

## Chapter 6

# Learning How to Read and Brief Cases

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As Chapter 4 explains, the U.S. common law system is derived from case law. Judges render decisions on legal issues in written opinions by applying statutes, regulations, or common law rules to factual circumstances presented by the parties, and determining the appropriate outcome. During the first semester of law school, law students read a multitude of cases to learn legal rules and understand how courts apply such rule frameworks to varied factual scenarios. Before starting this new intellectual activity of case reading, it is important to understand how judicial opinions are constructed and their organizational building blocks. Cases can be short or long depending on the number and complexity of the legal issues they discuss. To become an effective legal reader, you need a roadmap for navigating the standard component parts of a legal case. This chapter shows you

- how cases are organized and what constituent parts to look for when reading judicial opinions,
- how to actively “mark up” an opinion while reading it, and
- how to “brief” a case in a way that is useful for law school class discussion and analysis of a client’s legal problem.

### I. Typical Components of a Case Opinion

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A judicial opinion summarizes the factual background of the parties’ dispute, the applicable rules of law, the legal analysis, the court’s holding, and the reasoning behind the court’s decision. When reading a case for the first time, consider first scanning the opinion to highlight the following component parts, so you can see how the case is organized.

**Caption:** Case captions help court clerks keep track of numerous documents (i.e., pleadings, briefs, and pre-trial submissions) filed by parties in a case. A caption in a judicial opinion includes (a) the name of the court (indicating the governing jurisdiction), (b) the names of the parties (and their designation as “plaintiff” or “defendant”), (c) the case file number assigned by the clerk, and (d) the date of the court’s decision. Near the caption, you can also find the case citation—the name of the reporter in which the decision is published (or the online legal research database in which you can find an unpublished case), the volume of the reporter, and the page number on which the case begins. The citation helps you find the case in the hard-copy books in your law library or in an online legal database such as Westlaw, Lexis, or Bloomberg Law.

**Synopsis:** Beneath the case caption, legal publishers often include a brief background, summary, or synopsis of the case’s substance and procedural history. This abstract is not part of the judge’s opinion, but is written by lawyers or other legal analysts hired by the publishers. In your legal writing, you should not cite to this material because it does not reflect the “voice” of the court; nonetheless, these summaries are very useful in legal research because they provide a snapshot of the case.

**Headnotes:** Legal publishers like West Publishing, LexisNexis, and Bloomberg Law also hire attorneys or legal analysts to write numbered “headnotes,” which summarize—for lawyers conducting legal research—the legal rules discussed in the opinion. Headnote numbers indicate where the same concepts are discussed in the body of the court’s opinion. Headnotes in cases published by West implement a research tool called the Key Number System, which organizes legal doctrines into more than 400 Topics and 80,000 Key Numbers. LexisNexis also links case headnotes into a Topic index. Lawyers can use these Topics and Key Numbers to locate additional cases discussing the same legal issues.

**Attorneys and Judges:** Between the headnotes and the beginning of the court’s substantive analysis, the judicial opinion might identify the names of the attorneys representing the parties and the name of the presiding judge.

**Procedural History:** Often at the beginning of the opinion, the court recaps the procedural history of the case, which might summarize the complaint and its causes of action, any relevant defenses asserted by the responding party, any motions filed by the parties, any hearings conducted, and prior decisions rendered or orders issued by the court on those motions. The presiding judge uses the procedural history to lay the groundwork for why the court is deciding the particular issue at that point in time.

**Facts:** Next, the court usually describes the legally significant facts triggering the legal issue. The court conveys the parties’ respective stories, relying on the evidence and documentation provided by the litigants. If the parties disagree about certain facts, the court may summarize each side’s point of view.

## Look for IRAC

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One traditional and easy-to-follow structure of a legal analysis (discussed in detail in subsequent chapters) is known as IRAC: Issue, Rule, Analysis, Conclusion. When reading a case for the first time, see whether you can locate the issue, the rule of law, the analysis (or application of the rule to the facts of the case), and the conclusion.

**Issues:** Next, the court sets forth the precise legal issue (or issues) it is tasked with deciding. When reading a case, determine how many legal issues the court is analyzing. Follow the analysis of one distinct issue at a time.

**Rule:** Within the opinion, the court describes the applicable rule(s) of law. The rule could be derived from an excerpt from the Constitution, a statute, a regulation, or a common law rule based on elements, factors, or a definition of a legal term synthesized from prior cases.

### Analysis/Discussion:

- **Arguments raised by various parties:** Before conducting its own analysis, the court may describe each party's argument(s) on the legal issue at hand and the reasons each party believes the court should rule in its favor.
- **Holding on each issue:** The court conducts its analysis and then issues the holding: the court's answer to each legal question posed. Search for the court's holding by looking for phrases such as "the court holds," "the court finds," "we hold," or "we find."<sup>1</sup>
- **Rationale behind each holding:** The reasoning, or rationale, underlying the court's holding might be a few sentences or paragraphs, explaining the court's analysis. If the court is applying the elements or factors of a rule to render its overall decision, the court will analyze each element or factor—one at a time—as justification for its holding. The court also might explain "public policy" reasons supporting its holding—such as objectives that benefit society as a whole. Examples of public policy considerations include fairness, equality, efficiency, safety, health and welfare of citizens.
- **Dicta:** One sometimes overlooked component of a court's analysis is called dicta. The origin of the word dicta is the Latin phrase *obiter dictum* ("something said in passing"). Judges sometimes include sentences in case opinions that mention how they would rule under different facts or

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<sup>1</sup> Even though the court may use the term "we," law students and lawyers should refrain from using pronouns such as "I/we/our/my/you" in legal writing. Chapter 17 explains how these words detract from the formality of a lawyer's legal writing.

circumstances. These sentences are not mandatory authority that would govern the outcome of future cases, but they may be used as persuasive argument. Dicta can sometimes be difficult to distinguish from the rationale of a court's holding; this demarcation takes practice.

**Judgment:** The judgment in a case is different from the court's holding. The judgment reflects the procedural and substantive *action* to be taken in the case and directly affects the parties. For example, a trial-level court might

- ✿ grant a motion to dismiss a case (and “order” such dismissal);
- ✿ deny a motion to dismiss a case (and thus, the case would proceed);
- ✿ grant a motion for “summary judgment” on a legal issue or “cause of action” (and “order” that the clerk enter judgment in favor of one party);
- ✿ deny a motion for summary judgment on a cause of action, and therefore allow the “cause of action” to proceed;
- ✿ issue a “declaratory judgment,” declaring that a party is entitled to a certain action by the other party;
- ✿ issue some form of “equitable” relief, such as a temporary restraining order or preliminary/permanent injunction—to force another party to either do or stop doing something;
- ✿ award monetary damages in a certain amount;
- ✿ impose a sentence, sanction, penalty or fine in a certain amount;
- ✿ award attorneys' fees, interest, and/or court costs.

A court of appeals might

- ✿ reverse the trial court's judgment;
- ✿ affirm the trial court's judgment;
- ✿ remand (send back) the case to the lower court for further action; or
- ✿ vacate (cancel, invalidate, nullify) the decision of the trial court.

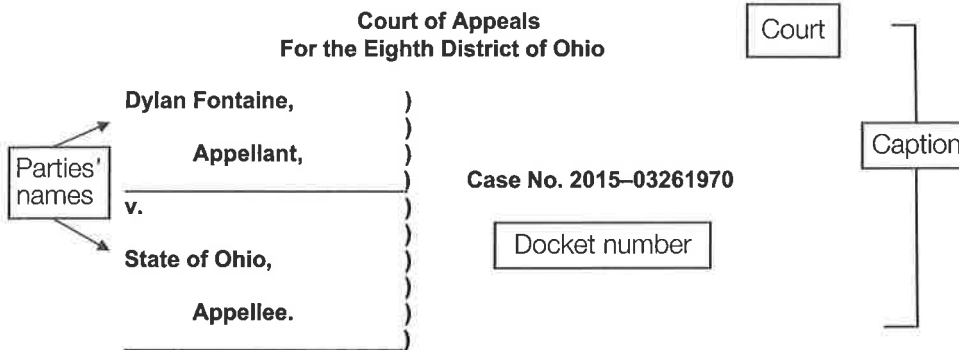
The court's decision is put into effect via the court's written “order,” which is the court's directive that the mandated action occur.

**Concurring or Dissenting Opinions:** At the appeals court level, if one or more of the judges<sup>2</sup> agrees with the judgment rendered by the majority of the court, but believes in a different reasoning or rationale to support the decision, such judge(s) may author a concurring opinion, explaining the alternate analysis. If one or more of the judges disagrees with the judgment rendered by the majority, such judge(s) may write a dissenting opinion. The judges' names will appear before such concurring or dissenting opinion, along with a note as to whether the additional opinion is a concurrence or a dissent. These parts of the case opinion are not mandatory authority but may have persuasive value.

<sup>2</sup> A trial court has only one judge. An appellate court usually is comprised of a panel of judges.

## II. Marking Up the Structural Components in a Case Opinion

Let's look for the various components discussed above in the following case example.



Synopsis: At trial, the jury found Appellant, Dylan Fontaine (“Fontaine”), guilty of the crime of felonious assault with a deadly weapon. The facts are: Fontaine removed a Jimmy Choo high-heel stiletto shoe from her foot and threw it at a local bartender, Jamie Dunham (“Dunham”). She yelled curse words at Dunham while throwing the shoe, and the pointed heel of the stiletto shoe hit Dunham in the forehead, causing a deep gash requiring emergency medical attention. Fontaine appealed the jury verdict, arguing that a stiletto shoe does not constitute a deadly weapon. The Court of Appeals affirmed the conviction.

Headnotes:

[1] Felonious Assault:

Under Ohio Rev. Code § 2903.11(A) (2008), the felonious assault statute states that “[n]o person shall knowingly . . . [c]ause or attempt to cause physical harm to another . . . by means of a deadly weapon or dangerous ordnance.”

[2] Deadly Weapon:

Ohio Rev. Code § 2923.11(A) (2013) defines a “deadly weapon” as “any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.”

[3] Deadly Weapon:

When evaluating whether an otherwise innocuous item qualifies as a deadly weapon under the felonious assault statute, Ohio courts consider (1) the size and weight of the item, (2) the shape and design of the item, (3) the ability of the item to be grasped in the hands of the user in such a way that it may be used on or directed against the body of another, and (4) the ability of the item to be used in a manner and with sufficient force to kill the other person.

Attorneys: Christopher Brown, Esq., for the Appellant, Prosecuting Attorney, Peter Gartner, Esq.

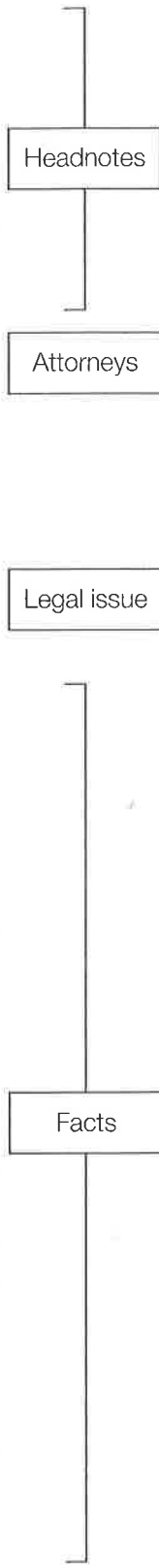
Judges: Aquino, J., Schonfeld, J., and Prager, J.

OPINION, per curiam.

The issue before the court is whether a stiletto high-heel shoe can constitute a deadly weapon under Ohio law.

The facts of this case are as follows. Appellant, Dylan Fontaine ("Fontaine"), is a twenty-seven-year-old resident of Cleveland, Ohio, where she works for an advertising and marketing agency. She is a frequent patron of an upscale wine bar called Enoteca located in Shaker Heights, Ohio. On New Year's Eve, Fontaine attended a party at the wine bar. Prior to midnight, she ordered a bottle of Spanish wine from the bartender, Jamie Dunham ("Dunham"). At midnight, Fontaine still had not received the bottle of wine she ordered and began to get agitated; she felt the bartender was ignoring her requests. She requested the bottle again. Finally, Dunham responded to Fontaine, "Dylan, I can't serve you any more. I'm cutting you off." Fontaine reacted angrily. A few moments later, witnesses saw her remove from her foot a size 7 champagne-colored suede Jimmy Choo high-heel stiletto shoe. The shoe was a platform "peep-toe" stiletto constructed of suede, leather, and steel. The heel measured 3.9 inches in height and was plated in a gold-colored metal; the point of the heel was affixed to a small rubber sole. The platform part of the shoe was less than half an inch wide.

Witnesses observed Fontaine throw the shoe with force at Dunham while yelling curse words. The pointed heel of the stiletto shoe hit Dunham directly in the forehead. He immediately fell backwards and into the bar, and then collapsed onto the floor. The point of the stiletto heel caused a deep gash in his forehead. Bystanders called paramedics to the scene. Police arrived as well, and they arrested



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Fontaine for felonious assault. Dunham's forehead required emergency medical attention, including stitches and treatment for a concussion. Paramedics transported him to the hospital where he spent one night; he was released the next afternoon.

Fontaine was charged with the crime of felonious assault with a deadly weapon. Ohio Rev. Code § 2903.11(A) (2008)—the felonious assault statute—states that “[n]o person shall knowingly . . . [c]ause or attempt to cause physical harm to another . . . by means of a deadly weapon or dangerous ordnance.” Ohio Rev. Code § 2923.11(A) (2013) defines a “deadly weapon” as “any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.” It is undisputed that Fontaine knowingly caused physical harm to Dunham by throwing her Jimmy Choo high-heel stiletto shoe directly at him. Therefore, the sole question is whether the shoe qualifies as a “deadly weapon” under Ohio law.

When evaluating whether an otherwise innocuous item qualifies as a deadly weapon under the felonious assault statute, Ohio courts consider (1) the size and weight of the item, (2) the shape and design of the item, (3) the ability of the item to be grasped in the hands of the user in such a way that it may be used on or directed against the body of another, and (4) the ability of the item to be used in a manner and with sufficient force to kill the other person.

Ohio courts have applied the foregoing factors to numerous household items that normally would not be considered weapons in their everyday uses. For example, in *State v. Redmon*, No. CA-7938, 1990 WL 94745 (Ohio Ct. App. June 25, 1990), a home intruder, who had smoked cocaine earlier in the evening, broke into a house, picked up a wicker rocking chair, approached the homeowner who was sitting on her couch, and told her that he was going to kill her. *Id.* at \*1. The intruder swung the rocker at the woman's face. While she was able to duck and run into the kitchen, the intruder continued swinging the chair as he made his way to the kitchen. He swung the rocker at the homeowner again, missed, and finally threw the object away. *Id.* After an ongoing struggle and a 911 call, eventually the police arrived and arrested the intruder for the crime of felonious assault. *Id.*

The intruder argued that the wicker rocking chair was not a deadly weapon. *Id.* However, the court held that the chair was indeed a deadly weapon as defined by Ohio law. *Id.* at \*2. The court explained, “[a]n instrument, no matter how innocuous when not in use, is a deadly weapon if it is of sufficient size and weight to

Facts

Rules

Court's  
narrowing  
of legal  
issue

Beginning  
of analysis/  
discussion  
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identification  
of rule factors

Precedent  
case  
explaining  
the rule

inflict death upon a person, when the instrument is wielded against the body of the victim or threatened to be so wielded." *Id.* The court considered the following factors: (1) the size and weight of the chair, (2) the shape and design of the chair, (3) the ability of the chair to be grasped in the hands of the intruder and swung at the victim, (4) the ability of the chair to be used in a manner and with sufficient force to kill the victim. *Id.* Applying these factors, the court emphasized that the intruder swung the wicker rocking chair at the victim's head, while telling her that he was going to kill her. She ducked and the chair missed her face by one-and-a-half feet. These factors supported the court's finding that the chair constituted a deadly weapon. *Id.*

Similarly, in *State v. Ware*, No. 57546, 1990 WL 151499 (Ohio Ct. App. Oct. 11, 1990), an ex-boyfriend entered his ex-girlfriend's home and, as she was putting a broom behind a door, struck her on the head with an iron and said, "I am going to kill you." *Id.* at \*1. The man continued to strike the woman with the iron while she screamed for help. She struggled toward her bed and grabbed a pillow to protect herself from the blows of the iron. The man continued to swing the iron, hitting her and the wall, until the iron fell apart. Eventually, she got away. *Id.* The ex-boyfriend was charged with felonious assault with a deadly weapon. He argued that the iron did not qualify as a "deadly weapon." *Id.*

Precedent  
case  
explaining  
the rule

The court held that the iron was a deadly weapon. *Id.* at \*6. Applying the above-mentioned factors to determine whether the iron was capable of inflicting death, the court emphasized that the ex-boyfriend used the iron in such a manner by striking the victim several times and caused her to sustain multiple abrasions and lacerations, requiring several stitches. The court found this sufficient to qualify the iron as capable of inflicting death. *Id.*

Further, in *State v. Maydillard*, No. CA99-06-060, 1999 WL 988822 (Ohio Ct. App. Nov. 1, 1999), an inmate at a correctional institution in Ohio entered the cell of another inmate carrying a plastic shaving razor from which he had removed the plastic guards to expose the blades. The first inmate brandished the razor at the second inmate in an attempt to collect a debt owed. *Id.* at \*1. A struggle ensued. Guards arrived at the cell, pulled the inmates apart, and handcuffed them. During a pat-down search, a guard found the razor. The inmate was charged with possession of a deadly weapon while under detention. *Id.*

Precedent  
case  
explaining  
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In applying the statutory definition of a "deadly weapon" to the razor, the *Maydillard* court held that the razor possessed by the



inmate was a “deadly weapon” by the manner of its use or adaptation. *Id.* at \*4. The court explained that cases that have found a razor not to be a deadly weapon involved circumstances where the razor was used or possessed in a manner consistent with its legitimate purpose, such as a barber’s razor or a pocket knife used for cutting packing tape and rope. *Id.* at \*3. However, this inmate had adapted the razor, by removing the plastic guards, to function as a deadly weapon. *Id.* at \*4. Further, he brandished it as a weapon. Finally, the court emphasized that the inmate presented no testimony that he was using the razor in a manner consistent with its legitimate purpose. *Id.*; see also *State v. Salinas*, No. F-84-8, 1985 WL 7568 (Ohio Ct. App. July 26, 1985) (holding that a jury reasonably could find that a baseball bat constituted a deadly weapon when the perpetrator swung the bat at a victim, causing injury to his jaw, ribs, and arms); *State v. Deboe*, 406 N.E.2d 536 (Ohio Ct. App. 1977) (holding that a club-like instrument three inches in diameter wrapped in spongy material, which the perpetrator swung rapidly at the victim, hitting him 15 or 20 times on the head, arms, back, shoulders, and kidneys, causing black and blue welts and bruises, constituted a deadly weapon).

Signal citations of precedent cases explaining the rule

In contrast, in *State v. Kaeff*, No. 20519, 2004 WL 2245095 (Ohio Ct. App. Sept. 24, 2004), a husband was indicted for one count of domestic violence and one count of felonious assault with a deadly weapon after using only his hands to attempt to strangle the victim, his wife. *Id.* at \*1. The husband filed a motion to dismiss the count of felonious assault on the ground that a person’s hands cannot, as a matter of law, be considered a deadly weapon. The trial court granted the motion and dismissed the count. The prosecution appealed the court’s ruling. *Id.*

Precedent case explaining the rule

The prosecution argued that hands (1) fit within the definition of an “instrument,” (2) are capable of inflicting death, and (3) can be used as a weapon. However, the court held that hands do not meet the definition of a deadly weapon. *Id.* at \*4. The *Kaeff* court reasoned that the factors defining a deadly weapon suggest the use of an object apart from one’s own body. Thus, one’s hands are not within the scope of the statutory definition. *Id.*

In evaluating whether Fontaine’s Jimmy Choo stiletto qualifies as a deadly weapon, this court must consider (1) the size and weight of the shoe, (2) the shape and design of the shoe, (3) the ability of the shoe to be grasped in the hands of the user in such a way that it may be used on or directed against the body of another, and (4) the ability of the shoe to be used in a manner and with sufficient force

Transition to Court’s analysis of facts

to kill the other person. Applying these factors, we hold that the stiletto shoe was a deadly weapon.”

Holding

The facts indicate that Fontaine’s “instrument” was a size 7 champagne-colored Jimmy Choo high-heel stiletto shoe. The shoe was constructed of suede and leather and was a platform peep-toe stiletto. The heel height measured 3.9 inches and was constructed of steel with a gold-colored point attached to a small rubber sole. The platform part of the shoe was less than half an inch. The shoe was neither lightweight nor small. Further, the pointy shape of the nearly four-inch metal heel, and the weight of the platform peep toe structure, rendered the shoe capable of causing harm when thrown with force. Fontaine was able to grasp the heavy unwieldy shoe in her hand and hurl it toward the body of Dunham, specifically his head. The weight and shape of the shoe, when thrown in the manner Fontaine propelled it, likely had sufficient force to kill another person.

Rationale

Unlike the perpetrator in *Maydillard* who modified an everyday razor by removing plastic safety guards, Fontaine did not modify or adapt the shoe from its original purpose. Further, unlike the assailants in *Redmon*, *Ware*, and *Deboe*, who swung their respective weapons—a rocking chair, an iron, and a sponge-covered bat—numerous times against the body of their victims, Fontaine heaved the shoe only one time at Dunham. However, given the shoe’s size, weight, shape, design, and ability to be grasped by Fontaine in such a way to be hurled at Dunham with sufficient force to gravely injure him and possibly kill him, this court finds that the shoe meets the definition of a “deadly weapon.”

Because Fontaine knowingly caused physical harm to Dunham by means of a deadly weapon, the jury properly found her guilty of felonious assault under Ohio Rev. Code § 2903.11(A).

Judgment

We affirm the verdict.

SO ORDERED.

### III. Drafting Useful Case Briefs

One key to success in your first semester of law school will be for you to learn how to read numerous and voluminous legal cases in an efficient manner and pare them down into key discussion components, identifying the major characters and events in the parties’ factual story, the legal issue, the rule of law, the holding on

the particular legal issue, the rationale/reasoning behind the holding, and the judgment (or procedural result) in the case. When you extract this information from a complex case opinion and condense it into “talking points,” you are creating a “case brief.” Each student, professor, and lawyer has a different way of processing, managing, and presenting this information. Develop a case brief template that works for you and fits the way your individual brain handles complex and dense information. The goal is to condense the critical components of a lengthy case into a one- or two-page document so you can refer to a streamlined summary of the case in class discussion instead of searching through numerous pages to track down the important information.

The following describes one possible strategy for creating a case brief template.

**Step One:** Print out a hard copy of the case; you want to be able to write on the document and circle, highlight, and mark up text on the paper. Skim the structure of the case as a whole before reading it closely to see whether you can identify some of the component parts mentioned in this chapter. Use a highlighter to identify these items, underline them, circle them, or make notes in the margins. It is okay, and recommended, to “get your hands dirty” and “get messy” when dissecting a case. No one will see your markup but you. Remember, statutes and cases are some of the raw materials of a lawyer’s creative process. It’s okay to be a bit of a mad scientist or untamed artist when working with these tools.

**Step Two:** Create a case briefing template on your computer or on a sheet of paper with the following categories.

- **Case name:** Who are the parties? What do they do for a living? What is their role in society? What is their relationship to one another? Instead of referring to the parties as “plaintiff” or “defendant,”<sup>3</sup> can you give each party a more useful descriptive term such as “employer,” “perpetrator,” “celebrity,” “contractor,” “property owner,” or “victim”? Do not refer to the parties by their actual names; eventually it will be easier to apply the principles of the case to your client’s factual circumstances if you assign role labels to the key players in the precedent cases rather than using their real names.
- **Jurisdiction:** In what court is the case pending? State or federal? What level does the court occupy in the judicial hierarchy—trial level, appeal, or court of last resort? (Consider searching for an online color-coded map of the particular state or federal court’s hierarchy so you understand how the specific case fits within the vertical framework.)
- **Date:** When was this case decided? Was there anything notable or important about the political culture in our country at the time? Was anything major happening in the particular state or the United States then?

<sup>3</sup> An exception to this suggestion is in the context of criminal case law; when briefing criminal cases, it is okay to designate the “accused” as the “defendant” since that is a clear indication of the individual’s role in the legal matter.

- **Facts:** What happened between the parties? Who is unhappy with whom? What led to the lawsuit? Can you capture the “story” of the case in a few sentences? Can you create a brief chronology of events?
- **Procedure:** What court documents have been filed so far in the case? What is the procedural “status” of the case? What procedural event in the litigation prompted the court to write an opinion at this time?
- **Legal issue:** What specific legal question are the parties asking the court to answer or resolve? Do the litigants want the court to resolve more than one legal issue?
- **Rule of law:** What rule of law governs the particular legal question? Is there an applicable statute or regulation? Have other cases provided a common law rule? Does the court break down the rule into a list of elements? Factors? Does the court define legal terms?
- **Arguments made by the parties:** What arguments does the plaintiff (or appellant or petitioner) make to persuade the court to rule in its favor? What arguments does the defendant (or appellee or respondent) assert to persuade the court to rule in its favor? Try to pare down the arguments for both sides into three or four bullet points.
- **Holding:** How does the court answer the legal question? Look for words like “the court holds,” “the court finds,” “we hold,” or “we find.” This is the substantive answer to the legal question (usually not a procedural step).
- **Rationale or reasoning:** What are the three or four reasons the court provides to support its holding? Does the court itemize a list of elements or factors and make a decision on each one? Does the court emphasize any public policy reasons for its decision (e.g., fairness, equality, efficiency, judicial economy, safety, health, welfare of citizens)?
- **Judgment:** What is the court’s judgment? More specifically, what procedural step does the court order? Does the court grant or deny a motion? Does the court order the entry of judgment in one party’s favor? Does the court award damages to one party or impose a penalty against another party? Does the court order “equitable relief” such as a temporary restraining order or an injunction? Does the court direct the clerk to take any procedural action?

**Step 3:** Go through the case again and begin to fill in your case brief template. If you encounter words in the opinion that you do not recognize or understand, look them up in a legal dictionary and keep a running definition list that accompanies your case briefs.

**Step 4:** Proofread and edit your case brief so it reads clearly. Use bolded or underlined headings so you can locate the different case components easily if questioned about them in class.

**Step 5:** Print out your completed case brief. Keep a folder of printed hard copies of your case briefs and take them to class so you do not have to search for answers to your professor’s questions on your computer, but instead have all the answers neatly typed up on your printouts.

**Sample “Best Practices” Case Brief**

Case Name (Parties): State of Ohio v. Marci Hersh (she is a woman who worked at Case Western Reserve University, who was accused of stalking a coworker)

Jurisdiction: Court of Appeals of the State of Ohio, Eighth District, Cuyahoga County (Ohio is divided into 12 appellate districts, each of which is served by a court of appeals)

Date: August 23, 2012

Legally Significant Facts: The accused stalker was convicted of the crime of “menacing by stalking” in a bench trial and appealed. In 2006, she allegedly stalked a worker by harassing her on a daily basis. They lived in the same apartment building and worked at the same university. The defendant was found guilty of menacing by stalking in 2008. In 2009, the defendant had encounters with the stalking victim’s parents, and then on a single occasion in 2009, the defendant followed the victim in a supermarket from aisle to aisle, but left the premises before the victim departed the store.

Procedure: The defendant was convicted of “menacing by stalking” (for the supermarket incident) in a bench trial and appealed.

Legal Issue: Whether the evidence was sufficient to establish a “pattern of conduct” as required to convict a defendant of “menacing by stalking” under the applicable Ohio statute, Rev. Code § 2903.211(A)(1) (2014), which states: “No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.”

Rule of Law: “Pattern of conduct” is defined as “two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents.”

Arguments Made by the Parties: The defendant argued that the supermarket encounter was the only encounter, and that the other encounters in 2006 were not “closely related in time.” The prosecutor argued that the defendant’s 2009 encounters with the victim’s parents served as the basis for a “pattern of conduct.”

Holding: The prosecution failed to present sufficient evidence of a “pattern of conduct.”

Rationale or Reasoning: The cases cited by the prosecution did not support the argument that a “pattern of conduct” can be established by a defendant’s alleged men-

acing interactions with *third parties* associated with a victim. Even if the court considered the encounters with the parents, the prosecution failed to present sufficient evidence that the encounters knowingly caused the victim to believe that the defendant would cause her physical harm or mental distress. The parents encountered her in public places; she said “hello” to them but did not otherwise talk to them. The victim did not testify that her par-

For tips on how to conquer anxiety about the Socratic method and answering a professor’s questions in class about a case, see Appendix E.

ents’ encounter made her believe that the defendant would cause her physical harm or mental distress.

Judgment: Court ordered that the conviction be vacated.