How to Brief a Case

If you’ve read about law school, you’ve seen references to briefing cases. You might also know that most practicing lawyers don’t formally brief cases, and many students eventually stop doing formal briefs for classes. So what, then, should you do? I’m going to give you unconventional advice, but first I’ll explain why you brief cases.

Case briefing is simply a way of taking notes about things you need to know. For classes other than legal writing, your immediate concern is to be prepared if your professor asks your questions about the case in class. But your more important concern is to create an outline of the law covered in the course, one you’ll use when you study for and take the final exam.

In your legal writing course – and as a practicing lawyer – you’ll take notes for different reasons. You’ll be assessing precisely what the law is in your jurisdiction and how it applies to the facts of a client’s case. You also need to know how much weight you should give to the case, and you’ll be jotting down things that you want to quote or paraphrase.

I have only one hard-and-fast recommendation about briefing cases: Do it yourself. Resist the temptation to use commercial briefs, the “brief this case” feature in Westlaw, or briefs created by another student. If you take notes yourself, you will understand and remember the case and the underlying law much better than you would if you rely on someone else’s work.

With that in mind, I’ll start with suggestions on taking notes, and follow with a concise discussion of the different things you could take notes about, and why they matter.

Core Suggestions

1. Until you’re more experienced, read the entire case once before you take notes.

2. Take notes on a computer. Anything you write should be part of your outline for the exam, and you shouldn’t waste time retyping something you wrote by hand.

3. Create a template. Once you’ve settled on how you’ll brief cases, use Word or Excel to create a simple template that you’ll fill out for each case.

4. Keep notes to a minimum. Use shorthand and abbreviations, and avoid full sentences except when you’re quoting or stating the rules and holding.
5. *Know the parties, but don’t get bogged down in facts.* For most cases, the facts that truly matter will be included when you note the holding and reasoning. The rest of the facts are there for background and context, but they’re rarely essential.

6. *Supplement notes by highlighting or underlining.* Even if you’re reading a digital version, you can highlight material or add notes. If you’re briefing for a class, highlight things your professor might ask about. If you’re taking notes for legal writing, highlight phrases you might want to quote.

7. *Supplement your notes after you’ve discussed the case in class.* You’ll often have a clearer idea of what the law is, and what’s important, after class is over.

**The Bare Minimum**

At a minimum, your notes on a case should include the following three sections:

1. The case name, court, and year
2. The holding
3. Critical points from the court’s reasoning

You’ll note that I haven’t included the legal rules. That’s because the rules are often the same in multiple cases; and for any legal issue a complete statement of the rules is typically *synthesized* from some combination of statutes and court decisions. You should state the rules separately from your case briefs and revise them as needed.

1. **The case name, court, and year.** For the name, it’s enough to note one name: the lead plaintiff for a civil case; the defendant in a criminal case. The court should include the jurisdiction and the court level. For instance, if you’re dealing with NY law, it matters whether the case was decided by a NY court, and whether it was an appeals court or trial court. The year is useful because recent decisions carry more weight, and it’s less likely the law has changed.

2. **The holding.** The “holding” is a short statement of how the law applies to key facts from a particular case. Keep in mind that holdings are statements, not questions, and that they’re usually written in the present tense. For most cases you can state the holding as a single sentence.

   When you write the holding, two points are critical. First, in contrast to the rule, it should be specific to the case (and other cases like it). Second, the holding should be brief, and should focus on how the rule was applied to the most critical facts of the case. Here’s one example, from People v. Barney, a NY case dealing with burglary:
Holding: Under NY’s burglary statutes, a fully-furnished but unoccupied house is a “dwelling,” even though the sole occupant died three days before the burglary and no one intended to sleep there at the time of the burglary.

Notice that this holding includes a conclusion – the house was a “dwelling” – along with key facts.

In many modern cases, the court will say, flat out, “we hold that ...” In other cases, you’ll have to figure out the holding yourself. Either way, there is often no single “correct” version of the holding. A holding can be read broadly or narrowly, depending on how fact-specific it is. (In practice, lawyers often argue whether the holding should be read broadly or narrowly.)

A few important points: (1) it’s usually essential to include a few critical facts as part of the holding, but don’t include too many; (2) don’t be too vague; and (3) include references to procedure only if they’re critical to the holding.

Below are possible ways to state the holding in Roberson v. Rochester Folding Box Co., a case in which the New York Court of Appeals considered whether a company acted illegally by using a recognizable drawing of a woman’s face in its advertising without her permission:

(a) The complaint does not state a cause of action.
(b) New York does not recognize a common law right of privacy.
(c) Under New York law, a plaintiff cannot recover damages for the unauthorized use of her likeness in an advertising campaign.

The first statement (a) is too vague: the same statement would be true for any decision upholding a motion to dismiss. The other two are correct, but (b) is broad and (c) is more narrow.

Finally, it’s important to know the difference between a holding and dicta. Dicta consists of statements about what the court might do if the facts were different. But courts can only decide the case in front of them: they don’t issue “advisory opinions” about possible future cases. An appeals court’s holding is binding on lower courts. Dicta is not binding, but it is important: it’s a window to the court’s thinking, and a useful guide to what the court might do in the future.

(3) The court’s reasoning. The court’s reasoning is critical regardless of whether you’re briefing for class or practice. You should understand why the court did what it did. We’ll discuss legal reasoning in class, but here are some things you should think about as you read a case.

- What do key words in the rule mean, and why?
- How do the facts of this case compare to the language of the rule?
- How do the facts of this case compare to the facts of other cases? Which similarities or differences are legally significant, and why?
- What are the public policies behind the rule? How does the result further those policies?
What might happen if the court reached the opposite result?
Did the court reject specific arguments by one of the parties? Which ones and why?

During the first weeks of the semester, we’ll talk about different types of legal reasoning, including rule-based reasoning, statutory interpretation, analogical reasoning, and policy-based reasoning. As you learn more, it will help you decide which points of reasoning are most important.

**Additional Points**

(1) **The holding vs. the Rules**

First year students sometimes confuse the “holding” and the “rules.” The rules are general statements of law that can be applied to different cases. The holding is the way the court applied the rule to the specific facts of the case.

For each case, there may be multiple rules. For instance, here’s the statutory rule for burglary in New York: “A person is guilty of burglary if he knowingly enters or remains unlawfully in a building with intent to commit a crime therein.” A second rule provides that burglary is second degree – with heightened penalties – if the building is a “dwelling.” A third rule states that a “dwelling” is “a building which is usually occupied by a person lodging therein at night.” Finally, a series of cases have developed a test that courts use to decide if a building is “usually occupied.”

We’ll talk about rules in class so I won’t say more here, except to note that the rules are almost always synthesized – in other words, they’re assembled from some combination of statutes and cases. For this reason, you should write them separately from your briefs. For any given legal issue, you might have one set of rules, and multiple cases applying those rules.

(2) **The Holding vs. the Issue**

Some professors will ask you for the “issue,” and it’s important to understand what they mean. The legal issue is simply whatever the court was asked to decide, and modern decisions typically state the issue clearly. A case may involve multiple issues, but often you’ll read the case for one issue, and textbook editors usually delete parts of the decisions they publish.

There’s an easy way to think about this: the issue is the holding restated as a question. In other words, the issue is a yes or no question and the holding is the answer. For that reason, there’s little point in writing the issue separately. If you’re asked for the issue, glance at your notes for the holding, and restate the holding as a question. For example, here’s the holding from People v Barney restated as an issue:
**Holding:** Under NY’s burglary statutes, a fully-furnished but unoccupied house is a “dwelling,” even though the sole occupant died three days before the burglary and no one intended to sleep there at the time of the burglary.

**Issue:** Under NY’s burglary statute, is a furnished but unoccupied house a “dwelling” when the sole occupant died three days before the burglary and no one intended to sleep there at the time of the burglary?

Other than adding a question mark, there are few differences between the two sentences: the verb “is” was moved, and “even though” was changed to “when.” I’ve noted those changes in bold and underlining so you can see them easily.

If you prefer, you could include the issue in your briefs, with the holding stated briefly – typically just “yes” or “no.” But keep in mind that the holding is often not purely a “yes” or “no” answer – it might be a qualified “yes” or “no” or include an exception. For instance, the answer to the question posed by the issue might be along the lines of “yes, unless ...” or “yes, but only if ...”

**Other Things You Might Note**

Following are other things you might include, depending on why you’re taking notes.

1. The procedural history
2. Additional facts
3. Key points from concurring or dissenting opinions

(1) The procedural history. This point is short, but it’s challenging for first year law students who you haven’t studied civil procedure. (It helps to keep a legal dictionary handy.)

Most cases you read will be appellate decisions, and most came to the appeals court in one of three procedural situations. First, some cases were decided by a trial court on a motion to dismiss for failure to state a claim, also known as a “demurrer” or “nonsuit.” When ruling on a motion to dismiss, the trial court will assume the allegations in the complaint are true, and will consider this question: If the plaintiff can prove these facts, can the plaintiff win under existing law? If the answer is “no,” the court will dismiss the case – there’s no point in going further.

Second, some cases were decided on a motion for summary judgment after the parties engaged in discovery. In these cases, the court will look only at facts that are not disputed, and will view them in the light most favorable to the party opposing summary judgment. The court will grant the motion if there are no genuine disputes of material fact and the moving party is entitled to judgment as a matter of law. Keep in mind that the point of a trial is to decide factual disputes. If
disputed facts don’t matter, a trial isn’t needed. Motions for summary judgment and motions to dismiss are known as “dispositive” pre-trial motions – they dispose of the case before a trial begins.

Finally, some cases were decided after a trial, and the losing party has argued that the trial court did something wrong. For instance, a party may argue that the court admitted evidence the jury should not have considered, or gave the jury incorrect instructions about the law.

The differences are important because they dictate how a court will approach the issue and view the facts of the case on appeal. On a motion for summary judgment, the court will consider only the undisputed facts and ask whether a reasonable jury could rule for the party opposing the motion. (If it could, the motion will be denied.) But on a motion to dismiss, the court will assume all facts in the complaint are true, and will not consider whether a jury might decide otherwise.

(2) Additional facts. If you’ve taken notes on the holding and reasoning, you’ve already noted the most critical facts – they’re the facts the court relied on when it reached its decision. In some cases, you may need additional background facts to put the holding or reasoning in context.

(3) Key points from concurring and dissenting opinions. Some cases include concurring or dissenting opinions. A concurring judge agrees with the majority about the outcome but has written a separate opinion. A judge might do this because the judge’s reasoning is different from the majority, or because the judge wants to emphasize a point the majority didn’t address. A dissenting judge, of course, disagrees with the result in the majority’s decision.

It’s important to remember that concurring and dissenting opinions are not the law, except in unusual circumstances. (We’ll discuss that at some point.) That said, if a casebook gives you a concurring or dissenting opinion, it’s there for a reason.

For class, you should note the key points from concurring and dissenting opinions, unless you’re sure your professor won’t ask about them. After class, you may decide to ignore concurring and dissenting opinions when you prepare for the exam.

In legal writing and in practice, the concurring and dissenting opinions are most useful in helping you decide whether the court is likely to expand or extend the rule to cover a situation that the court hasn’t yet discussed. And they may point out flaws in the majority’s reasoning that you can use to a client’s advantage.

Sample

To help you understand what’s important, what follows is a brief for People v. Barney. As discussed above, for any broad legal issue – for instance, when is a building a “dwelling” for purposes of N.Y’s burglary statute – the rules are the same for multiple cases, and they’re often synthesized from a statute and multiple cases.
For instance, I’ve listed four rules below – the first three are from different sections of the New York Penal Law, while the fourth point is synthesized from at least three different cases. For this reason, I’ve stated the rules separately from the brief for Barney. You should do the same for your classes – and modify the rules as necessary as you read additional cases.

Finally, note that the holding and reasoning include critical facts. The decision discusses other facts, but these are the only facts that truly matter.

Burglary Rules

(1) A person is guilty of burglary if they knowing enter or remain unlawfully in a building with the intent to commit a crime therein.

(2) The penalty for burglary is enhanced if the building is a “dwelling.”

(3) The statute states that a building is a “dwelling” if it is “usually occupied by a person lodging therein at night.”

(4) To determine is a building is “usually occupied,” courts consider various factors, including whether the building has been structurally adapted for lodging; whether the owner intends to return; and whether someone could have slept there at the time of the burglary. Courts also consider how often someone sleeps in the building and the building’s immediate past use.

People v. Barney (NY Court of Appeals 2003)

Holding: Under NY’s burglary statutes, a fully-furnished but unoccupied house is a “dwelling,” even though the sole occupant died three days before the burglary and no one intended to sleep there at the time of the burglary.

Reasoning:

• At the time of the burglary, the house was still fully furnished with working utilities, and the decedent’s personal property was still in the house. Thus, someone could have slept there.
• The house was “ordinarily occupied” by the decedent before his death, and nothing had changed in the three days since he died.
• An occupant’s intent to return is a factor, but it’s only one factor. The fact that the occupant was dead and didn’t intend to return doesn’t automatically mean the house isn’t a dwelling.
• The court refuses to hold that a house ceases to be a dwelling immediately after the occupant dies; to do so would reduce the criminality of a burglar who tries to exploit the occupant’s death, and it would pose a danger to grieving family members.