Bridging the Gap
Between College and Law School

Strategies for Success

SECOND EDITION

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Chapter 2

Learning to Read and
Brief Law School Cases

After reading the introduction and the first chapter you are now ready to begin. In law school, along with "learning to think like a lawyer," you are also expected to "learn the law" and learn how to apply it to a factual situation. In order to learn the law, you must first extract the law or rules from cases. You accomplish this by reading and briefing each case. You are probably thinking, "I already know how to read, so what's the point of this chapter?" The point is that the material you will read in law school, mainly court opinions edited and collected in casebooks, is very different from the material you read in college; therefore, in order to read, absorb, and understand cases, you must adopt a different approach. First, let us explore how and why law school reading material is different.

Reading in College

In college, most of your reading assignments, excluding literature, consisted of descriptive text. This type of text is used in college to suit the purpose of college learning, which is to provide greater understanding of a subject. In order to explain the subject, the author typically defines a concept or topic. Then general information is provided about that topic, before moving on to more specific information. For example, in business contracts, first the author might state what a contract is. Next, she presents general information about contracts. This could include such information such as the history of the first contract and the evolution of contracts; that is, she presents background information to explain the concept and use of a contract to expound on the definition. Last, she presents specific information about contracts, such as how and why they are formed and the different types of contracts (e.g., employment contracts, contracts for the sale of goods, etc.).

College texts that are descriptive are usually easy to understand because they are straightforward; the author defines a concept and then moves from general information to more specific information. While there are exceptions, reading for class tends to be uncomplicated. On the other hand, the books you will use in law school, primarily collections of edited appellate court decisions called "casebooks," are rarely descriptive, straightforward, or uncomplicated.
Reading in Law School

In law school, most of your reading assignments will come from a casebook. Although most casebooks consist of written decisions, or “opinions,” from appellate courts, they also contain brief introductory materials and notes related to the cases. Casebooks are used in law school to teach students to think like lawyers and to teach the law. Unlike college, in which texts aim to provide a greater understanding of one subject, in law school, casebooks are assigned to teach the law (i.e., rules) and, at the same time, the process of problem solving (i.e., the application of the rules) to a new factual situation.

In order to achieve this dual purpose, when reading each case, you must (1) extract the law or rule from the case and (2) be able to apply the rule to different factual situations. These two tasks can be rather difficult, depending on how the opinion is written. More often than not, judges do not write cases saying, “The law in this case is...” or “The real problem here is... and in order to solve it we must decide....” If they did, reading and understanding cases would be easy because the format would be consistent and the logical steps leading to the conclusion would be clear. Unfortunately, it isn’t that simple. In law school, you must engage in problem solving from the beginning (in reading even your very first case) to determine what is important about each case. Before we discuss specific tips and techniques for reading cases, we will define and describe the concept of case rules.

All law is made up of rules, and all rules can be broken down into smaller pieces or parts, called elements or factors. Most cases explain, define, describe, broaden, or narrow rules. What are rules? What are elements or factors? Very simply, a rule is a statement of the law that proscribes what a person can do. For example, you may read a case in which the court was asked to decide if a dog owner violated the city’s leash law when she had her dog on a leash but routinely dropped it and allowed the dog to chase a ball on a vacant lot. Ownership of the lot is in dispute. In deciding this particular problem, the court quotes the city’s leash law, which states, “All dogs must be on a leash when in public.” This is the rule.

Before you can analyze whether this particular owner violated the leash law, you must isolate each element of the rule and consider it separately. The elements are the specific conditions of a situation to which the rule applies, like a checklist of requirements. Here, the three elements are dog, leash, and “in public.” If we have (1) a dog, and the dog is (2) in a public area (whatever that means), then we must make sure that the dog is in fact (3) on a leash to comply with the law. Students are quick to jump to the conclusion: “Of course the owner violated the law,” before they assess each and every element of the rule. Before you answer any question “yes” or “no,” always ask yourself, “Does this problem fit the rule?” “Has each and every element of the rule been satisfied?” In our dog example, although we do indeed have a dog, it is unclear whether the dog was in a public area (the ownership of the lot is in dispute) or whether the dog was leashed (what does the statute mean by “on a leash”—that the dog have a leash or that the leash be held by a human being?) The conclusion that “of course the owner violated the law” is hasty because it is unclear whether each and every element of the rule was satisfied.
Things You Need to Know before Reading Your First Case

Obviously travel is a bit easier if you know what to expect. Likewise, reading a case is easier if you know what to expect. Usually, in the rush "to just get to it" law school professors do not explain how to read a case, they just expect students to know how it's done. Reading a case, however, is not like reading a textbook, a periodical or any other text. You need to have the necessary background before you can truly "read" a case. Here's what you need to know. Please note that although we have given you "the basics" — the information has much more depth and breadth than we've provided here.

The Dual Court System

The United States has a dual court system. The metaphor we will use to explain this duality is that of a small business with two departments, accounting and marketing. Think of the United States as a business with two departments, state and federal. When you read a case, first determine which "department" it comes from, state or federal. Just like accounting takes care of accounting matters and marketing takes care of marketing matters, federal courts take care of federal matters (federal questions, like violation of the Federal American With Disabilities Act), and state courts take care of state matters (state questions, like violation of the Illinois Disabilities Act). Usually, it is easy to tell whether a matter belongs in federal or state court simply by determining whose law is in question. Is the plaintiff claiming defendant violated a state or federal law?

Sometimes, however, the lines between federal and state, like the lines between accounting and marketing, blur. Suppose that in addition to accounting matters, the accounting department also resolves disputes between different people in the marketing department. In other words, if Pei Pei and Charlene disagreed (who both work in marketing, but have separate specialties) about a marketing matter, the accounting department might settle the dispute. This is not to say that their boss in marketing couldn't solve the problem, but only that in such a case, an option exists to go to the accounting department to obtain a resolution. The same is true in federal court. If there is a dispute between citizens of two different states (e.g., someone in Wisconsin is suing someone in Illinois about violation of an Illinois law), a federal court can hear the case. This situation is referred to as diversity jurisdiction. To recap:

TIP: Decide what "department" the case is in.

✔ Is this a state court case (there is a state law involved — what is it?)
✔ Is this a federal court case (because either there is a federal law involved OR this is a dispute between two citizens of different states about a state matter)
Divisions of Courts within Each Court System

The Trial Court

Obviously, no small business has two departments without a hierarchy in each department. In other words, not everyone is equal in the accounting department. There are junior accountants, senior accountants, and supervisors. The same can be said of the marketing department. Likewise, within each court system, state and federal, there is a hierarchy. Usually cases begin in the trial courts, where a judge and/or jury hears testimony and argument. At trial court, if there is a judge and jury, the judge is in charge of the law, and the jury is in charge of the facts. Returning to our analogy, in the accounting department, most work begins with the junior accountants. They “crunch” the numbers following a procedure set down by those above them. If a question about the numbers themselves arises, the junior accountant is the one to ask because she was the one who crunched the numbers. Likewise, at trial, the jury hears testimony of witnesses and determines who is credible and who is not. In other words, the jury “finds” facts. It, like the accountant crunching numbers, works with the facts. When you read a case, therefore, and there seems to have been a dispute of fact (e.g., did he or didn’t he run the red light), it is the jury that decides the answer.

If the jury finds facts, what does the judge do? Like a senior accountant who determines what accounting methods the firm uses, the judge determines what law applies to a particular matter. Let’s say the accountant tells his junior associates to use a certain accounting method. The junior associates crunch the numbers, using the system set up by the accountant. Take our previous example of running the red light. The jury decides whether or not the defendant ran the red light. However, the judge has to tell the jury what law to use in resolving the dispute. She has to evaluate what the rules are and what legal standards govern the matter. She instructs the jury on the law (hence the term “jury instructions”). In this case, she might instruct the jury: “Ladies and gentlemen, the law of this state is that everyone has a duty to obey traffic signals. If someone disobeys a traffic signal and, as a result, causes harm to another, then that person shall be liable in negligence.” The jury then takes the law and applies it to the facts in order to decide the case.

In cases where there is no jury at the trial court level (plaintiff can decide to waive the jury), a judge determines both the law and the facts of the case.

TIP: Distinguish between facts and law.

Having decided what “department” the case is in, make sure you know:

✓ The facts of the case (usually the jury decides the facts at the trial court level), and

✓ The law according to the trial judge governing the dispute.

The Appellate Court

What if a party doesn’t like a decision made by the trial court? What can she do? She can appeal to a higher court. But what does she appeal, exactly? It is important to know
that an entire case cannot be appealed to the appellate court. In other words, a party
can't simply state on appeal: "the trial court made a bad decision and it should be re-
versed." What if you disagree that your client ran the red light? What if you think that
the jury decided the facts incorrectly? Let's return to our accounting department. Who
actually crunched the numbers? Who researched them, checked them, and double-
checked them? The junior accountant, of course. If someone discovers that there is a
mistake in the books, the mistake can be one of two possibilities:

a) Factual — the accountant used the wrong numbers in the formula; or
b) Policy — the accountant used the wrong accounting method when crunching
the numbers.

The same possibility can be said of trial court decisions. If there is a mistake it's either:

a) Factual — the jury incorrectly found the facts (the client did not run a red
light); or
b) Legal — the trial court incorrectly instructed the jury as to the law.

When bringing a case up on appeal, attorneys look for a legal mistake rather than a
factual one. In other words, if a lawyer believes that the trial court incorrectly instructed
the jury as to the law, it is likely that the decision will be appealed. However, if the
lawyer believes that the jury incorrectly found the facts (the light was not red, it was
green), she will not jump at the chance to appeal. Why? Because in order to overturn
findings of fact, the lawyer must prove with clear and convincing evidence, that the
facts were wrong. This is a very high standard, and is rarely established.

Therefore, when reading an appellate case, look for the legal issue on appeal. What,
according to the lawyer, was the trial court's legal mistake?

TIP: Dissect the opinion.

✓ Isolate the legal issue on appeal (What mistake of law did the trial court
   supposedly make?)
✓ Focus on the arguments made by each side. What is the correct statement
   of law according to the plaintiff? Why is this correct? What is the correct
   statement of law according to the defendant? Why is this correct?
✓ Evaluate the court's opinion. What is the correct statement of law accord-
   ing to the appellate court? Why did it reject one side's arguments and ac-
   cept the other's?

What Can the Appellate Court Do with the Trial Court Decision?

If an employee makes a mistake, his boss has several options. She can overturn the
employee's decision outright, or she can yell at the employee and tell him to re-do the
particular task. In other words, our accountant boss can:

1) decide that her accountants were using the wrong method and overturn the
   method outright; or
2) decide that her accountants were using the wrong method and tell the em-
ployee's to re-crunch the numbers using the new method.

Appellate courts have similar options. They can reverse the trial court's decision al-
together. They could also reverse and remand the case back to the trial court for what
amounts to a "do-over." Appellate courts are more likely to reverse if there is a pure
question of law to consider, such as whether violating a traffic signal is automatic proof
of negligence. Appellate courts are more likely to remand if there is a factual compo-
nent to the decision, such as when, given the correct statement of the law, the trial court
needs to go back and consider more facts. Like the accounting department, appellate
courts deal with errors in two ways:

1) overturn the lower court decision (i.e., decide that the trial court misconstrued
the law); or

2) reverse the prior decision (i.e., decide that the trial court misconstrued the
law) and remand the case for further proceedings (i.e., trial court has to re-
assess the facts in light of this new standard).

TIP: Isolate the conclusion.

Decide what the appellate court did (reverse, remand, affirm) and why.
What was right (or wrong) about the trial court's decision?

Most of the cases you will be reading will be Appellate Court cases. Others will be
Supreme Court cases. Therefore, you will not be exploring the facts as much as you will
be taking on the law. In other words, at these higher rungs of the court ladder, ques-
tions revolve around what the law is concerning an issue rather than the facts in that
particular case. This limited reading leaves many students cold because of the lack of
the human component in the reading. Because the appellate and supreme courts focus
on law instead of facts, you will not explore what each witness had to say in the case,
what the effect of the matter was on the plaintiff and defendant, or what the trial court's
ruling meant to either side. Instead, you are left with the rather esoteric, and non-dra-
matic discussion of "the law." Focus on the law and try to understand how and why the
court ultimately decided the way it did. Once you have this information you can intel-
ligently discuss different fact scenarios (hypotheticals) and the application of the law to
each. In these discussions you can delve into the facts and whether or not the result is
good or bad given the circumstances (the human component).

Learning the Language

One of the reasons law students have such a hard time reading and understanding
cases is that they don't know the language. Have you ever been to a foreign country
and tried to order a meal from a menu in a language that you did not understand?
Something as simple as ordering a burger and fries becomes a puzzle. The same phe-
nomenon occurs when new students enter law school and are assigned their first case. Professors assume that students both know what a case is and understand the language the court uses (plaintiff, defendant, replevin, reversed and remanded, etc.). Although students may be familiar with some of the terminology, usually if they do not know the legal meaning of even one word, they blindly end up far from where they were headed. (Like hopping a train to Portland, Maine, instead of Portland, Oregon, or getting a rare steak when you ordered a well-done burger.) You can prevent this from happening to you by following one simple tip: get a good law dictionary and look up every single word or phrase you do not understand. Black’s Law Dictionary is a sound investment. This is simple and mundane, but it works. Oftentimes, in a haste to “be done with it,” students cut corners. This may mean skipping words they do not understand in the hope that their meaning will magically appear later in the reading, perhaps through context clues. This is not a reliable method in reading cases because it hardly ever happens. To make sure that you know enough language to order from the menu (so to speak), a short dictionary of common legal terms used so often in cases that you should know them, is included in the back of this book.

Reading Tips and Techniques

Most law students will admit (or claim) that the bulk of their time is spent reading cases. In fact, one law student admitted that she spent so much time reading and re-reading cases that she had no time for anything else. The good news is that reading cases will help you prepare for class and, ultimately, learn to think like a lawyer. The bad news, though, is that if all you do is read cases, you probably will not do your best on exams. The key is to develop a sensible balance between case reading and the other things you have to do, like synthesizing your notes, outlining, and reviewing. In order to allow sufficient time for all the other things, you have to be able to read cases efficiently. In order to help students use their time more efficiently, we developed the following techniques for reading cases.

**Step 1 — Anchor yourself.**

Never read a case without knowing the context. **Before** you read a case, you need to know what the case is all about. Think of this step as reading a travel guide before you book your trip. Before you read any case, you must do two things: (1) figure out the main issue, which is your anchor; and (2) read an additional source that will give you some general knowledge about that issue.

First, consult the casebook table of contents or the course syllabus to figure out what topic or issue the case will address and where this case fits into the big picture. The table of contents may lead you to a main issue and an element or sub-issue. See the sample syllabus.
Sample Syllabus

Torts
Fall 2000 Syllabus
Professor Taylor

Office hours

Rules and Regulations

Assignments
Intentional Torts
Battery
Intent
Vosburg v. Putney p. 2

Harmful or Offensive contact

Negligence

Strict Liability

Here, if you are assigned to read the Vosburg and Garratt cases, you know that you are reading about intentional torts, specifically battery. You also should note that these cases are about the intent element of battery; therefore, intent is your anchor.

Once you have an idea of which issue to look for in the case (intent) and where this topic fits into all of the topics you will study this term, consult an outside source that will give you some general knowledge about both battery and intent. Here, law school hornbooks, such as Prosser on Torts, or commercial outlines, such as Emanuel Law School Outlines, can be helpful. These books are very much like the books you read in college in that they are descriptive texts. They define and describe a concept and include the rules that you must extract from your cases.

Commercial outlines, running between $30 and $40 each, are less expensive than hornbooks, and tend to be very general and include few cases. Whatever they are, they are good for giving you an idea of the "big picture" and helping you see the forest, not just the trees. The better outlines (Emanuels and the Example and Explanation series by Aspen) are also good for providing sample exams with answers so that you can test yourself. Hornbooks and treatises, generally starting at $75 each, are more expensive but tend to be more detailed and include extensive footnotes to cases and law review articles that will further explain a topic. Before you spend any money purchasing either, see if your law school has an Academic Support or Academic Assistance office to recommend any study aids to assist you. Also, check with your professor to see which hornbook he or she recommends. By reading a hornbook or commercial outline before
reading the case, you gain a general understanding of the topic that the case will address and arm yourself with an anchor that will make case reading easier to understand and quicker to get through.

**Step 2—Read the case—focus on your anchor.**

Once you have your anchor (the topic that the case is about) and you know a bit about the anchor, you can begin reading the case. As you read, focus on the following: (1) the facts, (2) your anchor, and (3) the rule. First you should focus on the facts and try to determine "what happened." You need a factual basis for actions that took place to figure out whether the court found those actions legal or illegal. Second, you should focus on your anchor.

**TIP:** After you have some knowledge of the facts, ask yourself some questions as you read the case.

- ✔ What does this case tell me about this issue (anchor)?
- ✔ Is the court explaining the issue?
- ✔ Is it dividing the issue into elements or explaining one of the elements?
- ✔ Finally, try to figure out the rule that the court has articulated. In trying to determine the rule, again focus on the anchor. Try to determine whether the court is creating a new rule, rejecting an old rule, or explaining or redefining an existing rule. After reading the case a couple of times and trying to understand what the case is all about, you are ready to brief the case.

**Step 3—Brief the case.**

**What Is a Case Brief?**

A case brief is more than a summary of the case. It is a reduction of the case to its essential components that you will need later for class discussion, to create an outline, and to be able to apply the rule to a new set of facts (hypothetical or examination).

**Why Should I Brief My Cases?**

Case briefs serve three important purposes: they help prepare you for class, they provide an opportunity to practice legal writing, and, along with your class notes, they make a solid foundation for your outline, which you will need to prepare for your final exam.

**Class Preparation**

By not only reading the case but also briefing it, you will gain a greater understanding of the case and be ready to discuss it in class. Because most law school professors use a modified version of the Socratic method, class preparation is key. Professors expect
you to have cases briefed, understand the facts, and are willing and able to explain and expand upon the decision of the court.

Legal Writing

Briefing gets you into the practice of writing in the format expected on exams. When you brief, you learn how to isolate an issue, articulate the legal rules involved, express the court's reasoning in solving the problem the way it did, and pinpoint the conclusion, all in a condensed fashion. All of these skills are crucial for performing well on the exam. You will be expected to isolate the issue, articulate the legal rules, express the reasoning, and come to a conclusion. The more cases you brief and the more often you brief, the more likely it is that you will do well on the exam.

Foundation for Outlining

By briefing each case and subsequently "correcting" your brief during and even after class, you will have most of the information you need to create an outline. Your outline will help you answer the questions on the final exam more effectively.

**Briefing Tips and Techniques — FIRAC**

How do you brief? Everyone has his own style. You will find that in many law schools, legal writing professors declare that there are 5, 7, or even 9 parts to a brief, but there is no one "right" way to brief. That being said, you will notice that if you compare briefing styles, they all have common components, facts, issue, rule application and conclusion, FIRAC.

1) **Write down the name of the case** — Use only the last names of the parties (e.g., Miller v. Jones). Do not write down the citation.

2) **Summarize the relevant facts of the case** — Focus on the "just the facts ma'am" aspect of the case, rather than the procedural details. Although the procedural details might be important to some professors for class discussion, on the exam, you will not be tested on your knowledge of where a case has been or how it got there (unless the course is Civil Procedure). Instead, zero in on what are called the substantive relevant facts. In other words, give the story behind the case. Place yourself in the shoes of the attorney in this case, who is charged with the task of explaining the facts to the jury. How would you summarize what happened? Use the journalistic formula: who did what to whom, where, when, and how?

**Substantive Relevant Facts:**

Ms. Samson (who), owner of a dog, Spot, (who) had him on a leash as she walked to a vacant lot (where) on a Saturday morning (when) The lot had been
owned by the City, but private interests recently have disputed the City's ownership. As Ms. Samson approached the lot, she took Spot off his leash and let him play ball. (how did this happen) Spot saw another dog on a leash approaching the lot with its owner, Mr. White. (whom) Spot attacked the other dog (did what) and scratched Mr. White (to whom). Ms. Samson is charged with violating the City's leash law.

Notice that the facts in a brief do not contain every single detail (i.e., the day of the week, the name of the park or street, the breed of the dogs). Instead, the fact section focuses on the essence of the case. Remember, we are concerned only with who did what to whom, where, when, and how.

3) Isolate the issue — In one question, state the problem that the court has been asked to solve. The issue usually involves a question of law and/or fact. Students tend to make the issue either too specific or too general. In the dog problem, for example, here are some possibilities:

**Issue possibility**

<table>
<thead>
<tr>
<th>Problem</th>
</tr>
</thead>
<tbody>
<tr>
<td>Too specific — the parties' names do not matter, nor does the citation of the statute. Further, the issue as stated here does not summarize the essence of the dispute.</td>
</tr>
<tr>
<td>Way too general — “person” does not describe the owner’s relationship to the dog; “law” does not focus on the leash law; “another dog” disregards that another dog’s owner was also involved.</td>
</tr>
<tr>
<td>Just right — describes, rather than names, the parties: “dog owner” is more specific than “person” but not as specific as “Ms. Samson;” the statute is described rather than identified by number; and the essence of the problem is isolated — a dog is on a leash but the leash is dropped, and the nature of the lot is disputed.</td>
</tr>
</tbody>
</table>

How do you get the issue “just right”? Use the following formula:

**WHETHER + SVO + WHEN + FACTS**

\[
S \ V \ O = \text{Subject Verb Object (verb must be legally significant)}
\]

Let’s go through the formula:

* S = SUBJECT. Describe the subject of the sentence. Remember to keep it descriptive. Rather than name names (Ms. Samson) or generalize (person, plaintiff), you want
to describe the parties in a way that indicates their relationship. In this case "dog owner" is a good description.

V = VERB. The subject must have done something that caused legal consequence. The verb should indicate both the action and the legal consequence. Again, you want to strike a balance between being overly specific (e.g., violated the City's leash law ordinance, 123 ILCS 435) and being overly general (e.g., violated a law). Description is key. In this case, we can describe the subject's action and legal consequence with "violated the City's leash law." This phrase describes the essence of the dispute (the City's leash law). In all cases, you need to balance the over-generalized (e.g., "violated the law") against the overly specific (e.g., "breached Illinois law 124 ILCS 333"), and find something just right ("made an offer for purposes of a contract," or "owed a duty in negligence").

O = OBJECT. If in the "s" of the issue statement, you described the actor, here you will describe the recipient of that action. In other words, you described the actor as a "dog owner." Who was on the receiving end of her action? Not "the defendant" (too general) or "Mr. White" (too specific), but rather "another dog owner."

WHEN + FACTS. After isolating the actors and the action, you need to describe the factual setting. Again, you must strike a balance between the overly specific (e.g., when they met at 156 East Jackson Street, a vacant lot whose ownership is in dispute) and the overly general (when one dog ran after another dog). Ask yourself, "What facts in this case make this a difficult problem to solve?" In this case, it is both the leash situation (technically leashed but running around) and the nature of the lot (ownership in dispute). Both of these FACTS will make our analysis of the elements "leashed" and "public property" difficult; therefore, we must list both in our issue. Remember, you need to include FACTS, not legal conclusions at this point.

Example:

Do say: … when the owner has the dog on a leash but drops the leash and allows her dog to run around in a vacant lot, whose ownership between City and private interests is in dispute. [The phrase is factual (dog is on a leash but leash is dropped, lot ownership is in dispute) without being overly specific.]

Don't say: … when the dog is not leashed and the property is public. [This phrase describes legal conclusions. The term "leashed" in this context is a legal conclusion, which is in dispute—we do not know if the dog is "leashed" according to the statute until we know what the City law means by "leashed." Likewise, whether the property is public is a legal conclusion that is in dispute; what does "public" mean—owned by the City? Can a property whose ownership is in dispute be called "public?"]

4) Articulate the rules—State the rule(s) of law that the court used to solve the issue. Rules can come from either statutes or cases. Remember, a rule is a statement of the law that proscribes what a person can or cannot do under certain circumstances. Even though the court may discuss many rules in making its decision, focus on the rules that relate to the issue. For example, in the negligence problem, focus on the rules that relate to reasonable duty of care. Paraphrase the rules. It is not always necessary to write down the case they came from; what matters is that you pinpoint the rule (e.g., When one breaches the duty of reasonable care to another, one is negligent. The duty of rea-
sonable care is determined by considering whether a reasonable person, if put in the defendant's situation, would have acted in a similar manner).

Any given case may have many rules. Focus on only those rules that relate to your issue. In other words, if the issue is what constitutes "intent" for purposes of battery, then the only rules to note are those dealing with the "intent" element of battery. In our dog example, the rules that you must brief are those that relate to the City leash law — what the law says and how prior decisions have interpreted the terms "leashed" and "public." Has any previous case dealt with these interpretations? Remember, we are trying to see how the court solved Ms. Samson’s problem. Before deciding her case, the court turns to prior decisions for guidance, much like any human being making a decision about her life seeks others for advice. Perhaps previous definitions and interpretations will help this court decide this case.

5) Begin the application — Also known as the reasoning, rationale, or analysis, the application is often described as the "why" of the case. In this section, you must determine why the court decided the way it did. The application section may have as many as three parts.

Main — The main argument. Why did the court say a certain party should win the dispute? Here you should strive to combine the rules and the facts. In other words, the main argument should not simply repeat either the facts or the law. Instead, you should show how the court combined the rules and the facts of this particular situation.

Example:

Don’t say: The court cited previous cases in which a dog was leashed, meaning the owner maintained a hold on the other end, and public, meaning city-owned. [There are no facts, only regurgitation of the rules without any indication of HOW these rules helped the court solve this problem.]

Don’t say: Here the dog was on a leash, which the owner had dropped, and the lot was vacant. [There are no rules, only regurgitation of the facts without any indication of how the facts and the law worked together to solve this problem does not help solve our problem.]

Do say: As to the word “leashed,” the court cited a previous decision that construed that word to mean “connected to owner.” In this case, because the leash was not in Ms. Samson's hand, Spot was not “leashed” pursuant to the statute. As to the term “public,” the court found previous decisions holding that “public” means “owned by a public entity,” such as a city. In this case, because the ownership of the lot is in dispute, the court could not say it was public, in the sense that the lot is vacant (and, therefore, not held out to the public) and there is no indication as to the ownership of the property from just looking at it. [Notice how the rules blend with the law to form the application. In this section, you need to show how the court used the rules to solve a new and different problem.]

TIP: To ensure that you are completing the application section fully, count the number of times you use the word “because” in your answer. "Because" should be the bridge between the rule ("leashed" means "connected to owner") and the
Facts (Ms. Samson was not holding Spot's leash). Also, highlight all the facts in yellow and all the rules in pink. Stand back and look at the application. Is it all pink? If so, you have too many rules. Is it all yellow? If so, you have too many facts. Is it pink on top and yellow on the bottom? If so, you have isolated but not integrated rules and facts.

Example:

Application — too many facts

Here the dog was on a leash that the owner had dropped and the lot was vacant.

Application — all rules, no facts

The court cited previous cases where a dog was “leashed” meaning the owner was on the other end, and “public” meaning city-owned.

Application — rules and facts isolated

The court cited previous cases where a dog was “leashed” meaning the owner was on the other end, and “public” meaning city-owned. Here, the dog was on a leash that the owner had dropped and the lot was vacant.

Application — good mix of rules and facts

As to the term “leashed,” the court cited a previous decision that construed that phrase to mean “connected to owner.” In this case, because the leash was not in Ms. Samson’s hand, Spot was not “leashed” pursuant to the statute. As to the term “public,” the court found previous decisions holding that public means “owned by a public entity,” such as a city. In this case, because the ownership of the lot is in dispute, the court could not say it was public, in the sense that the lot is vacant (and therefore not held out to the public) and there is no indication as to the character of the property from just looking at it.

Opposing—The argument made by the other party or by the dissenting judge. Focus on the arguments made for the other side in terms of the law and the facts combined, just as you did in the main argument. For example, “Ms. Samson did not violate the leash law because Spot was leashed in the sense that he had on a dog collar and a leash: Ms. Samson merely let go temporarily. Thus, this was not a situation in which the dog was running around completely loose. She could have picked up the leash and restrained Spot at any time.”

Rebuttal — The reasons why the opposing arguments fail. Focus on the weakness of the opposing arguments and explain why the correct conclusion goes back to the main argument. For example, “Ms. Samson’s argument that her dog was ‘leashed’ fails. Contrary to her assertion, Spot was not ‘leashed’ in the sense that she could pick up the leash and restrain him at any time, because the very fact that she was unable to do so when Mr. White came along, belies this contention of control.”

6) Don’t forget the conclusion — A direct and complete answer to the issue, sometimes called “the holding,” this is what the court ultimately decided. For example, “Although Ms. Samson did not have her dog leashed pursuant to the City’s leash law, the dog was not on ‘public’ land (because of the ownership dispute) and, therefore, she was not in violation of the statute.”
TIP: A good brief should give you a sense of déjà vu all over again. Make sure:

- All the facts in the fact section reappear in the application section and vice versa. If there are facts in the fact section that you didn’t use in the application, they are either (1) irrelevant, or (2) you forgot to use them in the application. If you have facts in the application section that do not appear in the fact section, you forgot to brief them in the fact section.

- The issue should combine part of the rule briefed in the rule section (in the V of SVO) and the pertinent facts briefed in the fact section (when ...).

- The rule should be foreshadowed in the issue and incorporated into the application.

- The application (as illustrated in the yellow and pink exercise) should combine both the facts (briefed in the fact section) and the rules (briefed in the rule section).

- The conclusion, like the issue, should also be a combination of fact and rule.

These techniques for reading and briefing cases should help you to prepare more effectively for class and succeed in extracting the rule from the cases. Below we have provided a case and a sample brief using the FIRAC method, along with an exercise to help you practice the skill of reading and briefing cases.

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**Sample Case and Case Brief**

**Vosburg v. Putney**

80 Wis. 523, 50 N.W. 403 (1891)

Lyon, J.

[The plaintiff, 14 years old at the time in question, brought an action for battery against the defendant, 12 years old. The complaint charged that the defendant kicked the plaintiff in the shin in a schoolroom in Waukesha, Wisconsin, after the teacher had called the class to order. The kick aggravated a prior injury that the plaintiff had suffered and caused his leg to become lame. The jury found, in a special verdict, that plaintiff had, during the month of January 1889, received an injury just above the knee, which became inflamed and produced pus and that such injury had, on February 20, 1889, nearly healed at the point of the injury. The jury further found that the plaintiff had not, prior to February 20, been lame as a result of such injury, nor had his tibia in his right leg become inflamed or diseased to some extent before he received the blow or kick from the defendant. Instead, it was the defendant’s kick that was the exciting cause of the injury to the plaintiff’s leg. And, although the defendant, in touching the plaintiff with his foot, did not intend to do plaintiff any harm, the jury awarded plaintiff twenty-five hundred dollars. The trial court entered judgment for the plaintiff on the special verdict and the defendant appealed.]
The jury having found that the defendant, in touching the plaintiff with his foot, did not intend to do him any harm, counsel for defendant maintains that the plaintiff has no cause of action, and that the defendant’s motion for judgment on the special verdict should have been granted. In support of his proposition, counsel quotes from 2 Greenl. Ev. 83, the rule that “the intention to do harm is of the essence of an assault.” Such is the rule, no doubt, in actions or prosecutions for mere assaults. But this is an action to recover damages for an alleged assault and battery. In such cases, the rule is correctly stated, in many of the authorities cited by counsel that plaintiff must show either that the intention was unlawful or that the defendant intended the act itself, even if he did not intend the subsequent harm. If the intended act is unlawful, the intention to commit it must necessarily be unlawful. Hence, as applied to this case, kicking the plaintiff by the defendant was an unlawful act, and the defendant desired to kick plaintiff. Had the parties been upon the playgrounds of the school, engaged in the usual boyish sports, the defendant being free from malice, wantonness, or negligence, and intending no harm to plaintiff in what he did, we should hesitate to hold the act of the defendant unlawful or that he could be held liable in this action. Some consideration is due to the implied license of the playgrounds. But it appears that the injury was inflicted in the school, after it had been called to order by the teacher and after the regular exercises of the school had commenced. Under these circumstances, no implied license to do the act complained of existed, and such act was a violation of the order and decorum of the school and necessarily unlawful. In addition, although the defendant might not have intended the plaintiff to become lame, there is no question that he intended to kick him. One who intends the act is also responsible for the subsequent harm. Hence, we are of the opinion that, under the evidence and verdict, the action may be sustained.

Sample Case Brief

NAME: Vosburg v. Putney

FACTS: Two boys were in a classroom during school hours; the class had just been called to order by the teacher. The defendant kicked the plaintiff in the shin. Afterward, the shin area became infected, and the plaintiff eventually lost use of his limb.

ISSUE: Whether a boy satisfied the intent element of battery when he kicked another boy in the knee (while in class) and, as a result, the knee later became infected and diseased and the boy became lame.

RULE: In an action to recover damages for an alleged assault and battery, the plaintiff must show either that the defendant intended to do the act and the act was unlawful or that the defendant intended the ultimate result. If the intended act is unlawful, then the intention to commit it must necessarily be unlawful.

APPLICATION: Here, the boy did not intend the end result (injuring his friend’s leg so severely), but he did intend to kick him in the shin during a time (class in session) and a place (the classroom) this action (the kicking) was unlawful. Because he intended the act (kicking) and the kick was unlawful, he satisfied the intent element of battery.
CONCLUSION: Yes. Because the defendant's intended act of kicking the plaintiff was unlawful, his intention to kick plaintiff was also unlawful. Defendant is responsible for any harm resulting from his unlawful act.

Exercise

Exercise 2-1
Reading and Briefing Cases

Please read the following case and prepare a case brief. Please refer back to the sample class syllabus provided in this chapter prior to reading this case.

Garratt v. Dailey
279 P.2d 1091 (Wis. 1955)

The liability of an infant for an alleged battery is presented to this court for the first time. Brian Dailey (age five years, nine months) was visiting with Naomi Garratt, an adult and a sister of the plaintiff, Ruth Garratt, likewise an adult, in the backyard of the plaintiff's home on July 16, 1951. It is plaintiff's contention that she came out into the backyard to talk with Naomi and that, as she started to sit down in a wood and canvas lawn chair, Brian deliberately pulled it out from under her.... The trial court, unwilling to accept this testimony, adopted instead Brian Dailey's version of what happened, and made the following findings:

"III. ... [W]hile Naomi Garratt and Brian Dailey were in the back yard, the plaintiff, Ruth Garratt, came out of her house into the back yard. Some time subsequent thereto, defendant, Brian Dailey, picked up a lightly built wood and canvas lawn chair which was then and there located in the back yard of the above-described premises, moved it sideways a few feet and seated himself therein, at which time, he discovered the plaintiff, Ruth Garratt, about to sit down at the place where the lawn chair had formerly been, at which time, he hurriedly got up from the chair and attempted to move it toward Ruth Garratt to aid her in sitting down in the chair; that due to the defendant's small size and lack of dexterity, he was unable to get the lawn chair under the plaintiff in time to prevent her from falling to the ground. Plaintiff fell to the ground and sustained a fracture of her hip, and other injuries and damages as hereinafter set forth.

It is urged that Brian's action in moving the chair constituted a battery. A definition (not all-inclusive but sufficient for our purpose) of a battery is the intentional infliction of a harmful bodily contact upon another. The rule that determines liability for battery is given in 1 Restatement, Torts, 29, §13, as: "An act which, directly or indirectly, is the legal cause of a harmful contact with another's person makes the actor liable to the other, if (a) the act is done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to the other or a third person, and (b) the contact is not consented to by the other or the other's consent thereto is procured by fraud or duress, and (c) the contact is not otherwise privileged."
We have in this case no question of consent or privilege. We, therefore, proceed to an immediate consideration of intent and its place in the law of battery. In the comment on clause (a), the Restatement says: "Character of actor's intention. In order that an act may be done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to a particular person, either the other or a third person, the act must be done for the purpose of causing the contact or apprehension or with knowledge on the part of the actor that such contact or apprehension is substantially certain to be produced." See also Prosser on Torts 41, §8. We have here the conceded volitional act of Brian, i.e., the moving of a chair. Had the plaintiff proved to the satisfaction of the trial court that Brian moved the chair while she was in the act of sitting down, Brian's action would patently have been for the purpose or with the intent of causing the plaintiff's bodily contact with the ground, and she would be entitled to a judgment against him for the resulting damages. Vosburg v. Putney (1891), 80 Wis. 523, 50 N. W. 403; Briese v. Maechtle, supra. After the trial court determined that the plaintiff had not established her theory of a battery (i.e., that Brian had pulled the chair out from under the plaintiff while she was in the act of sitting down), it then became concerned whether a battery was established under the facts as it found them to be. A battery would be established if, in addition to plaintiff's fall, it was proved that, when Brian moved the chair, he knew with substantial certainty that the plaintiff would attempt to sit down where the chair had been. The mere absence of any intent to injure the plaintiff or to play a prank on her or to embarrass her, or to commit an assault and battery on her would not absolve him from liability if, in fact, he had such knowledge. Mercer v. Corbin (1889), 117 Ind. 450, 20 N. E. 132, 3 L. R. A. 221. Without such knowledge, there would be nothing wrongful about Brian's act in moving the chair, and, there being no wrongful act, there would be no liability.

While a finding that Brian had no such knowledge can be inferred from the findings made, we believe that before the plaintiff's action in such a case should be dismissed, there should be no question that the trial court had passed upon that issue; hence, the case should be remanded for clarification of the findings to specifically cover the question of Brian's knowledge because intent could be inferred therefrom. If the court finds that he had such knowledge, the necessary intent will be established, and the plaintiff will be entitled to recover, even though there was no purpose to injure or embarrass the plaintiff. Vosburg v. Putney, supra. If Brian did not have such knowledge, there was no wrongful act by him, and the basic premise of liability on the theory of a battery was not established.

Answer to Exercise 2-1
Sample Case Brief

NAME: Garratt v. Dailey

FACTS: Five-year old boy (Dailey) moved a chair from under an adult as she started to sit down. Adult claimed that the boy deliberately pulled chair out from under her. Trial court accepted boy's version of facts. According to Dailey, he originally moved the chair and sat in it himself, but when he noticed that plaintiff was about to sit down where the
chair had been, he tried to put the chair under the adult. Unfortunately, he wasn't able to place the chair in the right place in time.

ISSUE: Did Dailey have the requisite intent for battery when he allegedly removed a chair from the place where an adult was about to sit down, and the adult fell and suffered injuries?

RULES: Battery is the intentional infliction of harmful contact upon the body of another. In order to satisfy the intent requirement, plaintiff must prove that the act was done with the intention of bringing about a harmful or offensive contact or an apprehension of a harmful or offensive contact (absent consent or privilege). In other words, the act must have been done for the purpose of causing the contact, or done with the actor's knowledge that such contact or apprehension was substantially certain to occur.

APPLICATION: In this case, the trial court determined that the plaintiff failed to prove that Dailey pulled the chair out while she was in the act of sitting down. Thus, it cannot be said that the act was done for the purpose of causing the contact; however, it is unclear whether Dailey knew that such contact was substantially certain to occur. Plaintiff would establish a battery if, in addition to her fall, she proved that Dailey knew with substantial certainty when he moved the chair that she would attempt to sit down where the chair had been. The mere absence of an intent to injure the plaintiff, to play a prank on her, to embarrass her, or to commit an assault and battery on her would not absolve Dailey from liability if, in fact, he had such knowledge.

CONCLUSION: Unclear whether Dailey possessed the intent to commit a battery when he removed a chair from the place where an adult was about to sit down, and the adult sat down, fell, and suffered injuries. Case remanded to determine whether Dailey, when he moved the chair, knew with substantial certainty that plaintiff would sit down where the chair had been.

Endnotes

1. Cases are first heard in a trial court, and if one of the parties disputes the result, the case then goes to an appellate court for review. For more information on the court system and the life of a case see Dale A. Nancy, Law and Justice, 214, 227 (2nd ed. 1998).


5. For a more detailed analysis of the Socratic and Langdellian Method, see Chapter 1.

6. See Chapter 3 on Notetaking for more information on how to use your case briefs during class.

7. The procedural facts tell how this case got to this particular court. Did the case go to trial and get dismissed? Was the case decided at trial and did the losing party appeal to this court?


9. This case has been modified from its original form.