction the equal protection of the laws." The careful student would begin by identifying the key phrases from this amendment and deciding which of them were really at issue in this case. Assuming that there was no doubt that the school board was acting as the State, and that Miss Brown was a "person within its jurisdiction," then the **key issue** would be "Does the exclusion of students from a public school solely on the basis of race amount to a denial of 'equal protection of the laws'?"

Of course the implications of this case went far beyond the situation of Miss Brown, the Topeka School Board, or even public education. They cast doubt on the continuing validity of prior decisions in which the Supreme Court had held that restriction of Black Americans to "separate but equal" facilities did not deny them "equal protection of the laws." Make note of any such implications in your statement of issues at the end of the brief, in which you set out your observations and comments.

NOTE: More students misread cases because they fail to see the issues in terms of the applicable law or judicial doctrine than for any other reason. There is no substitute for taking the time to frame carefully the questions, so that they actually incorporate the key provisions of the law in terms capable of being given precise answers. It may also help to label the issues, for example, "procedural issues," "substantive issues," "legal issue," and so on. Remember too, that the same case may be used by instructors for different purposes, so part of the challenge of briefing is to identify those issues in the case which are of central importance to the topic under discussion in class.

4. Decisions

The decision, or holding, is the court's answer to a question presented to it for answer by the parties involved or raised by the court itself in its own reading of the case. There are narrow procedural holdings, for example, "case reversed and remanded," broader substantive holdings which deal with the interpretation of the Constitution, statutes, or judicial doctrines. If the issues have been drawn precisely, the holdings can be stated in simple "yes" or "no" answers or in short statements taken from the language used by the court.

5. Reasoning

The reasoning, or rationale, is the chain of argument which led the judges in either a majority or a dissenting opinion to rule as they did. This should be outlined point by point in numbered sentences or paragraphs.

6. Separate Opinions

Both concurring and dissenting opinions should be subjected to the same depth of analysis to bring out the major points of agreement or disagreement with the majority opinion. Make a note of how each justice voted and how they lined up. Knowledge of how judges of a particular court normally line up on particular issues is essential to anticipating how they will vote in future cases involving similar issues.

7. Analysis

Here the student should evaluate the significance of the case, its relationship to other cases, its place in history, and what is shows about the Court, its members, its decision-making processes, or the impact it has on litigants, government, or society. It is here that the implicit assumptions and values of the Justices should be probed, the "rightness" of the decision debated, and the logic of the reasoning considered.

A CAUTIONARY NOTE

Don't brief the case until you have read it through at least once. Don't think that because you have found the judge's best purple prose you have necessarily extracted the essence of the decision. Look for unarticulated premises, logical fallacies, manipulation of the factual record, or distortions of precedent. Then ask, How does this case relate to other cases in the same general area of law? What does it show about judicial policymaking? Does the result violate your sense of justice or fairness? How might it have been better decided?

FURTHER INFORMATION AND SAMPLE BRIEFS

Discussion of the student brief, with examples, is given in:

Delaney, J. (1987). ***Learning legal reasoning: Briefing, analysis and theory***. Bogota, NJ: John Delaney Publications. [Stacks KF 240 .D39 1987b]

Smith, D.J. (1996). ***Legal research and writing***. New York: Delmar Publishers. [Stacks KF 240 .S6 1996] (See pages 212-221)

Statsky, W.P., & Wernet, R.J. (1989). ***Case analysis and fundamentals of legal writing***. 3rd ed. St. Paul, MN: West Publishing. [Ref. Law & Stacks KF 240 .S78](See Chapter 12: "A Composite Brief")

Teply, L.L. (1990). ***Legal writing, analysis, and oral argument***. St. Paul, MN: West Publishing. [Stacks KF 250 .T46 1990] (See page 146 - Briefing judicial opinions for legal research and writing purposes).

Wren, C.G. & Wren, J.R. (1988). ***The legal research manual: a game plan for legal research and analysis***. 2nd ed. Madison, WI: Adams & Ambrose. [Ref. Law KF 240 .W7] (See pages 91 & 146)

Yelin, A.B. & Samborn, H.R. (1996). ***The legal research and writing handbook: A basic approach for paralegals***. Boston: Aspen Publishers, Inc. [Ref. Law KF 240 .Y45 1996] (See Chapter 4: "Briefing Cases")

Most of the standard guides to legal research include discussion of the appellate brief and other types of legal memoranda used by practicing attorneys. Detailed consideration of these forms with examples, are given in the books owned by the Library listed below:

Introduction to advocacy: Research, writing, and argument. (1996). 6th ed. Westbury, NY: The Foundation Press, Inc. [Stacks KF 281 .A2 I57 1996]

Peck, G. (1984). ***Writing persuasive briefs***. Boston: Little, Brown. [Ref. Law KF 251 .P4 1984]

Pratt, D.V. (1993). ***Legal writing: A systematic approach***. 2nd ed. St. Paul, MN:West Publishing. [Stacks KF 250 .P73 1993]

Price, M.O. (1979). ***Effective legal research***. 4th ed. Boston: Little, Brown.[Ref. Law KF 240 .P7 1979]

Re, E.D. (1993). ***Brief writing and oral argument***. 7th ed. Dobbs Ferry, NY: Oceana. [Ref. Law KF 251 .R4 1993]

Rombauer, M.D. (1983). ***Legal problem solving: Analysis, research and writing***. 4th ed. St. Paul, MN: West Publishing. [Ref. Law KF 240 .R64 1983]

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