

## Reading and Briefing Common Law Cases

This packet includes a series of court decisions relating to the topic covered in the course. As case law is a binding source of law in common law systems, it is essential that you develop the skills necessary to read court cases critically and try to understand how the case follows, or differs from, existing law. Courts may change existing law, if the existing source of law is case law. If the existing source(s) of law is/are however a constitution, statutes or a regulation, the courts may only interpret, not change, the existing source of law.

Therefore, when you read a common law case, you must pay attention to all of the details of the case including its historical and social context and background. You must also be aware of the reasoning or principles that result from the court's decision, even if those principles are not fully articulated in the text of the opinion. Last, you must read the case critically; imagine how a reviewing court might read the opinion, how counsel for each party might read the case, and what sort of questions might the case raise during the discussion in class.

When you first begin to read common law cases, you may have to read them several times in order to fully understand them. However, the more cases you read, the more familiar you will become with their language and structure.

In order to help you learn how to brief a case quickly and thoroughly, the following basic guidelines have been provided for you:

### Reading Cases:

Before you begin to analyze the case, read it through once completely. Define for yourself any words that are unfamiliar to you. Focus on the general context of the case. Once you have done this, reread the case using the following steps:

#### **1. Name and Context:**

- What kind of controversy is before the court?
- Who are the parties?
  - Trial court = plaintiff and defendant
  - Intermediate appellate court = appellant and appellee

- Highest court = petitioner and respondent
- Which court decided the case? When? What was the historical or social context?

## **2. The structure and reasoning of the majority opinion:**

- Discuss the procedural developments in the case leading to the present court decision.
- Is the opinion you are reading from the trial court? Usually one reads opinions from appellate courts – why? By what procedural tool did the case go from trial to appeal?
- Summary of the facts
- Legal issue before the court, sometimes followed by the legal theory of each party.
- Court’s decision, known as the “holding” in the case
- Court’s reasoning
  - What rule or legal principle did the court apply?
  - On what authority does the court rely?
- Rule emerging from this decision
  - Is the rule from the case different from the rule that the court examined in making its decision?
  - Has the court modified the existing law in this jurisdiction or made new law?

**3. The structure and reasoning of the concurring and dissenting opinion(s):** The concurring and dissenting opinions of judges who do not join the holding of the court are an established element of the common law legal system. In many cases, the concurring and dissenting opinions offer important analyses that may someday become the view of the majority of the court. It is therefore vital to have a clear understanding of concurring and dissenting opinions when you come across them.

- What reasoning does the concurring or dissenting opinion put forth?
- Assess the merit of the majority and the concurring or dissenting opinion’s reasoning.  
Which is more persuasive to you? Why?

After completing the steps above, you should be able to explain the facts, holding, and reasoning of the case if asked. You should also be able to explain the legal principle which is represented by the case. This legal principle is the basis of the system of binding precedent that the common law uses. If you are not able to explain the legal principle, you should read the case again following the above procedure.

## **Briefing Cases:**

In order to help prepare for lectures and examinations, most American law students must prepare written “briefs” of each case in advance. A brief is an organized way to express the material contained in any case. While you will develop your own style of case briefing over time, it might be helpful to begin with the following “traditional” format. (You can use the acronym “FIRAC” to help you to remember the process.

### **1. Facts –**

- **Introductory Materials** = case name, citation, court, authoring judge or justice.
- **Procedural Posture** = The history of the case through the legal system, including everything that has happened in the courts up to the current holding.
- **Substantive Facts** = The “human story” or dispute that brings the parties before the court. What is the personal, business, or other problem that made the parties seek legal intervention.

**2. Issue** – This is the question that the parties bring before the court. You should try to boil this down to a narrow, factually specific legal question.

**3. Rule** – This is the *broad* legal principle for which this case stands. You should try to determine whether the court articulated a new legal principle or ruled upon existing legal principles. You should also try to determine how this case added to the body of existing law.

**4. Application of the facts to the rule** to determine the outcome of the issue. This is also described as the “**rationale.**” This is the court’s reasoning. You should be prepared to discuss how the court explained its decision. The court may use several lines of reasoning, if it does, you should explain each one thoroughly.

**5. Conclusion.** This is also known as the **holding** – This is the *narrow*, factually specific legal answer that the court gives to the question that the parties ask. You should state how the court decided this particular controversy.

In addition to the basic FIRAC steps, there are two steps of analysis that advanced students will need to make.

**6. Concurring and Dissenting Opinions** – The basic case brief requires the FIRAC elements. Discuss alternate reasoning on this issue by other members of the court. Dissenting and Concurring opinions are very important aspects of the common law legal tradition. Therefore, they should be given the same time and consideration as the majority opinion, particularly when preparing for class discussion.

**7. Evaluation** – This section should contain your thoughts, ideas and questions about the case.

The Certificate in US American Law (CUSL) program staff hope that the above guidelines will help you not only prepare for the weekly lectures and the examination, but will also help you develop the fundamental structural and analytical skills essential for gaining any true understanding of the common law legal system.