

## How to Brief a Case

Briefs should be a one-page summary of the case. Structure the summary according to the elements listed below. The structure adheres to the types of questions the professor asks in class and to the information you'll need for outlining. Not every case can be summed up in one page, but it's a good discipline to attempt to condense the material.

### THE ELEMENTS OF BRIEFING

- |                             |                      |
|-----------------------------|----------------------|
| → <u>Procedural History</u> | → <u>Dicta</u>       |
| → <u>Legal Issue</u>        | → <u>Reasoning</u>   |
| → <u>Facts of Case</u>      | → <u>Holding</u>     |
| → <u>Statement of Rule</u>  | → <u>Concurrence</u> |
| → <u>Policy</u>             | → <u>Dissents</u>    |

You might consider creating a standard form using a word processor, then fill in the blanks as you read the case. You may want to modify the form as you go along through the semester. Professors will differ as to what they like. At the end of this chapter is a sample brief.

### Procedural History

How did this case get to this particular court? Typically, you will be reading case law from the appeals court. That means the case has already been decided at a lower court and the losing party has appealed to a higher court. Typically, the lower courts don't write opinions on their decisions, consequently, you'll almost always be reading appellate decisions.

The judge often starts the case with information on how the court below decided the case and which party is making the appeal. Often the cases will present a detailed history of the arguments presented by both parties in the court below as well.

At minimum, you should be able to answer the following two questions that your professor is likely to ask in class:

*Who is appealing on what issues?*

*What happened in the lower court?*

## Legal Issue

A well-written opinion starts out by telling you the legal issue up-front. Language that the court uses might include such phrases as:

*"The question before us is whether...."*

*"This case was brought before us to decide whether..."*

Appellate courts hear a case on appeal when there has been a problem with the case in the court below. The problem could be an error that the court made or the appellate court may want to take the case because the lower courts in its jurisdiction are not consistent in their decisions. By taking this case, it gives the higher court a chance to give guidance and establish precedent for the lower courts to follow.

If you're having trouble [spotting the issue](#), then try to key into the word "whether." It often signals what the turning point for a case.

## Facts of Case

A well-written case gives the relevant facts that brought the parties to court. In a Torts case, for instance, the judge recites the facts of the accident or injury. In Contracts, the prior business relationship might be discussed. In Criminal law, the crime is described.

Case law is at its worst when the court leaves out the facts. Judges sometimes don't include facts because the question before the appellate court doesn't require all of the details to be resolved. The issue on appeal is so narrow, that the facts as determined by a jury are often no longer relevant to the issue at hand. However, it helps when the judges give you a context by outlining all of the facts.

You'll probably encounter such a case in Civil Procedure. Pennoyer v. Neff is one of those traditional law school cases that is extremely frustrating to understand because it lacks a background history of the facts. In situations like this, you want to revert to secondary sources such as hornbooks<sup>3</sup>, to pick up on the material.

<sup>3</sup> Hornbooks are summaries of the law that can be found in your library.

## Statement of Rule

The court should give a clear statement of the rule that controls the issue. The court often traces the development of the law within its own jurisdiction, starting with the common law rule. Since many of these bodies of law differ slightly between states, the court prefers to look within its own jurisdiction before it cites to a case from another state or country. The judge then either reaffirms a principle of law or fashions a new rule that evolves the law.

## Policy

Rules don't stand by themselves without any sort of reason behind them. If there isn't a sound policy behind a rule, then the court tries to fashion a rule that serves the principles of equity or justice. Sometimes a statute that does not further the policies of equity or justice binds the judge. In those circumstances, the judge sometimes upholds the statute but writes the opinion in such a way to bring the injustice to the attention of the legislature in order to encourage them to change the law.

## Dicta

Dicta refers to anything that isn't relevant to the case's holding. Often judges will use a case to expound upon their theories of the law. The theories may not be relevant to the case at hand, but it gives the judge a chance to give direction to the lower courts by putting the theory in writing. Dicta does not carry weight as a precedent. But it's useful to note how the court might have ruled given a different set of circumstances.

## Reasoning

The reasoning is the Analysis arm of IRAC. This is how and why the court fits the particular facts and circumstances of this case into the rule. The courts often fashion tests or rely on precedent, which forms part of the reasoning. You should take special note of the reasoning and try to emulate it in your own writing.

## Holding

The holding is the court's decision on the issue. Who wins? The holding may be narrowly construed to a particular issue or be very broad. Identifying the holding may merely consist of finding the words "We hold that..."

The holding should include the disposition of the case. Is the ruling of the lower court

affirmed? Overturned? Remanded for retrial?

## Concurrence

A Concurrence is a separate opinion in which one of the judges agrees with the result but has different reasoning. Like dissents, you will find that concurrences proliferate in Supreme Court cases. Look at the concurrence to see how the reasoning differs. Make a note of it in the brief.

## Dissents

Typically, a panel of judges tries appellate cases. Not surprisingly, there is not always unanimous agreement. Consequently, a judge who is not in the majority will write a dissent. Dissents are ubiquitous in Supreme Court cases. Make sure that you pick up the major sticking points in the dissent. What principles does the dissenting judge disagree with the majority on? Dissents are sometimes indicators of a direction the court may eventually move towards.

[↑ Return to Top](#) [? Test Yourself!](#)

## Sample Case and Brief

What follows are a sample case and a brief of that case. You'll notice that the elements of the brief scan very closely to the IRAC method with the additional elements of procedural history and the facts.

### SAMPLE CASE

The following is a sample case that is commonly used in Contracts Cases to illustrate the idea of a "legal duty." Each element is identified.

**STEPHEN GRAY, RESPONDENT, v.  
THERESA D. MARTINO,  
APPELLANT**

Supreme Court of New Jersey  
91 N.J.L. 462; 103 A. 24  
February 2, 1918, Decided

**Parties:** These are the primary parties. Generally the case will be referred to only by the last names of the parties. E.g. *Gray v. Martino*.

MINTURN, J. The plaintiff occupied the position of a special police officer, in Atlantic City, and incidentally was identified with the work of the prosecutor of the pleas of the county. He possessed knowledge concerning the theft of certain diamonds and jewelry from the possession of the defendant, who had advertised a reward for the recovery of the property. In this situation he claims to have entered into a verbal contract with defendant, whereby she agreed to pay him \$500 if he could procure for her the names and addresses of the thieves. As a result of his meditation with the police authorities the diamonds and jewelry were recovered, and plaintiff brought this suit to recover the promised reward.

The District Court, sitting without a jury, awarded plaintiff a judgment for the amount of the reward, and hence this appeal.

Various points are discussed in the briefs, but to us the dominant and conspicuous inquiry in the case is, was the plaintiff, during the period of this transaction, a public officer, charged with the enforcement of the law?

The testimony makes it manifest that he was a special police officer to some extent identified with the work of the prosecutor's office, and that position, upon well-settled grounds of public policy, required him to assist, at least, in the prosecution of offenders against the law.

The services he rendered, in this instance, must be presumed to have been rendered in pursuance of that public duty, and for its performance he was not entitled to receive a special quid pro quo.

**Facts of the case:** What happened that brought these parties to court?

**Procedural History:** Who won in the court below?

**Legal Issue:** What fact or circumstance is at issue that will be the deciding factor in how the court rules on this case?

**Reasoning/Analysis:** The court applies the facts to see whether they satisfy the elements of the rule.

The cases on the subject are collected in a footnote to *Somerset Bank v. Edmund*, 10 Am. & Eng. Ann. Cas. 726; 76 Ohio St. Rep. 396, the head-note to which reads: "Public policy and sound morals alike forbid that a public officer should demand or receive for services performed by him in the discharge of official duty any other or further remuneration or reward than that prescribed or allowed by law."

This rule of public policy has been relaxed only in those instances where the legislature for sufficient public reason has seen fit by statute to extend the stimulus of a reward to the public without distinction, as in the case of *United States v. Matthews*, 173 U.S. 381, where the attorney-general, under an act for "the detection and prosecution of crimes against the United States," made a public offer of reward sufficiently liberal and generic to comprehend the services of a federal deputy marshal. Exceptions of that character upon familiar principles serve to emphasize the correctness of the rule, as one based upon sound public policy.

The judgment below for that reason must be reversed.

**Rule of Law:** Under what rule of law does this issue fall?

**Holding:** What is the conclusion of the court?

## **SAMPLE BRIEF**

**Gray** (cop) v. **Martino** (crime victim)

### **Procedural History**

- Cop sues for reward money.
- District court awards money to the cop.
- Defendant appeals.

### **Issue**

At the time the contract was formed, was the plaintiff acting as a police officer charged with a legal duty to catch criminals without further reward?

### **Facts**

- Plaintiff makes a verbal contract with defendant. In return for \$500, plaintiff will find defendant's stolen jewels.
- Plaintiff had knowledge of whereabouts of jewels at contract formation.
- Plaintiff is a special police officer and has dealings with prosecutor's office.
- Defendant published advertisement for reward.
- Plaintiff finds stolen goods and arranges return.

### **Rule of Law**

1. A public officer cannot demand or receive remuneration or a reward for carrying out the duty of his job as a matter of public policy and morality
2. However, it is not against public policy for a police officer to receive a reward in performance of his legal duty if the legislature passes a statute giving the reward to the public at large in furtherance of some public policy - such as preventing treason against the US.

### **Reasoning**

- Court finds sufficient evidence to characterize this fellow as a public official.
- His interaction with the prosecutor's office weighed in as a factor in

suggesting he had a legal duty.

- Since he is characterized within the rule as a public official, he cannot, as a matter of law, receive a reward for the performance of his duties.

### **Holding**

Court reverses decision of lower court in favor of the plaintiff since he was characterized as a public official.