HOW TO BRIEF A CASE

Briefing cases is a tedious experience. It requires one to read case law very carefully, often more than once. It also requires the reader to analyze the case, making judgment calls in choosing the portions that are relevant for the reader’s needs. Finally, it requires the reader to turn those judgment calls into a coherent, summary form that expresses the essence of the judge’s opinion. This is exactly why case briefing is so important.

The case brief should consist of five (5) elements: Facts, Procedural History, Issue, Holding, and Reasoning. A sixth element could be the Decision. The following discussion explains how each of these five (5) parts of the brief should be drafted.

THE FACTS:

A good case brief starts with it Facts section, but in order to be “brief,” a Facts section should only include the key facts. As a rule of thumb, key facts are those whose existence not only places the case in a context, but also helps to shape the case’s outcome. How is that determined? It is done through careful reading. As you examine the facts from a case in order to brief it, ask yourself if the court could have reached its decision without the fact being in existence. If not, that usually indicates a key fact that should be in your brief.

THE PROCEDURAL HISTORY:

The Procedural History is a brief and succinct statement that summarizes how the case came to be in the court where the ruling is to be decided. The Procedural History states the initial theory under which suit was sought, the name of the court in which the action began, the court’s ruling on the issue and the actions taken by the losing party in response to the court’s ruling. The statement should also include the same information with respect to the higher court on which the appeal is based.

THE ISSUE:

The Issue is the brain center of the case brief and the hardest part of a brief to grasp. A good issue asks a legal question, not an “outcome” question. An issue is about what the court has to grapple with in the appeal, not about who wins or loses. A good issue also incorporates some of the key facts into its wording. You know you have written a good issue when it stands on its own – when it, by itself, would allow a reader who has not read the case to still get an understanding of it. Write your issue in the form of a question. Begin with the word, “Whether.” Do not be alarmed if your issue reads
differently from someone else’s since Issues can convey the same legal question but be expressed in different ways.

**THE HOLDING:**

For a case brief, the holding should simply answer the question presented in the Issue in as short a method as possible. On a formal level, however, a Holding is the pronouncement of law issued by the court’s majority opinion; it is the precedent. The Holding in a case brief, however, should just answer the Issue.

**THE REASONING:**

The Reasoning section is the heart of the brief. A good reasoning section tells the reader why the court did what it did or how it reached its conclusion. Since appellate courts most often reach their conclusions through relying on case law, then a question is often raised concerning whether a reasoning section should include case citations. It generally should not, since citations by themselves, explain nothing. Instead of citations, a Reasoning section should give the principles from the precedent cited in the case. Sometimes courts use prominent legal doctrines, commonly called black letter law, as the foundation on which the reasoning is built. A court’s reasoning is often in the latter part of the opinion and usually makes reference to the facts in the earlier part of the opinion. Likewise, your Reasoning section should revisit integral facts in order to summarize the court’s analysis.

**THE DECISION:**

The Decision section is procedural in nature. Appellate courts do one of four things with a case: affirm, reverse, remand or vacate. At times, however, courts do more than one of those options in the same opinion. Once can usually find the court’s decision at either the beginning or the end of the case. If a disciplinary sanction against an attorney is stated or upheld it is wise to include that sanction in your decision.