

Appendix 1. The Case Method in Casebook Courses

Appendix 1.C. Briefing Cases for Class Preparation in Casebook Courses – Complete Guide

Your professors in all your casebook courses likely will provide you with guidance in preparing case briefs for class discussion, even if only by example through the questions they ask about cases. The discussion below provides detailed instructions, which you can later tailor to the needs and customs of each course.

When you research cases for an office memorandum, you will employ many of the skills of close reading, interpretation, and synthesis that you develop over the first semester in briefing cases for other courses. However, in an office memorandum, you will present your case analysis in a different way than in preparing a case for class discussion. Accordingly, refer to our textbook for instruction on case analysis in an office memorandum.

I. Study of Cases in Your First-Year Casebook Courses

When preparing for law school classes, like Torts, Contracts, Property, and Criminal Law, you must analyze cases: judicial decisions, mostly appellate, published as “opinions,” that resolve specific disputes. In those and similar courses, casebooks simplify your task. Rather than requiring you to search for unedited judicial opinions in the library, your assigned casebooks will group judicial opinions in logical fashion and will present them in edited form to isolate selected issues.

When preparing for class discussion, you should anticipate the possibility that your professor will call on you to recite the facts of the case, identify the issue and holding, explain the court’s reasoning, opine whether the court would reach the same decision under slightly different hypothetical facts, critique the court’s decision or analysis, or synthesize (compare) the decision with other decisions on the same or a similar issue. Such preparation for a class of one to two hours should take you several hours of intense reading, thinking, and note-taking. This process of preparation is commonly referred to as “briefing” the case for class.

The resulting “case brief” is not an end in itself; seldom will a professor ask you to turn it in for review. It is simply a vehicle for class preparation. Accordingly, view the following recommendations as simply one way of preparing for a typical class. If you find that another method of preparing for a particular professor’s class is more effective, adapt your study techniques accordingly.

II. Preparing a Case Brief

A. General Approach and Format

Whether researching a memorandum problem or preparing for class, you should prepare “case briefs”: written analytic summaries of appellate opinions. Although you will eventually develop shorthand techniques for taking notes on cases, during your first semester you should prepare formal, thorough case briefs to ensure that you develop skills of case analysis.

You should not be troubled if your instructors and textbooks recommend a variety of formats for case briefs. All the formats include essentially the same information; they vary chiefly in emphasis and organization. Below are outlines of two sample formats. If necessary,

you can modify them to suit the requirements of a professor who asks students to recite parts of a case in a different order.

A	B
1. Identification	1. Identification
2. Issue(s) and Holding(s)	2. Facts
3. Facts	3. Procedural History
4. Procedural History	4. Issue(s) and Holding(s)
5. Reasoning	5. Reasoning
6. Evaluation	6. Evaluation
7. Synthesis	7. Synthesis

Although format B may be more popular, format A has the advantage of forcing you to frame the legal issue before stating the facts, thus ensuring that you state the facts with an appreciation for their legal significance. The issue and holding also provide an effective overview of the case brief.

Whichever format you select, you should start by placing the case in context in your study, as described in Section B below. Then, read the case completely before beginning to write. To state some elements of a case brief, you must first understand other elements; moreover, the organization of an appellate opinion may differ from that of either case brief format outlined above. Indeed, some elements of the case brief may not appear explicitly anywhere in the opinion. For example, the precise issue and holding of a decision may be only implicit in the court's statement of the facts, legal reasoning, and disposition. Consequently, before briefing a case, you should read and reread the entire opinion until you understand all its elements.

You might try this technique for reading and briefing: (1) Read the opinion once, at a moderate pace, to get a general idea of its content. (2) Then, study it carefully, at a deliberate pace, looking up any unfamiliar terms, and filling in the elements of your case brief. (3) Finally, read it again, aiming for deep understanding, and adjusting your case brief to reflect your additional study. Sometimes notes after the case will help clarify some passages that are difficult to understand.

During step 1, consider whether you identify with one side of the dispute, or with the judge writing the opinion, or a dissenting opinion. As you proceed to step 2, you can engage more actively with the case by adopting the role of a party's attorney, who must understand the case to explain it to a new client, or by adopting the role of the authoring judge who must persuade other judges to sign on to the opinion.

As you study the case, try to anticipate the questions that your professor will ask in class. It might help to review the class syllabus, the section headings in the casebook, and any notes in the casebook before and after the case. Pay special attention to any comments your professor made about the next case for study at the end of the previous class. All these things can provide

clues to the points that your professor is likely to explore and emphasize when discussing the case.

B. Elements of a Case Brief

Before addressing the more formal elements of the case brief, take a moment to place the case in context in your studies. Glance at the class syllabus or the section heading in the casebook in which the case appears. Remind yourself of the topic that the class is exploring and make a quick note of that context immediately above the case name in your brief, such as: “Remedies/Damages/liquidated damages v. penalty clauses.” This quick preliminary step can provide some helpful orientation before you study the case and summarize the following elements.

1. Identification of the Case

In preparing a case for class, you should begin your case brief with

- the name of the case, which is usually taken from the names of two adversary parties;
- the jurisdiction, in the sense of the geographical and political body, within which the court sits;
- the level of the deciding court;
- the date of decision; and
- the page on which the case appears in the casebook (“CB”), which facilitates quick cross-reference between notes and casebook.

For example, the following notes identify a 1904 decision of the Supreme Court of Rhode Island, which appears in the student casebook at page 387:

Davis v. Smith, Rhode Island Supreme Court (1904), CB 387

To develop familiarity with citation form, you can record the full citation to the reporters in the library in which the opinion appears, if that citation is presented in your casebook. The following example includes such a full citation, along with an additional reference to the page on which the edited opinion begins in the student casebook:

Davis v. Smith, 26 R.I. 129, 58 A. 630 (1904), CB 387

By citing to the official Rhode Island Reporter, “R.I.,” you have referred to the Rhode Island Supreme Court under commonly accepted citation form. Consequently, both examples above identify the authoring court in *Davis v. Smith* as the court of last resort in Rhode Island. That information is significant: It shows that the authoring court is not bound by lower court decisions within Rhode Island or by decisions in other states, although such decisions might provide persuasive authority.

The early date of the *Davis v. Smith* decision, 1904, helps identify the decision’s place in Rhode Island law. This decision adhered to nineteenth-century legal principles that minimized a landlord’s duties and liability to a tenant’s infant son for unsafe conditions, partly because the infant son was not, and could not be, a party to the lease. As discussed in Chapter 3, any aging decision can lose force or relevance over the years because of growth in the economy,

technological advances, and changes in social attitudes and legal context. Such changes prompted the Rhode Island Supreme Court to overrule *Davis v. Smith* in 1967, stating that “[we] can perceive no reason to abide by a rule of law promulgated over a half century ago and leave unchanged a principle which in our opinion no longer serves a useful purpose in today’s times.” *Rampone v. Wanskuck Bldgs., Inc.*, 227 A.2d 586, 588 (R.I. 1967) (allowing employee of tenant to sue landlord in tort after she stepped in a hole in the floor, when the landlord had undertaken a contractual obligation to the tenant to make repairs).

The name of a case does not always clearly identify the original parties to the underlying dispute. A named party may be a representative of one of the original disputants or an assignee of its rights and obligations. For example, the dispute in *Hamer v. Sidway*, 27 N.E. 256 (N.Y. 1891), concerned the contract rights and obligations of William E. Story, Sr., and his nephew, William E. Story, II. The case name is taken from the parties to the lawsuit: (1) the executor of the senior Story’s estate and (2) a person who acquired the nephew’s contract rights through assignment.

Identifying the court may be problematic as well. Most court systems use “Court of Appeals” to refer to the intermediate appellate court and “Supreme Court” to refer to the court of last resort. In the New York state court system, however, the trial courts of general jurisdiction are the Supreme Court and the County Court; the intermediate appellate courts are the appellate divisions of the Supreme Court and the appellate terms of the Supreme Court; and the court of last resort is the Court of Appeals.

2. Issue and Holding

a. Issue

An “issue” is a material question of fact or law that arises from the claims, defenses, and arguments of the parties. An issue may be a question of law, such as whether Congress intended the term “sex” to encompass sexual orientation as well as biological status as male or female in section 703(a) of Title VII of the Civil Rights Act of 1964. Except at the trial level, an issue rarely presents only a question of fact, such as whether the evidence shows that an employer exclaimed “Women can’t perform this job!” when he rejected a woman’s application for employment.

Most commonly, the issue before a trial or appellate court requires a combination of legal and factual analysis in the determination of whether the facts of a dispute satisfy a general legal rule. An example of such a question is whether certain conduct by an employer in fact created a discriminatory work environment, thus satisfying Title VII’s rule regarding discrimination in “conditions . . . of employment.” By applying the rule to the facts and reaching a conclusion, the court not only resolves the immediate dispute before it, but it also refines the rule by adding more concrete substance to its abstract terms.

If you look for a concise statement of the issues in an appellate opinion, you might find only frustration. Courts do not always state the issues in simple terms before resolving them. When a court does formally state the issues, it might not state them with the narrowness and specificity to which you should aspire if you seek to maximize the development of your analytic skills. You can find clues to the precise question addressed by the court in the court’s description of the trial court decision that it is reviewing, in its summary of the parties’ arguments on appeal, in the emphasis it places on specific facts, and in its discussion of the law.

At a minimum, your statement of an issue should identify a substantive legal question that distinguishes the case from the bulk of case law in the casebook. In addition, you should specifically incorporate the facts of the case that are critical to the court's analysis and that therefore help to define the precedential effect of its decision.

For example, the following statement of the issue obviously is too general:

Did the trial court correctly dismiss the tort claim against the defendant?

This issue statement does not distinguish the case from countless others in a first-year casebook on tort law. The issue statement should identify the narrower topic of tort law presented in the case:

Is an employer liable in tort for discharging an at-will employee for a reason that violates public policy?

This statement of the issue identifies (1) a legally significant relationship between the parties (employer/employee), (2) the nature of the claim (tort), (2) the basis for the claim (public policy), and (4) the obstacle to relief on a contract claim (by its terms, the employment contract is terminable at the will of either party).

Though the second statement of the issue is much more informative, it still leaves room for improvement. Your issue statement will better define the effect of the decision as precedent if you more specifically refer to the critical facts:

Is the employer liable in tort for violation of public policy when he discharged an at-will employee because of her truthful testimony in a hearing of the State Dept. of Health and Safety?

This statement of the issue identifies the source of public policy, and it gives sufficient factual details to permit an assessment of the importance of that policy.

The point at which the disadvantages of increased complexity begin to outweigh the benefits of enhanced specificity in the issue statement is a matter of judgment and personal style. As discussed in the next subsection, you can reduce the complexity of the issue statement by transferring some of the critical information to the statement of the holding.

b. Holding

The "holding" is simply the court's answer to the question presented in the issue. If you state the issue so that it is sufficiently narrow and specific to provide a basis for evaluating the effect of the decision as precedent, you may state the holding with a simple "yes" or "no." Of course, if a professor asks you during class discussion for the holding of a case without first asking for the issue, she expects you to offer more than "yes" or "no." In those circumstances, you should transform the issue into a detailed holding in the form of a statement:

By firing an employee because she had testified at a hearing of a state agency, the employer committed the tort of wrongful discharge in violation of public policy.

Even when pairing the holding with a detailed statement of the issue, you may wish the holding to convey further information than "yes" or "no." For example, if a fully descriptive statement of the issue would be unwieldy, you can move some of the critical information to the holding:

Issue: Did the employer discharge the employee for a reason that violates public policy, thus rendering the employer liable in tort for wrongful discharge?

Holding: Yes. By discharging the employee because she testified at a hearing of the State Dept. of Health and Safety, the employer violated public policy reflected in a statute authorizing the Department to gather information about workplace safety and to develop regulations based on that information.

Because narrowly drafted statements of the issue and holding represent an attempt to identify the effect of the decision under *stare decisis*, from a practical standpoint the precise contours of the issue and holding may not become clear until subsequent decisions interpret and apply them as precedent. Through that process of determining whether the prior decision is controlling, analogous, or distinguishable, subsequent decisions help explain—or might even redefine—the relative importance that various facts and policies played in the prior decision. In turn, this process helps the court explain the relative importance of various facts and policies to the resolution of subsequent disputes.

Consequently, the issue and holding of the decision cannot be identified with perfect certainty when analyzing that decision in isolation. Rather, each decision presents a range of possible statements of the issue and a holding. When preparing for class, you should try to state an issue and a holding that fall somewhere within a plausible range. Try also to appreciate how other statements nearer to either end of the plausible range would aid in the advocacy of either side of a subsequent dispute.

In a future case dealing with an employee's testimony to the State Dept. of Transportation, for example, an employer might argue that precedent on the tort of wrongful discharge should be limited to testimony before the State Dept. of Health and Safety, because the public interest in maintaining safe workplaces is especially great. The other party might argue that the precedent should be read more broadly to state a principle about the public interest in encouraging truthful testimony in hearings of any state agency.

3. Facts

a. Significance of Facts

Pressed for time, you might be tempted to skim over the facts of a case and rush to the middle of the opinion, searching for succinct statements of law that you can preserve in your notes. In the final analysis, however, legal rules are nothing more than statements of the legal consequences of specific facts.

Whether case law is based on statutory interpretation or common law, it generally develops gradually, with each new opinion adding refinements in the law through its application of legal standards to the facts of a new dispute. A court's statements about the law are fully meaningful only when read in the context of the facts of the dispute that the court resolves. Consequently, you should master the facts of a case with the same intensity that you devote to appreciating the court's discussion of legal principles.

b. Selecting Facts for Your Fact Statement

Your statement of facts should include all "material" facts, which are facts that have legal significance and therefore directly influence the court's holding and reasoning. Identification of

material facts is not an exact science; rather, it is a matter of judgment that requires an appreciation of the factors that the court considered in reaching its decision. In your statement of facts, you may also refer in general terms to any additional background facts that are helpful to a full understanding of the dispute. At the least, your statement of facts should identify

1. the principal parties to the underlying dispute that gave rise to the legal proceedings,
2. the relationships between those parties, and
3. the events that led to the dispute.

You may refer to such facts as “historical facts” to distinguish them from “procedural facts,” which are discussed in Subsection 4 below.

For purposes of general discussion, this book often uses the procedural term “plaintiff” to refer to the party who initiates a lawsuit and the term “defendant” to refer to the one against whom suit is brought. You can create a more concrete image of the underlying dispute, however, if you identify the parties with their more specific, formal names.

In addition, you should consider supplementing the formal names with labels that have substantive, rather than merely procedural, significance. Because statutes generally address broad categories of activities rather than individual cases, they often create rights and obligations in broad but carefully defined classifications of persons, such as “employers” and “employees” or “buyers” and “sellers.” Similarly, although courts interpret statutes and develop common law in the context of individual disputes, a series of judicial decisions on closely related points may create case law that allocates rights and obligations according to membership within general classes of persons, such as “landowners” and “trespassers.” Therefore, you can more clearly reveal the legal significance of material facts in your case brief if you identify the named parties or other important actors with labels that reflect undisputed and legally significant classifications, such as employer, buyer, seller, merchant, landlord, tenant, landowner, or invitee.

When you assign a label to a party or otherwise characterize a factual matter, do not prematurely state a conclusion on an issue that is disputed by the parties and that is later analyzed in the opinion. For example, your statement of facts should not refer to a seller as a “merchant” if the parties dispute whether the seller is a merchant for purposes of determining the seller’s warranty obligations under the Uniform Commercial Code. Similarly, your statement of facts should not state that the defendant in a criminal burglary prosecution “broke into” a “dwelling” if “breaking” and “dwelling” are elements of the charged offense and if the parties dispute those elements.

Rather than stating disputed legal conclusions in your statement of facts, summarize the subsidiary facts that the court analyzes in reaching its conclusion. For example, in the first case in the preceding paragraph, you might state that the seller of a computer system did not normally buy or sell goods, and that his sale of the computer system was an isolated transaction, but that the seller’s occupation as a computer repair person led the buyer to believe that the seller had special knowledge of the performance capabilities of different computer systems. In other parts of your case brief, you can discuss whether those subsidiary facts satisfy the legal definition of “merchant,” a matter that the parties dispute.

c. Gaining a Working Knowledge of the Facts

To be able work with the facts, you must go beyond simply summarizing or reorganizing the opinion's fact statement. Otherwise, you may find yourself simply transferring words and phrases from the casebook to your case brief without truly comprehending their meaning. Instead, seek a conceptual understanding of the facts, one that creates concrete images of the parties and transactions. If necessary, prepare charts, timelines, or other graphics that vividly represent the relationships between multiple parties and events.

To fully appreciate this point, return briefly to the discussion of *Hadley v. Baxendale*, reproduced in Appendix 1.A. Notice how the charts summarize the transactions and legal proceedings in a rough timeline. Did those charts help you form a vivid image of the events? If so, imagine how your own charts or other graphics can help you visualize complex transactions or relationships among parties.

As a practical matter, moreover, preparing graphics will enhance your class performance in at least three ways. First, you will force yourself to thoroughly study and comprehend the facts, because you will not be able to represent the facts in a graphic form unless you truly understand what happened in the case. Second, by glancing at your graphic representation in class, you can quickly recall the facts. Third, by relying primarily on such a representation in your class recital of the facts, you will tend to describe the facts more naturally and spontaneously than if you mechanically read your summary of the facts verbatim from your notes.

4. Procedural History

a. Elements of Procedural History

In your statement of the procedural history of a case on appeal, you should identify:

1. which party or parties originally brought legal action against which others,
2. the legal claims and defenses and the relief sought in that action,
3. the trial court's disposition along with the stage of the proceedings at which the trial court rendered its decision,
4. the dispositions of any intermediate appellate courts below the authoring court, and
5. the authoring court's disposition.

In some cases, it may also be helpful to summarize the arguments that the parties made to the trial or appellate courts.

The case name on appeal does not always reveal which party initiated the legal action in the trial court. In the trial court, the case name begins with the plaintiff's name. In some appellate courts, however, the case name begins with the name of the party who is dissatisfied with the trial court's decision and has thus appealed (the "appellant") or petitioned for review (the "petitioner").

b. Significance of Procedural History

The nature of the plaintiff's legal claim and request for relief in the trial court can provide a key to the appellate court's analysis. For example, classification of a plaintiff's legal claim as one

in tort rather than in contract might determine whether the claim is barred by a statute of limitations or whether the plaintiff is entitled to punitive damages. Similarly, whether a contract is sufficiently definite to enforce could depend on whether the plaintiff seeks enforcement through an award of damages or through injunctive relief granting specific enforcement.

Moreover, by stating the dispositions of all the courts that rendered decisions in the case, you can identify precisely the ruling that the authoring court has reviewed. The “disposition” is the practical, procedural effect of the court’s holding on the litigation. In an opinion of a trial court, it might be “action dismissed,” “summary judgment for the plaintiff,” or “judgment on the jury verdict for the defendant.” In an opinion of an appellate court, it might be “affirmed,” “reversed,” or “reversed and remanded for further proceedings.”

In stating the trial court’s disposition, try to identify the stage of the proceedings at which the trial court rendered judgment. An appellate court gives varying degrees of deference to different kinds of trial court decisions. Therefore, the likelihood of reversal by an appellate court depends partly on the stage of the proceedings at which judgment is rendered and, in some cases, on the classification of critical issues as ones of fact or law.

For example, although appellate courts review without restriction the legal rules formulated by trial courts, they restrict their review of the factual findings made by a trial judge or jury after a full trial, overturning such findings only in unusual circumstances. On the other hand, a trial judge does not resolve disputes of fact when using summary judgment to dispose of claims before trial, and an appellate court will reverse summary judgment if it determines, without deference to the analysis of the trial court, that the parties genuinely dispute material facts. Further, on a motion to dismiss an action for failure of the complaint to state a claim for relief, both the trial and appellate courts assume the truth of the allegations of fact in the complaint and analyze the legal significance of those allegations.

5. Reasoning

a. Rule and Rationale

By carefully studying the reasoning of opinions, you will gradually gain familiarity with the way in which judges decide cases. With that acquired knowledge, you can develop the ability not only to analyze a legal dispute and offer a reasonable prediction of its outcome in court, but also to persuade a court to reach a conclusion favorable to your client.

Unfortunately, published opinions provide only an imperfect guide to the decision-making process. For example, the published opinion may exclude some of the more pragmatic reasons privately expressed by panel members to one another and may focus instead on more conventional legal analysis. Because an opinion thus communicates a court’s actual reasoning imperfectly, do not hesitate to read between the lines and to make at least a mental note of facts or policy considerations that you believe might have contributed to the court’s decision, even though the court did not expressly identify them as critical factors.

On the most fundamental level, when stating a court’s reasoning, note whether the court is interpreting and applying a constitution or statute or is developing common law. Many judicial opinions rely on two or more sources of law, sometimes in combination and sometimes applied to different issues. Beyond that, you should summarize the court’s reliance on precedent, its analysis of policy considerations, its explanation of the significance of critical facts, and its

adoption or recognition of a legal rule of general application.

Some opinions do not formulate or restate a general legal rule that controls the analysis. Instead, they simply define a dispute on specific facts, reach a decision, and provide a justification that is narrowly tailored to the dispute before the court. Such an opinion leaves you only with a “holding” in the narrowest sense. Using techniques described near the end of this guide, however, you can synthesize several such cases addressing similar issues and derive your own rule of general application.

When you analyze cases for class discussion, you should reflect on how the court’s opinion might apply to facts other than those presented in the dispute that the court resolved. Your professors will provide many opportunities for application of legal rules to new facts in classroom hypotheticals and in essay examinations. You should develop a facility for analyzing—and developing arguments about—how the law announced in a case would apply to different facts.

b. Holding and Dictum

One of your most challenging tasks is to distinguish the holding of a decision from dictum. Narrowly defined, a “holding” is the court’s resolution of an issue before it, limited to the material facts of that dispute. It does not include statements in the opinion about the probable outcome of disputes not before the court.

“Dictum,” on the other hand, is a statement in the opinion that helps explain the court’s reasoning by addressing questions not squarely presented in the dispute before the court. With dicta, a court may compare its rule of decision with other rules that it does not apply to the dispute, or it may discuss how its rule of decision might apply to facts other than those presented in the dispute before it.

The issue, facts, and holding of a previous decision limit the decision’s effect as precedent under stare decisis. Even a lower court that is absolutely bound by the holdings of the previous decision may choose not to follow a dictum in the decision.

Dictum in an opinion is not meaningless; it may have considerable persuasive value. Nonetheless, because dictum does not carry the full weight of a holding, you should take care to read all the court’s reasoning in view of its narrow, fact-specific holding. Do not confuse what a court says, or even what it says it is doing, with what it actually does in a case.

6. Evaluation

You should resist any tendency to defer to the reasoning of a judicial decision as the expression of the single “correct” analysis of a dispute. Many disputes present close questions that are reasonably susceptible to alternative, inconsistent resolutions, something that is made explicit when a majority opinion is followed by a strong dissenting opinion.

You should read a decision critically to determine whether you agree with the result and the reasoning. Constant practice in critically examining judicial opinions will help you develop the ability later to persuade a court to adopt or reject the rule or reasoning of nonbinding authority.

On one level, you should examine an opinion for doctrinal integrity by asking questions such as these:

- Does the court analogize or distinguish precedent in a convincing manner?

- Does it apply the appropriate standard of review?
- Does it analyze a statute under accepted principles of statutory interpretation and construction?
- Does the court place excessive emphasis on certainty in a general rule at the expense of equitable considerations in the context of peculiar facts?

On another, closely related level, you should examine the policy and practical implications of an opinion. For example, you might ask:

- Does a decision that promotes economic security for employees unwisely reduce economic efficiency at the expense of producers and consumers?
- Does a court-developed tort standard allocate risks among parties in a way that encourages them to conduct themselves in a manner that avoids harm to others yet encourages socially productive ventures?

7. *Synthesizing the Case with Other Cases*

a. A Bridge between Case Briefs and Course Outlines

Perhaps the most important and the most challenging element of a case brief is the “synthesis,” in which you explore the relationships between two or more cases that address the same issue or closely related ones. After comparing the critical elements of each in a series of cases, you can refine your view of the holding of each case in the series.

With synthesis, you can either (1) formulate a general principle that explains all the decisions or (2) compare and evaluate the inconsistent approaches of different courts or of the same court over time. By synthesizing cases, you take a critical step in legal analysis that will have special significance when you look ahead to final examinations: Synthesis forms a bridge between daily briefing of isolated cases and periodic preparation of course outlines.

When studying law, you cannot fully appreciate the legal significance of a single judicial decision without examining its role within a larger body of case law; yet you cannot master the larger body of case law without first gaining at least an imperfect grasp of its parts, first one case in isolation and then a growing group of cases. As you brief a series of cases, you gain new insights by examining the cases’ relationships to one another. Those insights may cause you to modify your early, less sophisticated understanding of a case standing alone or standing with fewer cases in the series. Additionally, they may enable you to identify a general legal principle, or at least a set of accepted criteria, that helps to explain the decisions.

b. Reconciling Disparate Results

The first step in synthesizing cases is to compare the cases’ substantive results as conveyed by their holdings, regardless of the procedural dispositions of the appellate courts. For example, assume that two appellate decisions from different jurisdictions, States X and Y, have addressed the question of whether a specific newspaper advertisement amounts to an “offer,” defined at common law as an expression of willingness to enter into a contract that empowers the offeree to create a contract by accepting the offer. In Case A, an appellate court of State X affirmed a trial court judgment that a specific newspaper advertisement amounted to an offer to sell the advertised goods. In Case B, an appellate

court of State *Y* affirmed a trial court judgment that a different newspaper advertisement communicated only an invitation to negotiate rather than an offer to sell. If you are not yet prepared to abandon hope of finding some degree of consistency among the states in their formulation and application of common law, you should be curious about the reasons for the difference in results.

In the next step of the synthesis, you should determine whether Cases *A* and *B* are materially distinguishable and therefore warrant different results on application of the same legal principles, or whether they are legally inconsistent and thus represent different views of the law adopted by courts in different states. In case of doubt, you should first attempt to reconcile the cases by searching for distinctions in facts, procedure, or both that support a conclusion that the cases are legally consistent. For example, unusually specific and detailed language of commitment in the advertisement in Case *A* might clearly communicate a willingness to conclude a contract for sale on a customer's assent. In contrast, more general language in the advertisement in Case *B* might leave important terms of sale unaddressed, suggesting a need for further bargaining before the advertiser is willing to commit to a contract for sale.

In these circumstances, you could compose a single legal rule that is consistent with the reasoning of both cases and that appropriately produces different results on application to the contrasting facts of the cases:

A newspaper advertisement is an offer only if it expresses definite commitment, leaving no important detail for future negotiation.

With such a synthesized rule, you will better understand the holdings of Cases *A* and *B*, more firmly grasp otherwise abstract legal principles, and improve your ability to predict the outcome of a new case that presents the same issue on new facts. By applying the same general rule to the materially different facts of the two cases, you can then explain why the cases should reach different conclusions even though adopting and applying the same legal rule.

If you fail to find material distinctions in facts or procedure between Cases *A* and *B*, you can safely conclude that the appellate decisions are legally inconsistent. In that event, you should analyze the reasons for the different views of the law. Perhaps States *X* and *Y* apply different legal approaches because they emphasize different policies. Such a synthesis helps you to put conflicting case law into perspective and to develop the ability to persuade a court in a future case to adopt one line of conflicting authority over another.

Different results in cases decided by the same court present especially interesting questions of synthesis, because the court cannot depart from its prior decision under *stare decisis* without overruling the prior decision. If the cases are not obviously distinguishable but the court does not explicitly overrule the prior decision, you should search with special care for possible distinguishing features before concluding that the court has implicitly overruled the prior decision. Of course, the proper synthesis may lie in middle ground: A decision can limit the range of possible interpretations of a prior holding without completely overruling it.

c. Implications for Consistent Results

If two cases reach the same result, a synthesis should compare their facts and reasoning to determine whether the courts were influenced by similar factors. In Case *A*, for example,

suppose that a court in State X held that a certain newspaper advertisement constituted an offer to sell the advertised goods. In Case C, suppose further that a court in State Z found a different newspaper advertisement to constitute an offer. Although both decisions find offers, a comparison of the facts could suggest that in State Z found an offer in Case C on weaker facts than those in Case A. That still leaves open the possibility that State X would similarly find an offer on equally weak facts in a new case. Alternatively, the reasoning of Case A might suggest that the court in State X is more cautious about recognizing that parties have committed to contractual obligations, and would not reach the same result if presented with the facts on which the court in State Z found an offer in Case C.

d. Limited Utility of a Case Viewed in Isolation

When you synthesize, you compare two or more cases. Therefore, when you prepare a single case brief in isolation, you will not include a synthesis, except perhaps in the form of a prediction of the questions that may arise later from uncertainty in the breadth of the holding of the case.

In a perfect world, you would read all opinions in a series of cases relating to a problem area before briefing any of them. You would brief each case with an eye to the problems raised in the others, and only then prepare a single synthesis of the entire series of cases.

Unfortunately, class assignments and library research techniques seldom permit that luxury. As a more practical procedure, you should prepare a synthesis for each case brief in a series beginning with the second case. Each succeeding synthesis will reflect the addition of a case to the group of cases among which you can make comparisons, thus adding new insights to previous syntheses. If your casebook does not provide more than one main case on a topic, try to synthesize the main case with notes cases or hypothetical cases following the main case, or with hypothetical cases presented in class by your professor.

Checklist for Briefing a Case

In preparing a case brief, follow these steps:

- Place the case in context, briefly noting its place in your current topic of study.
- Thoroughly read the entire case at least once.
- Identify the case. Include details that help identify the case's place in the overall case law of the jurisdiction and the case's value as precedent, including authoring court and date of decision.
- State the issue and the holding as narrowly as possible by tailoring your statement of the issue to critical facts, without making your question cumbersome and unwieldy.
- Summarize the material facts and the helpful background facts.
- Summarize the procedural history, including the dispositions in the trial court and on appeal.
- Summarize the reasoning of the court. Distinguish holding from dictum. Identify general

rules recognized by the court and pay particular attention to the authority, policy analysis, and logic on which the court relies.

- Critically evaluate the court's holding and reasoning.
- Synthesize the case with others that present the same or a similar issue. Attempt to explain apparently conflicting results among the cases.

Exercises for Case Briefs

1. Case Brief

Read the following excerpt of the appellate opinion in *White v. Benkowski* and prepare a case brief. Try to state the issue more narrowly than the court does. Critically evaluate the court's holding and dicta regarding the availability of punitive damages; ask yourself whether you can defend the court's views on the grounds of economic efficiency, certainty in legal rules, equity in individual cases, the proper roles of compensation and deterrence, or any other policy considerations. You should not yet attempt to synthesize this case with any others, although you may comment on possible extensions or limitations to its holding that subsequent cases could introduce. After completing your case brief, compare it with the sample in Problem 2 below.

WHITE V. BENKOWSKI
Supreme Court of Wisconsin
37 Wis. 2d 285, 155 N.W.2d 74 (1967)
[footnotes in the original omitted]

This case involves a neighborhood squabble between two adjacent property owners.

Prior to November 28, 1962, Virgil and Gwynneth White, the plaintiffs, were desirous of purchasing a home in Oak Creek. Unfortunately, the particular home that the Whites were interested in was without a water supply. Despite this fact, the Whites purchased the home.

The adjacent home was owned and occupied by Paul and Ruth Benkowski, the defendants. The Benkowskis had a well in their yard which had piping that connected with the Whites' home.

On November 28, 1962, the Whites and Benkowskis entered into a written agreement wherein the Benkowskis promised to supply water to the Whites' home for 10 years or until an earlier date when either water was supplied by the municipality, the well became inadequate, or the Whites drilled their own well. The Whites promised to pay \$3 a month for the water and one-half the cost of any future repairs or maintenance that the Benkowski well might require. As part of the transaction, but not included in the written agreement, the Whites gave the Benkowskis \$400 which was used to purchase and install a new pump and an additional tank that would increase the capacity of the well.

Initially, the relationship between the new neighbors was friendly. With the passing of time, however, their friendship deteriorated and the neighbors actually became hostile. In 1964, the

water supply, which was controlled by the Benkowskis, was intermittently shut off. Mrs. White kept a record of the dates and durations that her water supply was not operative. Her record showed that the water was shut off on the following occasions:

- (1) March 5, 1964, from 7:10 P.M. to 7:25 P.M.
- (2) March 9, 1964, from 3:40 P.M. to 4:00 P.M.
- (3) March 11, 1964, from 6:00 P.M. to 6:15 P.M.
- (4) June 10, 1964, from 6:20 P.M. to 7:03 P.M.

The record also discloses that the water was shut off completely or partially for varying lengths of time on July 1, 6, 7, and 17, 1964, and on November 25, 1964.

Mr. Benkowski claimed that the water was shut off either to allow accumulated sand in the pipes to settle or to remind the Whites that their use of the water was excessive. Mr. White claimed that the Benkowskis breached their contract by shutting off the water.

Following the date when the water was last shut off (November 25, 1964), the Whites commenced an action to recover compensatory and punitive damages for an alleged violation of the agreement to supply water. . . .

The jury returned a verdict which found that the Benkowskis maliciously shut off the Whites' water supply for harassment purposes. Compensatory damages were set at \$10 and punitive damages at \$2,000. On motions after verdict, the court reduced the compensatory award to \$1 and granted defendants' motion to strike the punitive-damage question and answer.

Judgment for plaintiffs of \$1 was entered and they appeal.

Wilkie, Justice.

Two issues are raised on this appeal. . . .

1. Are punitive damages available in actions for breach of contract?

. . . .

Punitive Damages

. . . .

Over one hundred years ago this court held that, under proper circumstances, a plaintiff was entitled to recover . . . punitive damages.

Kink v. Combs is the most recent case in this state which deals with the practice of permitting punitive damages. In *Kink* the court relied on *Fuchs v. Kupper* and reaffirmed its adherence to the rule of punitive damages.

In Wisconsin compensatory damages are given to make whole the damage or injury suffered by the injured party. On the other hand, punitive damages are given

. . . on the basis of punishment to the injured party not because he has been injured, which injury has been compensated with compensatory damages, but to punish the wrongdoer for his malice and to deter others from like conduct.

Thus we reach the question of whether the plaintiffs are entitled to punitive damages for a breach of the water agreement. The overwhelming weight of authority supports the proposition that punitive damages are not recoverable in actions for breach of contract. In *Chitty on Contracts*, the author states that the right to receive punitive damages for breach of contract is now confined to the single case of damages for breach of a promise to marry.

Simpson states:

Although damages in excess of compensation for loss are in some instances permitted in

tort actions by way of punishment . . . in contract actions the damages recoverable are limited to compensation for pecuniary loss sustained by the breach.

Corbin states that as a general rule, punitive damages are not recoverable for breach of contract.

In Wisconsin, the early case of *Gordon v. Brewster* involved the breach of an employment contract. The trial court instructed the jury that if the nonperformance of the contract was attributable to the defendant's wrongful act of discharging the plaintiff, then that would go to increase the damages sustained. On appeal, this court said that the instruction was unfortunate and might have led the jurors to suppose that they could give something more than actual compensation in a breach of contract case. We find no Wisconsin case in which breach of contract (other than breach of promise to marry) has led to the award of punitive damages.

Persuasive authority from other jurisdictions supports the proposition (without exception) that punitive damages are not available in breach of contract actions. This is true even if the breach, as in the instant case, is willful.

Although it is well recognized that breach of a contractual duty may be a tort, in such situations the contract creates the relation out of which grows the duty to use care in the performance of a responsibility prescribed by the contract. Not so here. No tort was pleaded or proved.

Reversed in part by reinstating the jury verdict relating to compensatory damages and otherwise affirmed.

2. Sample Case Brief for *White v. Benkowski*

Compare the case brief that you prepared in Problem 1 with the following sample. Remember that the sample is only an example of a reasonable reaction to the opinion; it is not necessarily the best interpretation and evaluation of the opinion, and it certainly is not the only reasonable one. In particular, the "evaluation" is a matter of individual opinion.

Context: Remedies for Breach of Contract/Limits on Damages/Punitive Damages

***White v. Benkowski*, 37 Wis. 2d 285, 155 N.W.2d 74 (1967), CB 12.**

Issue and Holding: Is Buyer entitled to an award of punitive damages for Supplier's malicious breach of a contract to supply water, even though Buyer established no independent tort? No.

Facts: The Whites (Buyer) and Benkowskis (Supplier) are neighbors. By written agreement, Supplier promised to supply Buyer's house with water from Supplier's well for 10 years, unless the well became inadequate or unnecessary. The relationship deteriorated, and Supplier maliciously shut off Buyer's water supply partially or completely on nine occasions for the purpose of harassing Buyer.

Procedural History: Buyer sued Supplier for compensatory and punitive damages, alleging only breach of contract. On a finding of malicious breach of contract, the jury awarded Buyer \$10 in compensatory damages and \$2,000 in punitive damages. On motions after verdict, the trial court disallowed punitive damages and reduced the compensatory damage award from \$10 to \$1. Buyer appealed. The appellate court reversed the trial court's reduction of the award for compensatory damages, but it affirmed the trial court's elimination of the award for punitive damages.

Reasoning: Prior Wisconsin case law, persuasive authority from other jurisdictions, and the views of commentators support the following common law principle: Even an intentional and malicious breach of contract will not support an award of punitive damages. In dictum, the court suggests that punitive damages could be awarded if the breach of contract also constituted an independent tort; however, Buyer failed to plead and prove an independent tort. The court did not explicitly overrule a nineteenth-century decision in which it had approved punitive damages for breach of a marriage contract, thus leaving open the question of whether the court will retain that exception and distinguish it from breaches of more ordinary contracts.

3. Case Briefs with Synthesis

Assume that the parties and courts in the following two cases agree on the following statement of general legal rules regarding offers to enter into a contract. Whether they agree, or potentially agree, on further details of the legal rules is a matter for your interpretation and synthesis.

Contracts are formed through a process of offer and acceptance. An offer is an expression of a willingness to enter into a contract. It gives to the party to whom it is addressed, the “offeree,” the power to create the contract by assenting to the offer in a manner authorized by the offer. To constitute an offer, an expression must lead a reasonable person in the position of the offeree to understand that she has such power.

With that background, prepare a case brief for each of the following two cases. End the second case brief with a synthesis of the two cases. Do not assume that all the citations in these opinions are consistent with the current uniform citation style that you should use in your office memoranda in future assignments. Compare your case briefs and synthesis with the sample that follows this exercise.

CRAFT V. ELDER & JOHNSTON CO.
Ohio Court of Appeals
38 N.E.2d 416 (Ohio Ct. App. 1941)

Barnes, Judge.

. . . On or about January 31, 1940, the defendant, the Elder & Johnston Company, carried an advertisement in the Dayton Shopping News, an offer for sale of a certain all electric sewing machine for the sum of \$26 as a “Thursday Only Special.” Plaintiff . . . alleges that the above publication is an advertising paper distributed in Montgomery County and throughout the city of Dayton; that on Thursday, February 1, 1940, she tendered to the defendant company \$26 in payment for one of the machines offered in the advertisement, but that defendant refused to fulfill the offer and has continued to so refuse. The petition further alleges that the value of the machine offered was \$175 and she asks damages in the sum of \$149 plus interest from February 1, 1940. . . .

The trial court dismissed plaintiff’s petition as evidenced by a journal entry . . . : “Upon consideration the court finds that said advertisement was not an offer which could be accepted by plaintiff to form a contract, and this case is therefore dismissed with prejudice to a new action, at costs of plaintiff.”. . .

We will now briefly make reference to some of the authorities. “It is clear that in the absence of special circumstances an ordinary newspaper advertisement is not an offer, but is an offer to negotiate—an offer to receive offers—or, as it is sometimes called, an offer to chaffer.” Restatement of the Law of Contracts, Par. 25, Page 31.

Under the above paragraph the following illustration is given, “ ‘A,’ a clothing merchant, advertises overcoats of a certain kind for sale at \$50. This is not an offer but an invitation to the public to come and purchase.”

“Thus, if goods are advertised for sale at a certain price, it is not an offer and no contract is formed by the statement of an intending purchaser that he will take a specified quantity of the goods at that price. The construction is rather favored that such an advertisement is a mere invitation to enter into a bargain rather than an offer. So a published price list is not an offer to sell the goods listed at the published price.” Williston on Contracts, Revised Edition, Vol. 1, Par. 27, Page 54.

“The commonest example of offers meant to open negotiations and to call forth offers in the technical sense are advertisements, circulars and trade letters sent out by business houses. While it is possible that the offers made by such means may be in such form as to become contracts, they are often merely expressions of a willingness to negotiate.” Page on the Law of Contracts, 2d Ed., Vol. 1, Page 112, Par. 84. . . .

“But generally a newspaper advertisement or circular couched in general language and proper to be sent to all persons interested in a particular trade or business, or a prospectus of a general and descriptive nature, will be construed as an invitation to make an offer.” 17 Corpus Juris Secundum, Contracts, Page 389, § 46, Column 2. . . .

We are constrained to the view that the trial court committed no prejudicial error in dismissing plaintiff’s petition.

The judgment of the trial court will be affirmed

Geiger, P.J., and Hornbeck, J., concur.

***LEFKOWITZ V. GREAT MINNEAPOLIS
SURPLUS STORE***

**Minnesota Supreme Court
251 Minn. 188, 86 N.W.2d 689 (1957)**

Murphy, Justice

This is an appeal from an order of the Municipal Court of Minneapolis. . . . The order for judgment awarded the plaintiff the sum of \$138.50 as damages for breach of contract.

This case grows out of the alleged refusal of the defendant to sell to the plaintiff a certain fur piece which it had offered for sale in a newspaper advertisement. It appears from the record that . . . the defendant published the following advertisement in a Minneapolis newspaper:

Saturday 9 A.M. . . .

....

1 Black Lapin Stole Beautiful, worth \$139.50 . . . \$1.00

First Come First Served

The record supports the findings of the court that on . . . the Saturday[] following the

publication of the above-described ad[] the plaintiff was the first to present himself at the appropriate counter in the defendant's store and . . . demanded the . . . stole so advertised and indicated his readiness to pay the sale price of \$1. . . . [T]he defendant refused to sell the merchandise to the plaintiff. . . .

The defendant relies principally on *Craft v. Elder & Johnston Co.* . . . On the facts before us we are concerned with whether the advertisement constituted an offer, and, if so, whether the plaintiff's conduct constituted an acceptance.

There are numerous authorities which hold that a particular advertisement in a newspaper or circular letter relating to a sale of articles may be construed by the court as constituting an offer, acceptance of which would complete a contract. [citations omitted]. . . .

The authorities above cited emphasize that, where the offer is clear, definite, and explicit, and leaves nothing open for negotiation, it constitutes an offer, acceptance of which will complete the contract. The most recent case on the subject is *Johnson v. Capital City Ford Co., La. App.*, 85 So. 2d 75, in which the court pointed out that a newspaper advertisement relating to the purchase and sale of automobiles may constitute an offer, acceptance of which will consummate a contract and create an obligation in the offeror to perform according to the terms of the published offer.

Whether in any individual instance a newspaper advertisement is an offer rather than an invitation to make an offer depends on the legal intention of the parties and the surrounding circumstances. Annotation, 157 A.L.R. 744, 751; 77 C.J.S., Sales, § 25b; 17 C.J.S., Contracts, § 389. We are of the view on the facts before us that the offer by the defendant of the sale of the Lapin fur was clear, definite, and explicit, and left nothing open for negotiation. The plaintiff having successfully managed to be the first one to appear at the seller's place of business to be served, as requested by the advertisement, and having offered the stated purchase price of the article, he was entitled to performance on the part of the defendant. . . .

Affirmed.

4. Sample Case Briefs with Synthesis

The context line in the first sample brief below applies to both cases. Both Evaluations in the sample briefs below note the importance of the quantity term. The cases don't specifically discuss the presence or absence of a quantity term; instead, that analysis reflects the kind of extra information that you might secure from class discussion.

Context: Contract Formation under Common Law – Offer

***Craft v. Elder & Johnston Co.*, 38 N.E.2d 416 (Ohio Ct. App. 1941).**

Issue: Did a newspaper advertisement for the sale of a certain electric sewing machine for \$26 as a Thursday only special constitute an offer?

Holding: No. In the absence of special circumstances, the ad was only an invitation to negotiate.

Facts: Buyer alleged that Seller advertised a type of sewing machine worth \$175 for sale for \$26 on Thursday only, in a shopping newspaper with citywide distribution. On Thursday, Buyer attempted to purchase one of the advertised machines but was refused.

Procedural History: Buyer sued Seller for the difference between the value of the machine and the advertised sale price, plus interest. The trial court dismissed on the ground that the ad

was not an offer to sell. The court of appeals affirms.

Reasoning: Relying mainly on secondary sources of the common law, the court applies a general rule of construction that newspaper advertisements are invitations to submit offers, rather than offers themselves, if they do no more than inform the general public of the price for described goods. The court suggests that an ad might constitute an offer in “special circumstances,” but this ad did no more than state the price associated with a certain model sewing machine, with no statement of the quantity available.

Evaluation: This decision makes sense. Seller did not specify any quantity limitations in the ad, nor did it limit who might respond to it. If the ad were an offer, Seller might be subjected to unlimited liability as innumerable buyers streamed into the store on Thursday and accepted the offer for more sewing machines than were in stock. A reasonable buyer would not interpret the ad to permit those consequences.

This also explains why a commercial “price quote” sent to numerous commercial buyers would not be an offer: until such a buyer requests to buy a specified quantity at the quoted price, the seller would not know whether it has sufficient stock on hand to satisfy the request, making it more reasonable to view the buyer’s request as the first offer.

Lefkowitz v. Great Minneapolis Surplus Store, 86 N.W.2d 689 (Minn. 1957).

Issue and Holding: Did a newspaper ad for the sale of a specified quantity of described goods to the first arriving customers constitute an offer to sell? Yes.

Facts: In a newspaper ad, Seller advertised “1 Black Lapin Stole,” for sale at a specified date and time for \$1, “First Come First Served.” On the appropriate date, Buyer attempted to purchase advertised item for \$1 and was refused even though he was first in line.

Procedural History: The Buyer sued the Seller for breach of contract and was awarded \$138.50 in the trial court. The Supreme Court affirms.

Reasoning: The court rejects Seller’s argument that *Craft* is controlling; instead, it relies on authorities that recognize a newspaper ad as an offer if it is “clear, definite, and leaves nothing open for negotiation.” This offer met that standard because the ad identified not only the goods and the price, but also the quantity available (just one) and the means of identifying which buyer could bind Seller to contracts (the first buyer). Because the ad carefully limits Seller’s obligation in clear and definite terms, a reader could reasonably interpret the ad as stating a commitment to enter into a contract on those terms, with nothing left for further negotiation.

Evaluation: This decision makes sense because it finds an offer on very specific terms: subject matter, price, quantity available, and means of determining which customer can claim the limited quantity and bind the seller. It makes sense on pragmatic terms because the seller is willing to sell one item at a loss because it might draw hundreds of customers to the store, while still limiting the seller’s obligation to honor that price for only a single item and single customer.

Synthesis: *Craft* and *Lefkowitz* likely apply roughly the same legal rules and reach different conclusions only because of the differences in their facts. *Craft* did not state that all newspaper ads fall short of offers, only that ones with “general terms” will “generally” not be offers, in the “absence of special circumstances.” Conversely, *Lefkowitz* would find an offer in a newspaper ad but only if it was “clear, definite, and explicit, and left nothing open for negotiation.” Those requirements could well be among the “special circumstances” that the Ohio court in *Craft* would also recognize as supporting an offer. And the *Lefkowitz* court likely would agree with

Craft that a newspaper ad with only “general terms” would normally not amount to an offer for lack of definiteness.

Although the cases do not directly discuss the significance of a quantity term and the problem of a seller’s potentially unlimited liability, the facts of the cases support a distinction based on whether it would be reasonable for a reader to conclude that each seller was objectively committing to contractual obligation. Unlike in *Lefkowitz*, the ad in *Craft* did not limit the quantity available at the stated price, nor did it state which of the many readers would qualify to buy at that price. Without those limitations in the ad, a court giving the ad the force of an offer would allow an indeterminate number of customers to accept for an unlimited quantity of sewing machines, likely binding the seller beyond its ability to perform. No reasonable reader of the ad should interpret the ad as conveying the seller’s intent to be bound to an unlimited number of buyers for an unlimited quantity of goods. On the other hand, in *Lefkowitz*, the very limited quantity term (one) and the means of identifying which customer can claim it (first-come, first-served) so clearly and narrowly defined the seller’s proposed obligation that it was reasonable for a reader to interpret the seller as being committed to those terms in an offer, which one buyer could accept to create a contract. The cases are distinguishable on their facts and thus are legally reconcilable.