CHAPTER ON READING AND BRIEFING CASES
Introduction to Law
Reading Assignment

Introduction

There are many law-school skills that will require at least your entire first semester to develop. But there are two law-school skills that you need to start working on before you ever set foot in a classroom. These are (1) reading cases and (2) briefing cases. Each professor’s syllabus tells you what pages you must read before you get to class. And each professor expects you to brief every case in that reading assignment before you get to class. The purpose of this chapter is to help you get started.

This chapter begins with a glossary of some of the important terms you are likely to encounter in your first week of law school. The rest of the chapter is in two parts. The first part is getting the “Big Picture.” It explains how the casebook and the course syllabus are related. It also attempts to guide you through constructing the “Big Picture” for Torts I. Unless you have the “Big Picture,” the court cases in your casebook will appear almost meaningless.

The second part covers how to read and brief court cases from the casebook. The premise of this chapter is that, to learn information, law-school students need to learn how to organize information. Without knowing the “Big Picture” and the structure of the court cases, reading cases and briefing them will be, at best, confusing.
Contents

I. Objectives of This Assignment

II. Glossary of Some Important Terms

III. Review Questions (to be answered at the end of this chapter)

IV. Reading Cases: How to Begin
   A. Get the Big Picture
   B. Use a supplemental aid to do some pre-reading

V. How to Read and Brief the Case
   A. What court cases are
   B. Developing reading strategies that work
   C. The structure of cases
   D. Reading cases
   E. Briefing cases
      1. Traditional briefs
      2. Data charts (T-charts)

VI. Review
I    Objectives of this assignment:

- Know how and why to get the Big Picture of a class
- Understand what cases are for
- Know how information is organized in cases
- Read cases effectively – develop questions to use as you read
- Discover and learn legal concepts
- Organize the concepts to learn them
- Brief cases using traditional format or data charts (T-charts)
- Know the terms used in law school

II    Glossary of some important terms:

Some of the words and phrases that you will read and hear in law school will be utterly unfamiliar to you. Others may already be in your vocabulary, but from now on they may have meanings that are completely different than before. A large part of becoming a lawyer is learning the vocabulary of the law. To help you do this, you should get a good law dictionary, such as Black’s Law Dictionary. You should also get a good regular dictionary. Look up terms that the court discusses, even if they seem familiar. They may turn out to mean something completely different than you thought.

Many of these definitions have been taken from Black’s Law Dictionary.

Affirm: An appellate court’s decision to confirm a lower court’s judgment or decision.

Appellate-court case: A judicial opinion written by a court that is higher in the court system than the trial court. The purpose of the opinion is to decide the issue(s) that the parties appealed on. The names of the appellate courts vary, depending on the state or on whether the opinion was issued by a state or federal court.

Argument: A series of reasons that a party uses to try to convince a court that the party’s position is correct, so that the party can win the case or receive an advantage in the case. The parties’ arguments might explain that the law should be applied to the facts in a particular way to achieve a particular result in the case; they might explain why the law in that jurisdiction should be changed and a new rule should be adopted; or they might explain why a particular rule should be interpreted in one way and not another.

Case: Case can mean different things. Sometimes case means the judicial opinion that the court issued. Sometimes it means a legal dispute between parties that ends up in court. Some cases are criminal, which means that the state or federal government is accusing an individual of having broken one or more criminal laws and is seeking to prosecute that individual. In a criminal case, a lawyer representing the government (the prosecutor) charges the individual (the defendant) with violating certain laws and is seeking to have the defendant imprisoned, fined, or both. Other cases are civil, which
means that one individual (the plaintiff) is claiming that another individual (the defendant) is liable to the plaintiff because the defendant has wronged the plaintiff in some way that the law can remedy. Usually, plaintiffs in civil cases are seeking to make the defendant pay money as a way to right the wrong.

**Casebook:** A collection of court cases (that is, judicial opinions), statutes, and other sources of legal concepts. The purpose of the casebook is to teach specific legal concepts, how the legal concepts fit together in a coherent Big Picture of the law, and how those legal concepts apply to specific situations.

**Case brief:** A summary of the court’s analysis in a given court case (that is, judicial opinion). Law students write a case brief for each case after reading it. This is done before class, and students bring the case briefs to class. Then, when the professor calls on the student during class, the student has a record of the key points in the case. The student also uses the case brief to boil the case down to its essentials so that the student can incorporate that information into an outline.

**Citation (or cite):** A numbering system used by legal publishing companies to enable lawyers and judges to find the law. Judicial opinions are collected and published in sets of books; each book in each set has a volume number. The citation will include the volume number, an abbreviation for that set of books, a page number where that opinion begins, and the year the case was decided. Thus, once you have the cite, finding the opinion is easy. Other kinds of law (such as statutes) have similar citation systems.

**Common-law rule:** A judge-made rule as opposed to a statutory one. In the United States, there are three branches of government, and each branch makes law. The legislative branch makes statutes; the executive branch makes things like treaties (and it also includes administrative agencies, which make a lot of rules and regulations); and the judicial branch makes law called *common law*.

**Complaint:** The initial pleading that a plaintiff files to start a civil case. The complaint is a document that states why the court has jurisdiction, what legal theories the plaintiff’s case involves, and what relief the plaintiff demands (that is, an explanation of what the plaintiff wants to get at the end of the case). In some states, this pleading is called a *petition*. In criminal law, the *complaint* is a formal charge accusing a person of an offense.

**Defendant:** In a criminal case, someone (whether an individual, corporation, or other entity) who has been accused of violating one or more criminal statutes or, in a civil case, someone who has been accused of having wronged another in some way that the law can remedy. Common abbreviations for *defendant* are D and Δ (the Greek letter *delta*).

**Dissent:** An expression of disagreement with a majority opinion. In the trial court, only one judge is in charge of the case. Thus, in trial court opinions, there can never be a dissent because there is no one with whom the judge can disagree. However, appellate court cases are decided by panels of judges. If a majority of these judges agree on what
the decision should be and why, they will write the “majority” opinion; any judges who disagree will write a dissent, explaining the source of the disagreement.

**Elements:** The necessary, distinct characteristics or component ideas that make up a particular legal theory. For a person to win a lawsuit, the person must be able to show that all the elements of that legal theory have been proved. For example, to sue another person for battery, a plaintiff must prove that the defendant fulfilled certain elements: (1) intent, (2) contact with the plaintiff’s person, and (3) that the contact was harmful or would be offensive to a reasonable person. Plaintiff can only win the lawsuit if plaintiff can prove that all these ideas are true about the plaintiff’s case.

**Evidence:** Something (including witnesses’ testimony, documents, and tangible objects) that tends to prove or disprove the existence of a fact that is alleged to be true by one party or another. For example, a witness’s testimony that he saw the defendant murder the victim is evidence that helps to prove that the victim is dead and the defendant is the murderer. A document might tend to prove that two people entered into a contract. A tangible object might tend to prove that something is true; for example, a can of beans with broken glass in it might tend to prove that the manufacturer who canned the beans was negligent. Evidence can also mean the collective mass of things, especially testimony and exhibits, which are presented before a tribunal such as a court in a dispute between parties. “Evidence, broadly defined, is the means from which an inference may logically be drawn as to the existence of a fact; that which makes evident or plain. Evidence is the demonstration of a fact; it signifies that which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. In legal acceptation, the term ‘evidence’ includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. ‘Evidence’ has also been defined to mean any species of proof legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, and the like.” 31A C.J.S. Evidence § 3, at 67-68 (1996).

**Facts:** The part of a case (judicial opinion) that explains what events led up to the dispute that ended up in court. The facts explain what happened before the lawsuit began or, sometimes, what happened after the lawsuit began.

**Holding:** The outcome of the case. The holding explains what the court ultimately decided about the dispute between the parties in the case.

**Hornbook:** A type of supplemental aid. A Hornbook is a treatise (a detailed explanation of the law) that is written by an acknowledged expert in that field of law.

**Intent:** The state of mind that a person has when the person does something. Intent is an element of some torts and most crimes. It is also an element of many other legal theories. What state of mind is required depends on what tort, crime, or other legal theory is at issue. Intent is a complex concept, one that you will spend a great deal of time on in law school.
**Intentional torts:** One branch of torts. There are seven intentional torts, and they are called *intentional* torts because each requires as an element that the defendant had a certain intent – a certain mental state. There are seven intentional torts: Battery, Assault, False Imprisonment, Intentional Infliction of Mental Distress, Trespass to Land, Trespass to Chattels, and Conversion.

**Issue:** The legal problem that the case (judicial opinion) solves. The issue is a legal aspect of the case that the parties disagree about and that is important enough to affect the outcome of the case. Issues usually take one of three forms: (1) if the jurisdiction has not yet adopted law that would help a court decide a particular case, the issue would be what law the jurisdiction should follow and why; (2) if the jurisdiction has already adopted law on a particular point, the issue might be how to interpret it (that is, what does that law mean?); or (3) if the court knows what the law is and how to interpret it, the issue might be whether the facts fit that law and why. A case might have only one issue, or it might have several.

**Judgment:** A judgment is the court’s final decision in a case. In it, the court determines the rights and obligations of the parties in the case. For example, in a civil case in which the plaintiff won, the judgment will declare the plaintiff the winner and state what rights the plaintiff has because of the lawsuit, such as a right to collect money from the defendant. In a criminal case in which the defendant was found guilty, the judge will issue a judgment of conviction. If the defendant was not convicted, the judge will issue a judgment of acquittal. The term *judgment* includes a decree and any order that the law allows a party to appeal from.

**Jury instructions:** A set of directions or guidelines that a judge gives a jury that tells the jury the law that the judge thinks governs the case. *Jury instructions* is often shortened to *instructions*. They are sometimes also called *jury charge*, *charge*, *jury direction*, or *direction*.

**Motion:** A written or oral request that the court make a particular ruling, decision, or order. In the course of a lawsuit, the parties might make many motions, asking the court to decide different kinds of things. A motion can be as simple as orally asking the judge to order the windows to be opened during a trial to air out the stuffy courtroom; or it can be extremely complex, involving lots of legal analysis and arguments (motions for summary judgment, for example, are sometimes very long and complicated). The point is that, when the parties want the judge to make a decision, they ask for the decision; the request for a decision is called a *motion*.

**Motion for a directed verdict:** A party's request that the court enter judgment in its favor before submitting the case to the jury because there is no legally sufficient evidentiary foundation on which a reasonable jury could find for the other party. For example, if the plaintiff has no evidence to prove one or more of the elements of the plaintiff’s case, the defendant will move for a directed verdict. If the motion is granted, the court will hold that the defendant is the winner and the plaintiff is the loser. On the
other hand, if there is no evidence to show that any element of the plaintiff’s case can be disproved, the plaintiff could move for a directed verdict. If it is granted, the court will declare the plaintiff the winner. Or if there is no evidence to disprove a defense that the defendant is asserting, the defendant can move for a directed verdict and be declared the winner. The motion for a directed verdict is a way to cut the trial short and have the judge decide the case right on the spot, as a matter of law, without waiting for a jury to do it.

**Motion for summary judgment:** A request that the court enter a judgment without holding a trial because there is no genuine issue of material fact to be decided by a fact-finder – that is, because the evidence is legally insufficient to support a verdict in the other side's favor. Either side can move for summary judgment. In federal court and in most state courts, if the movant (the person making the motion) is the defendant, the movant must point out in its motion that the plaintiff has no evidence to prove one or more essential elements of the plaintiff's claim, after which the burden shifts to the nonmovant (the plaintiff) to produce some evidence on those elements and show that there is a genuine fact issue that a jury should decide. But if a party moves for summary judgment on its own claim or defense, then that party must show that the evidence proves each element of the claim or defense as a matter of law.

**Negligence:** A kind of tort. Usually, to win a negligence case, the plaintiff must prove that the defendant (1) had a legal duty, (2) which the defendant breached, and (3) the breach caused (4) damage to the plaintiff, for which the plaintiff wants compensation. Intent is not an element of negligence.

**Notecases:** Also called endnotes or just notes, these are short descriptions of cases or short explanations of legal concepts that can be found in your casebook after a judicial opinion. For example, look in your Torts casebook (Prosser, Wade, and Schwartz). You will see a “principal case” called Weaver v. Ward. After it, you will see six notecases. Some of these further explain the legal concepts that were present in Weaver v. Ward, and some of them briefly explain points from cases that are not reprinted in your casebook (see note 3 on page 6, explaining a point from Williams v. Holland). Some of them give additional sources that you could read for more information on a particular point (see note 6), but don’t panic – nobody expects you to go look all these things up. You will not have time. Finally, the notes sometimes have questions for you to answer to test your understanding of what you have just read. Always read the notes after the cases! You will often find that they greatly clarify what the principal opinion was talking about. If the note asks a question, write out an answer to the question. This will give you practice at using the law you learned from the case you’ve just read.

**Nutshell:** A supplemental aid. Like hornbooks, Nutshells are treatises, but they are more concise explanations of the law (and they don’t cost as much).

**Opinion (or judicial opinion):** Often used interchangeably with case, an opinion is a document written by a judge or justice of a court to decide issues in a lawsuit. To a layperson, the word opinion means a personally held belief, whether or not that belief can
be backed up by proof or reasoning. But a judicial opinion means something very different. In a judicial opinion, a judge does not give his or her personal beliefs. Instead, the opinion is (or is supposed to be) a document written in a specific format that explains what events (facts) led up to a lawsuit, what law applies to the parties’ dispute, and exactly why the court is deciding the way it is. It is supposed to be a well-reasoned explanation of the court’s analysis leading to the court’s decision. Judicial opinions are one type of law.

**Outline:** A tool created by law students to learn the law and study for examinations. You should create an outline for each course. To create an outline, you must first set out the Big Picture of the law and then insert the details of the law so that you can see what all the parts are and how they fit together. You should begin your outlines in week 2 or 3. *Do not* wait much longer than that because there is too much material. If you wait until the middle of the semester to start your outline, you will not have time to finish it.

**Party:** Someone directly involved in a lawsuit.

**Petitioner:** A party who presents a petition or a claim for relief to a court or other official body. This is a title often given to a person who is appealing a case (also called the *appellant*).

**Plaintiff:** In a civil case, the person who starts the lawsuit and sues the defendant. Common abbreviations for *plaintiff* are P and π (the Greek letter pi).

**Privilege:** In Torts, a legal defense to an intentional tort. That is, even if a plaintiff can prove every element of the intentional tort, if the defendant proves that he or she has a privilege, then the defendant cannot be liable to the plaintiff. There are nine privileges: Consent, Self-Defense, Defense of Others, Defense of Property, Recovery of Property, Necessity, Authority of Law, Discipline, and Justification.

**Procedure:** That part of the case (judicial opinion) where the court explains (1) what legal decisions were made in the case after the lawsuit started but before it arrived in the court that is addressing it now and (2) how the case ended up in the court where it is now. For example, in a case in the Supreme Court of a state, the procedure may explain what decisions the trial court or jury made, who appealed the case, what decision the court of appeals made, and who appealed from that decision.

**Prosecutor:** The person who represents the government in a criminal case. The prosecutor is not a party to the case; instead, the prosecutor is the government’s lawyer.

**Reasoning:** That part of the case (judicial opinion) that explains why the court is making whatever decision it is making. Reasoning may explain why the court is adopting the rule it is adopting, or why it is interpreting the law the way it is, or why the facts do or do not fit the law.
**Remand:** The act or an instance of sending something (such as a case, claim, or person) back for further action. For example, a case nearly always has to go to the trial court first. If one or both of the parties appeal a decision made by the trial court, the case goes “up” to the appellate court. The appellate court then makes a decision, and if the trial court needs to do something further with the case because of what the appellate court decided, then the case is remanded back “down” to the trial court. At that point, the trial court is in charge of the case again. People can also be remanded: for example, a person charged with a crime can be remanded to the custody of the police. That is, the person is returned to the custody of the police agency.

**Respondent:** The party against whom an appeal is taken (also called the *appellee*). In other words, the respondent is not the one who appealed the case; instead, the respondent is only responding to the appeal filed by the petitioner. At common law, the defendant in an equity (as opposed to law) case was also called a *respondent*.

**Restatements:** Model rules for different areas of law. Restatements are written by committees of people who are experts in a given area of law. They put together a series of rules that they think various jurisdictions should adopt as law. However, Restatement provisions are *not* law in a given jurisdiction *until* that jurisdiction’s court adopts them. Many states have adopted parts of various Restatements as law, and that is why you will study many Restatement provisions.

**Reversal:** An appellate court’s overturning of a lower court’s decision. If the appellate court decides that a lower court (whether the trial court or a lower appellate court) made a very bad decision about one or more issues in a case, the appellate court can change the decision to whatever it considers the right decision should be.

**Rule:** *Rule* can mean many things. For our purposes, a *rule* is an explanation of what an element means and exactly what it takes to prove that element, *or* it is a piece of law that a party has to prove in a given case to achieve the outcome that party is seeking.

**Socratic method:** A teaching method used by many law-school professors. During class, a professor using the Socratic method will call on a student (usually requiring the student to stand up) and ask a series of questions about a particular case from the assignment. These questions are intended to elicit all the important aspects of the case; to test the student’s understanding of the legal analysis of the case; and to clarify the facts, law, or reasoning in the case. Sometimes, professors will present the student with a *hypothetical* (or *hypo*), in which the professor makes up a new set of facts and asks the student to explain how the law would apply to those new facts. Extroverted students often enjoy being called on, while introverted students often dislike it. But the professor’s goal is to help students learn to “think on their feet,” a skill that they must develop to be effective advocates.

**Strict liability:** An area of Tort law. A strict liability case is a case in which a plaintiff can win without having to prove that the defendant acted intentionally or negligently, which often makes it easier for a plaintiff to win. However, strict liability is available in
only a limited number of situations where, for policy reasons, courts have decided that it would not be fair to make the plaintiff prove intent or negligence.

**Supplemental aid:** A source other than a casebook that you can go to for explanations of legal concepts.

**Tort:** An area of law made up of a number of legal concepts. A tort is a civil (as opposed to criminal) wrong for which the law can provide a remedy to the plaintiff who has been harmed, but only if the plaintiff can prove all the elements necessary to establish that the tort has been committed. Examples of torts include intentional torts, negligence, strict liability, defamation, products liability, etc.

**Trial court:** The lowest-level court in a given jurisdiction. For example, in Michigan, the court system has three levels: the trial courts, the Court of Appeals, and the Supreme Court. Most cases have to start at the trial court level. Decisions made at the trial court level can then be appealed to the higher courts if one or both parties believe that the trial court made a serious mistake.

**III Review Questions (to be answered at the end of this chapter)**

After reading this chapter, you should be able to answer the following questions:

What is the purpose of making a structured overview of a class?

What is a casebook?

What might make a court case difficult to read?

Why should law school students pre-read using supplemental aids?

What are the structural components of a typical case in a casebook?

What is the purpose of briefing?

What kinds of questions can you use to help you find, sort, and understand the law? The reasoning? The facts? The issue(s)? The procedure? The parties’ arguments? The holding?

What do you see as the advantages of using the traditional brief versus the T-chart, and vice-versa?

How is reading in law school different from other reading that you have done in college or as a graduate student?

What new demands will law school place on your memory?
IV Reading Cases: How to Begin

What a casebook is: A casebook is a collection of court cases and other sources of legal concepts, organized so that it presents one or more legal concepts at a time. The purpose of the casebook is to teach you the law and how the law is applied to different situations. Each case that you read will teach you some specific points about the law and show you how that law was applied to the facts of that case.

In writing the casebook, the author researched and found cases that explained the concepts that the author knows the students must learn. However, the cases that are in your assigned reading for law school usually do not contain the entire opinion. They have been heavily edited and shortened to present the specific concept that is being taught at that point in your class. The author takes out everything that does not directly pertain to what the author is trying to teach at that point and leaves only the parts that do pertain. This may make the reading “choppy” or disconnected.

Before you read the assigned cases: The first thing that you need to know is that the most important skill in law school is the ability to organize large amounts of detailed information. If you do not organize the massive quantities of information that you will be exposed to, you will not be able to learn it, retrieve it from your long-term memory, or use it effectively.

How casebooks differ from textbooks: In high school or college, your textbooks organized the information for you. Textbooks were usually laid out in an outline format, with chapter titles and headings. All of the information in the chapter pertained to the idea in the chapter title; all of the information under each heading pertained to the idea in the heading. Most importantly, all of the information under each heading was organized for you. Thus, creating an outline was very simple: all you needed to do was to put the chapter title at the top, write the headings down below, and then summarize the information under each heading.

The casebook is different in one very important way. Though there are chapter titles and headings in each chapter, and many casebooks do contain informational text in which the casebook author explains major concepts, the information under the headings is not otherwise pre-organized. Instead, most of what you will find under each heading will be a series of court cases, notecases, maybe statutes or Restatement provisions, or other sources of legal concepts. Each of these will contain a number of different ideas. The burden falls on you to find all the ideas, put the pieces together, and organize the information so that you can learn it. This means that you must develop the habit of categorizing the information as you come to it.

Organizing information requires you to understand how specific pieces of information in each category fit into the Big Picture, both for that day and for the whole course.
A. Get the Big Picture

To get the Big Picture for that day, you should first find out what topic is being taught in that part of the book. To do this, check the course syllabus and the casebook’s table of contents to see what concept you will be covering that day. As you read the case, remember that the author’s purpose was to teach you all about *that concept* and look for everything that has to do with that concept. This will give you the Big Picture for that day’s assignment.

But before you start reading *any* cases, the best thing that you can do for yourself is to develop a Big Picture for the *whole course*. Check your syllabus first to see how much of the book you will cover this term. Then take a good, hard look at the parts of the table of contents that the course will cover. Usually, the table of contents lists *all* the major concepts that you will learn in the course. Look at all the major headings and subheadings and try to figure out how the big concepts fit together. That is, how many major, separate areas are there in the course? What are the sub-parts of each of those areas? You will be able to figure a lot of it out at the beginning. On the other hand, it won’t be clear how some of the parts fit together until you learn more about the concepts in those parts, but that’s okay. You don’t have to figure it all out in the first week. But (1) starting to build the Big Picture early and (2) continuing to develop that Big Picture are both necessary for you to really learn the material. Here is an example of building the Big Picture.

The table of contents in the Torts book is laid out something like this (only parts of the table of contents will be reprinted here):

Chpt I. Development of Liability Based Upon Fault

Chpt II. Intentional Interference with Person or Property
1. Intent
2. Battery
3. Assault
4. False Imprisonment
5. Intentional Infliction of Mental Distress
6. Trespass to Land
7. Trespass to Chattels
8. Conversion

Chpt. III. Privileges
1. Consent
2. Self-Defense
3. Defense of Others
4. Defense of Property
5. Recovery of Property
6. Necessity
7. Authority of Law
8. Discipline
9. Justification

Chpt. IV. Negligence
1. History
2. Elements of Cause of Action
3. A Negligence Formula
4. The Standard of Care

. . . . . . . . . . . . . . . . . . . . .

Chpt. XII. Defenses

Chpt. XIII. Vicarious Liability

Chpt. XIV. Strict Liability

Now develop a Big Picture to work with. Why is this important? Because you will shortly be exposed to overwhelming amounts of detail. If you have no Big Picture in mind, you won’t know what concept the details pertain to or where the details go. If you don’t know where the details go, then (1) you won’t really understand them, (2) you won’t be able to remember them, and (3) you won’t be able to use them effectively later. Most people find that they learn better when they get the Big Picture first.

From this table of contents and from some of the explanations in the first chapter, we get a sense of the major areas the course will cover. There will be three major categories of law: intentional torts, negligence, and strict liability. How do these areas relate? The explanations in the first chapter make it clear that these are three separate kinds of torts. One is not a subset of another; instead, they have very different rules. So you could draw a mental picture like this:
This is a tree diagram, showing the very basic structure of torts, a mighty fine data-organization device. Once we have the major concepts organized, we can start adding in sub concepts. So, for example, in Chapter II, the table of contents starts with intent. However, from our reading, we quickly learn that intent is not a tort itself; instead, it is the one element that all intentional torts share. There are seven intentional torts, and each will have intent as an element. So we can add that to our picture. We also learn the “privileges” are defenses to intentional torts. So we can add those nine privileges, coming off the “intentional torts’ arm, because you don’t use privileges unless you are dealing with an intentional tort.

Now that we see how the intentional torts and privileges fit together, we can go on and do the same thing for negligence and strict liability: we decide how the sub-parts of negligence fit together and then draw them in and do the same for strict liability.

Some people don’t like pictures like this; some prefer traditional outline format. Those people might do something like this as the basic organization:
I. Intentional Torts
   1. Battery
   2. Assault
   3. False Imprisonment
   4. IIID
   5. Trespass to Land
   6. Trespass to Chattels
   7. Conversion

   A. Privileges
      (A) Consent
      (B) Self-Defense
      (C) Defense of Others
      (D) Defense of Property
      (E) Recovery of Property
      (F) Necessity
      (G) Authority of Law
      (H) Discipline
      (I) Justification

II. Negligence

Et cetera.

B. Use a Supplemental Aid to do some Pre-reading:

   Before you begin reading your cases, it is also a good idea to start by reading
   from an outside source or supplemental aid. There are many supplemental aids available
   from many different companies. The best aids are usually either the Hornbooks or the
   Nutshells. Hornbooks are treatises (detailed explanations of the law) that are written by
   acknowledged experts in that field of law. Nutshells are also treatises, but they are much
   shorter (and cheaper). Both will give you an overview of the law that you are studying.
   To know which part of the Hornbook or Nutshell to use, find what pages cover that same
   concept.

   When you read it, don’t worry about trying to figure out all the details. Your
   purpose is simply to get the major elements and rules. That way, when you read your
   cases, you will already be somewhat familiar with the law. It is much easier to find and
   understand the law in the cases when you know what you’re looking for. Even though it
   takes some time, figure out which pre-reading source works best for you. Once you
   decide which sources you like, you can buy them from the school’s bookstore.
V How to Read and Brief the Case

Most law students have never read a court case before they get to law school, and learning to read them is difficult for many students. Part of the problem is understanding what cases are and what they are for. For most students, a second problem is the most serious and the most difficult to overcome: understanding how to develop effective reading strategies. A third part of the problem is that the way information is organized in the casebook and in cases is different from other kinds of text.

Students who want to learn to read cases effectively need to understand (1) what cases are for and how courts decide them and (2) how to develop effective reading strategies by understanding (3) how the information is organized and why it is organized that way. Once students understand those aspects, reading cases and getting the important information out of them becomes much easier.

A. What court cases are

Court cases are primary documents. They are written by judges (or the judges’ staff members), and their purpose is to decide one or more issues in the case. An issue is generally something that the parties seriously disagree about and that will affect how the case will come out. So the court’s job is to decide the issues and to decide who, if anyone, is right. To do this, the court must explain

- What events led up to a particular lawsuit (facts and procedure)
- What the plaintiff sued for or, in a criminal case, what crime(s) the defendant was charged with committing (the general area of law)
- What issue(s) the parties raised (the issue(s))
- What law applies to the case (the specific area of law that was relevant)
- Why the facts in the case did or did not fit the law (the reasoning)
- What the court’s decision was in the end (the holding)

How courts decide cases: Be aware that most of the cases you will read are appellate-court cases. That is, cases almost always start in a lower court - a trial court – and the trial-court judge makes some kind of decision in the case. No matter what happens in a lawsuit, it seems that somebody – one of the parties or even both parties – ends up unhappy with the decision. So if one or both of the parties appeal that decision to the higher court, then the appellate court has two possible jobs: (1) the appellate court might have to figure out what the law is or what it should be or (2) the appellate court might have to figure out whether the trial judge made a mistake that is so serious that the decision can’t be allowed to stand.

Because most cases are from the appellate court, the cases that you read will almost never discuss every single aspect of the case. Instead, when the parties appeal, they point out to the appellate court what the parties believe were the most serious issues. If one party believes that a particular rule should apply in that jurisdiction or that the law in that jurisdiction should be changed, that will be the issue on appeal – what is the law
that should apply in that jurisdiction and why? If one party believes that the trial court applied the law incorrectly – that is, that the law is clear, but the trial judge misunderstood the law – then that will be the issue on appeal. If one party believes that the judge made some other kind of mistake, that will be the issue on appeal. The point is that the parties decide what the case is about, and they do not try to argue about every single aspect of the case. They pick and choose what’s most important, and most of the time, the appellate court will address only the issues that the parties bring up.

B. Developing reading strategies that work

i. The college model – what doesn’t work in law school.

In most college courses of study, students are not required to read critically or analytically. Instead, a student reading a chapter in the textbook is expected only to (1) follow along and try to understand the ideas contained in the text; (2) distill a single main idea out of that text; (3) memorize that idea; and (4) repeat that idea back on a test. Students who use this reading strategy in college tend to do well because most college courses of study are about memorizing information rather than using ideas to solve new problems. However, this strategy will not work in law school. Though law school requires memorizing a vast quantity of details, memorizing alone is never enough. Law school is about learning how to solve new problems using the principles of law that you encounter. Thus, students are learning at the application level, rather than just memorizing and repeating information. To do this, students must understand the principles on a much deeper level and in much more detail, and they must practice applying them to new situations. In short, though it is necessary in law school to distill the main idea from text, that alone is never sufficient.

ii. The law school model – what does work in law school

Unlike in college, reading in law school requires a much higher level of interaction with the text. In fact, studies show that the more students interact with the text, the higher the students’ grades.¹ Students who follow the college model – passively following along with the text – tend to be the students at the bottom of the class. Students at the top of the class are the ones who use active reading techniques. In short, there is a direct correlation between reading strategies and grades.

Active reading requires, among other things, knowing what questions to ask as you read. The structure of what you are reading dictates the questions that you pose as you read. The questions posed by the reader are what allow the reader to interact with the

text. This interaction with the text is what separates good readers from poor readers. The following section will describe the structure of the text – the cases – that you will be reading and will suggest the kinds of questions you should be asking as you read.

C. The Structure of Cases:

In law school, most of what you read will be from court cases. Court cases are usually made up of certain specific parts: facts, procedure, the parties arguments, the issue or issues, law (elements, rules, or both), reasoning, and a holding. Because the court case is a way for the court to solve the problem that the parties have posed, it has a different structure from other kinds of text that you may have read in the past. Cases usually follow a very specific pattern – the pattern of legal analysis. You must understand this pattern and the way that the information is organized in the case, or you will not be able to use that pattern to figure out what is important. Furthermore, when you write an essay exam answer, you will be expected to use a pattern that is very similar to the pattern that courts use.

Here is the pattern that cases usually follow:

<table>
<thead>
<tr>
<th>An explanation of what kind of case this is – contract case, murder case, false imprisonment case, etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facts – what events led up to this lawsuit? This section often includes the procedure – what the lower court(s) decided about this case. Sometimes it includes the parties’ arguments in the case.</td>
</tr>
<tr>
<td>Issue(s) – the court’s statement of what specific parts of the decisions made by the lower court(s) are being disputed by one or both parties.</td>
</tr>
<tr>
<td>Law – either (1) what law the parties are arguing should apply (if the law is not clear or if there is no law at all on that point in that jurisdiction) or (2) what law applies (if the law is clear) or (3) both.</td>
</tr>
<tr>
<td>Reasoning – (1) why the court is adopting one rule instead of another or (2) why the facts in this case do, or do not, fit the requirements of the law or (3) both. Sometimes, in this section, the court explains or criticizes the parties’ arguments.</td>
</tr>
</tbody>
</table>
Sometimes the court then gives more law and more reasoning, and maybe even more law
and more reasoning, and so on until the court has discussed all the law that it needs to
decide the case. Then it usually ends with . . .

**Holding** – the answer to the issue. It describes the court’s decision in case.

(Be aware that, sometimes, cases – especially very old cases – do not follow this
pattern very closely. Most likely this will be because the pattern had not been developed
at the time those cases were written.)

D. **Reading Cases**

i. **Finding the law**

The most efficient way to read a case is to skim the case until you find the law.
So the first question you will ask will be, “Where does the law begin?”

On a first reading, don’t bother to read the facts carefully because you won’t
know which facts are important or legally relevant until you know what the law is. What
makes a fact important is that it tends to “fit” – that is, prove or disprove – some piece of
law. So if you don’t know what the law is, you can’t tell which facts fit.

It’s usually easy to tell when the court is done with the facts and procedure and
starts talking about law. The facts and procedure are like a story – they explain what
happened to the particular people in this case. But the law is never about anybody in
particular. Instead, the law is abstract: it explains what happens to anybody who does a
particular thing or is in a particular position. So when the case stops talking about the
parties in the case, the court is probably talking about the law.

Here is an example. On page 10 of the Torts book by Prosser, Wade, and
Schwartz is a case called *Cohen v. Petty*. Right under the case name, the authors of the
case book wrote “Court of Appeals of the District of Columbia, 1933.” This tells us
which court decided the case (the Court of Appeals of the District of Columbia) and
This is the citation to the case – where you would go to find the case in the library. This
case has two cites because the case appears in two different sets of books. So if you
looked in volume 62 of the D.C. Appeals Reports (abbreviated App.D.C.) and turned to
page 187, you would find this case. And if you went to volume 65 of the Federal
Reporter, second series (abbreviated F.2d) and turn to page 820, you would find this
same case.

Now look at the first paragraph of the case. It starts with the words “Groner,
Associate Justice.” That means that Justice Groner, who was an Associate Justice of
the D.C. Court of Appeals, is the one who is credited with writing this opinion. He may
have actually written it himself, or he may have had a staff member write it and Justice
Groner signed it. But in any case, Justice Groner gets credit for writing the opinion, and the rest of the justices apparently agreed with what he had to say.

Look at the rest of the first paragraph. Notice that it tells us what the plaintiff sued the defendant for (failing to operate his car with reasonable care, leading to an accident that caused plaintiff’s injuries) and it also gives some procedure (the trial judge gave binding instructions [directed a verdict] and plaintiff appealed). Notice that the words “directed a verdict” appear in brackets. These brackets mean that the casebook author added those words at that point. Whenever the casebook author adds words to or changes words in the opinion, the casebook author puts the words in brackets so that you know that those words were not in the original opinion. Here, the casebook author wanted to clarify that the plaintiff was appealing the trial court’s action of directing a verdict. A directed verdict is when the trial judge tells the jury what verdict to reach—that is, the judge tells the jury that it has to hold that a particular side wins—because the trial judge believes that, legally, it is the only possible decision. So here, the judge instructed the jury that it had to find that the defendant had won. This only happens when the plaintiff has some kind of fatal flaw in her case. So our job will be to figure out what it was that the plaintiff had to prove but couldn’t. Thus, the first paragraph does not give us any of the law; instead it tells us what kind of case this is (a negligence case because “failing to exercise reasonable care” always means “negligence”). This follows the pattern we expected to see, and the court also slipped a little procedure into the first paragraph.

Skim the second paragraph. Is the court explaining the law there?

No. It is telling the story of how this accident came about. Therefore, these are facts because the whole paragraph is about these particular people.

Skim the third paragraph, which is on page 11. Is there any law?

No. It’s still facts.

How about the fourth paragraph – law?

No. Still facts. (By the way, do you see the three asterisks - *** - at the end of the paragraph? That means that the casebook author omitted some text from the opinion at that point. It might be only a sentence, or it might be pages and pages, but the author is showing you where the omission is. Remember, most of the cases you will read have been edited so that the casebook author can stick to the point he or she is trying to make.)

How about the fifth paragraph, beginning with “The sole question is whether . . .” Law?

Not really. The court is telling us the issue – the point that the parties disagreed about. The question is whether the trial judge was correct in taking the decision away from the jury. The court immediately answers the question (gives its holding), by saying
that the trial judge was correct. We still don’t have any law, and that’s what we look for first.

How about the fifth paragraph? Does it contain law?

Yes. We can tell that for two reasons. First, the court starts out with, “It is undoubtedly the law that . . .” So the court tells us that it is about the give law. Second, the court is no longer talking about anybody in particular. Instead, it says that “one who is suddenly stricken . . .” In other words, anybody who is in that situation is not liable (“is not chargeable with negligence”) as long as this rule applies. So we have found some law. (By the way, do you see the “[Cc]” at the end of the paragraph? That means that in the opinion, the court named the cases from which it got this rule. However, your casebook author knows that nobody reads citations – they just interrupt the text. Why does the casebook author signal every change or omission from the case? Because cases are primary documents – they are law. So every time the casebook author makes a minor editorial change, the author must indicate that there has been a change at that point.)

Once you have found all the law, there are a couple more questions you need to ask yourself. The first question is, “How many ideas are there in this law?” To answer this question, you have to figure out how the words fit together – how they form “clusters” that describe various ideas. Once you’ve found all the ideas, then ask yourself, “How do these ideas fit together?” See whether you can create an outline that shows how the ideas relate to each other. Then ask, “What does each idea mean?” One of the biggest mistakes that law students make is memorizing words without truly understanding what ideas they represent. To help you understand the ideas, you can ask two additional questions: “How can I put each idea into my own words?” and “What would be an example of this idea?”

So let’s break the law down into its component parts. For a person not to be liable, several things must be true. Our job is to find all the separate ideas that must be true. To do this, we need to scan the law in this paragraph and find out how many separate ideas are there.

The paragraph of law states as follows:

It is undoubtedly the law that one who is suddenly stricken by an illness, which he had no reason to anticipate, while driving an automobile, which renders it impossible for him to control the car, is not chargeable with negligence.

Break this up so that you can see the separate ideas – what must be true before a person isn’t liable? One quick and easy way to spot all the ideas is to insert slashes in between the ideas.

It is undoubtedly the law that / one who is suddenly stricken by an illness, / which he had no reason to anticipate, / while driving an automobile, / which
renders it impossible for him to control the car, / is not chargeable with negligence.

The next question is, “How do these ideas fit together?” With this rule, the simplest way is just to make a list. Four things must be true for a person to avoid liability:

1. The person must be suddenly stricken with an illness,
2. The person must have no reason to anticipate the illness,
3. The person must be driving the automobile, and
4. The illness must make it impossible for the person to control the car.

All of these things must be true or the person can be liable. Now ask the next question: “How can I put each idea into my own words?” What is another way to say “suddenly stricken with an illness?” “Suddenly stricken with an illness” means “quickly” hit by a nasty physical condition” or “abruptly getting sick.” Now, “What would be an example of this idea?” An example might be feeling fine one minute and then, the next minute, doubling over from some internal condition.

How about “no reason to anticipate the illness”? You might put it into your own words by saying something like this: “Having no way to predict that the sickness was coming.” What would be an example? How about something like having a perfect record of health, and then being told that you have a condition that you have never had before and nobody else in your family had ever had? The point of these questions is to make yourself understand the ideas behind the words. This is crucial in law school because, on your exams and in your practicing life, you will never know what kind of story you will have to analyze. If you know what kinds of ideas to look for in the story, you will be more likely to analyze it correctly.

It turns out that there is no more law in this case. Some cases have lots and lots of law; this case has only one short rule with four parts. So it’s time to look for the next important part of the case.

ii. Finding and sorting the court’s reasoning

Notice that, up to this point, the case follows the pattern that we expect to see. It began with an explanation of what kind of case this was; it gave some procedure and a whole lot of facts; and now it has given us the law in that jurisdiction. (Notice also that this is not a case where the parties are arguing that the law should be changed or where the law is not clear – instead, the court seemed to have no problem explaining what the law was.) What we expect to see now is reasoning – how that law applied to this defendant’s situation.

When you are reading the court’s reasoning, you might see one of several different patterns. Often, to decide the case, the court only needs to address one or two elements of the law. This will be true when you’re reading an opinion from an appellate court and the parties are only disputing one or two elements. Sometimes, the parties’
dispute concerns a number of points of law. Then the court will have to explain some law and give its reasoning, then explain another piece of law and give its reasoning, and so on.

This case is fairly simple because it only involves one rule with four parts. To explain its reasoning, the court will have to explain exactly why each of these four ideas were true of this defendant. If all four weren’t true, then the trial court should not have directed the verdict. So as you read, your job is to discover

Which idea was the court discussing at any given point?
Which facts does the court refer to for each idea?
How does the court describe those facts?
How does the court conclude on each piece of law? Is each piece proven, or not?

To answer these questions, you must play a matching game – match what the court is talking about to the pieces of the law that the court has previously explained.

The court states, “In the present case the positive evidence is all to the effect that defendant did not know and had no reason to think he would be subject to an attack such as overcame him.” Which idea is the court discussing?

The court seems to be addressing more than one. It is definitely discussing number (2), that he had no reason to anticipate it, because the court *says* he did not know and had no reason to anticipate it. The court also seems to be alluding to number (1), that he was suddenly stricken, because the court describes the facts as showing an “attack” that “overcame” him. The conclusion is that the court seems to have put a check mark next to number (1), and it has definitely found that number (2) is proven.

Next, the court says, “Hence negligence cannot be predicated in this case upon defendant’s recklessness in driving an automobile when he knew or should have known of the possibility of an accident from such an event as occurred.” Which idea is the court discussing now? First, it points out that the defendant had not done anything wrong *before* he got sick, so the plaintiff can’t prove that anything else defendant did caused the accident. That does not connect up with any idea in our list. Second, it describes the facts by reiterating that the illness was sudden – number (1) and it is also discussing number (4) – that the illness made it so that the defendant could not control the car. So the court seems to have checked off all four parts of the rule – its conclusion or holding. The court’s final decision is that the trial judge was right in holding for defendant because plaintiff could not refute the defense.

**iii. Analyzing and sorting the facts**

Now we can go back and read the facts carefully. As we read, our job is to sort them out – to decide which facts go with each of the four parts of the rule. The question you may ask is, “Which facts fit each part of the rule?” To do this, you must again play a
matching game: ask yourself which facts contain the same basic concept as each idea in the rule. Sometimes the facts may “match” the ideas required by the rule (which tends to show that that part of the rule cannot be proved). What facts go with number (1)?

Everybody in the car was having a nice conversation. Then, the defendant suddenly exclaimed to his wife, “Oh, Tree, I feel sick,” and the defendant’s wife looked over and saw his eyes close, and defendant fainted immediately. These facts tend to show that the illness suddenly came over him.

How about number (2)? Defendant said that he had never fainted before in his life, that his health was good, that he had eaten that day, and that he had felt fine until just before he fainted. That tends to show that he had no reason to anticipate that anything was wrong or that he was about to become unconscious.

How about number (3)? Everybody agreed that defendant was the driver.

How about number (4)? Well, the defendant was unconscious. Unconsciousness makes it kind of hard to drive.

So let’s look back at the process of reading the case. We skim until we find the law. Once we find the law, we break it up into its separate ideas and write down the four parts of the rule. Then, as we look at the reasoning, we ask ourselves, “What piece of law? Then is that fact legally relevant? Or instead, is it only a background fact, given to explain the story?”

iv. Finding the other parts of the case

When professors call on you in class, they will usually want to know some or all of the other parts of the case, such as the issue(s), the procedure, the parties’ arguments, and the holding. Again, there are questions you can ask yourself to help you answer the professors’ questions.

Sometimes the court will explicitly state the issue. In Cohen v Petty, the court stated, “The sole question is whether, under the circumstances we have narrated, the trial court was justified in taking the case from the jury.” That is a statement of the issue, but it’s a little vague. To get more specific statement of the issue, you can ask, “In its reasoning, what did the court spend its time discussing?” The issue is the question that the court must answer to decide the case, so whatever the court focuses on in the reasoning must be the issue. In some cases, the issue can be whether one of the elements can be proved by the facts. In other cases, the issue might be to clarify what the law is or should be (see, for example, Spano v. Perini). In Cohen v. Petty, the issue was whether the trial court was right when it decided that the plaintiff had not shown that all four parts of the rule were met? Was there any other evidence that defendant had done something negligent?

To find the procedure, you could ask questions like this: “Where did the case start? What decisions were made there? Did the case go to another court after
that? What decisions were made there?” In *Cohen v. Petty*, the case started in the trial court. During the trial, the trial judge directed a verdict in the defendant’s favor, which means that the plaintiff’s case had a fatal flaw so the judge decided that the defendant had to win. Plaintiff thought that this was a wrong decision and appealed to the D.C. Court of Appeals. The case did not go to any other court in between the trial court and the D.C. Court of Appeals.

To find the parties’ arguments, you could ask questions like this: “Does the court tell me what the parties argued? If it didn’t, did it give me clues to the parties’ arguments by the way it explained its reasoning?” If the court tells you the parties’ arguments, then this task is easy. But often the court will not explain the parties’ arguments. If that happens, you can often figure it out by looking carefully at the reasoning. Does the court seem to be refuting something? It might give you a clue by, for example, using phrases like “even though” or “even if.” For example, in *Cohen v. Petty*, the court says, “Even if plaintiff’s own evidence tended more strongly than it does to imply some act of negligence . . .” These words contain the clue: plaintiff probably argued that this kind of accident does not happen unless the driver is somehow negligent. On the other hand, the defendant’s argument is easier to figure out: the court accepted the defendant’s argument as true, so the court’s reasoning probably reflects what the defendant argued. Here, the defendant argued that there was no evidence to disprove any part of the four-part rule.

To find the holding, you could ask, “What did the court ultimately decide in this case?” The holding is often at the end of the case; however, sometimes it is not. In *Cohen v. Petty*, the holding was given twice: once in the middle and once at the end. The case states, “The sole question is whether, under the circumstances we have narrated, the trial court was justified in taking the case from the jury. We think its action was in all respects correct.” The second sentence is a holding. At the end, the court says, “Affirmed.” That is another holding: the court is agreeing that the trial court made the right decision.

**Summary: Reading Cases**

This case did not have a lot of law in it. But often, a case will contain a *lot* of law. For example, the court may discuss the *elements* of the law – that is, all the different aspects that have to be true for the plaintiff to prove the case. For example, to prove that a tort has been committed, the plaintiff has to prove that every element of the tort was present. For a prosecutor to prove that a defendant is guilty of a crime, the prosecutor has to prove that the defendant committed every part — every element — of the crime. And often the court will discuss *rules* — that is, an explanation or definition of what the elements *mean*. All of the law in the case that pertains to the topic of the assignment will be important, so it is important to find all the elements and rules that the court discusses in that case. The court in *Cohen v. Petty* only discussed one relatively simple rule with four parts, so that’s all the law that we would need to write down.
Now let’s look at two different formats for briefing the case. No matter which format you use, your purpose is the same: to take notes on the kinds of things that your professor will likely want you to know and to summarize the court’s legal reasoning.

E. Briefing Cases

Two Methods of Case Briefing: Traditional and New

Purposes of Briefing Cases:

(1) Case briefs are a *summary of the legal analysis* in the case.
(2) They are a *tool that you create* to help you to
   (A) Find all the important parts of the case and
   (B) Record what you have found so that you can
       • Be prepared to recite in class
       • Follow along as others recite or as the professor lectures
       • Transfer the important information into an outline
       • Analyze the law by making analogies to and distinctions from other cases

The three most important parts of any case are (1) the law, (2) the facts that “fit” each piece of law, and (3) the reasoning. There are two main varieties of reasoning: it may be an explanation of why certain facts did or did not fulfill the requirements of each piece of law; or it may be an explanation of why the court adopted a particular rule in the first place.

Your professors may ask about other parts of the case as well. These other parts include (1) procedure, (2) the issue, (3) the plaintiff’s (or prosecutor’s) argument, (4) the defendant’s argument, and (5) the holding.

**You will be expected to write a brief for each case in your reading assignment. You must brief the case before you go to class and bring your briefs with you to class.**

One interesting thing about briefing is that though the final product – the brief – lists information in a certain order, it is often not the same order the information was in the case, and it is often not the order in which you wrote the information down. For example, the traditional brief starts with “facts.” It is far more efficient to leave the “facts” part blank at first and then write the facts down *last* because you often will not know which facts were actually important until after you have finished analyzing the other parts.

Here is a sample format for briefing in the traditional way:

1. A Traditional Case Briefing Format
Name of the case, name of the court, date of the case (you may also want to include the page number where the case begins in your casebook).

Facts: Briefly explain what happened in the case. Be sure to write down the facts that “fit,” “connect to,” or “match” a particular piece of law. If a fact doesn’t match up with some piece of law in the case, then the fact is not legally important. However, your professor may quiz you on background facts also – that is, facts that are not legally important, but that help to explain the story in the case.

Procedure: What happened in the lower court(s) – what decisions did the lower court(s) make about this case?

Issue: What piece (or pieces) of law did the court spend its time discussing in detail? What element or rule was the court mostly concerned with?

Plaintiff might argue: Sometimes the court says what the plaintiff argued, and sometimes you have to figure out what the plaintiff argued.

Defendant might argue: The flip side of “Plaintiff might argue.”

Law: Squeeze every piece of law out of the case that you can find. Break the law down into pieces – every separate idea that the rules contain. Look for all the elements and for all the rules that say what the elements mean. Then organize the pieces into a checklist form, so that you can see all the different ideas. Cases often contain a lot of law, and your job is to pull all of it out.

Reasoning: Remember the two kinds of reasoning. (1) Does this case explain why the court is adopting the rules that it is using? If so, write down the reasons that the court gives. (2) Does this case explain why the particular facts in this case do, or do not, fit the law? Then explain which piece of law the court focused on, and exactly why the particular facts did, or did not, fit.

Holding: How did the case come out? What did the court do in the end?
A Sample Brief of *Cohen v. Petty* in the Traditional Case Briefing Format

*Cohen v. Petty*, DC Court of Appeals, 1933

**Facts:** D was driving, and he suddenly said that he felt sick. D’s wife saw his eyes close as he fainted, and then the car crashed. D testified that he felt fine until he passed out, that he was in good health, that he never passed out before, and that he had eaten that day. P didn’t produce any evidence to contradict any of this.

**Procedure:** Trial judge granted a directed verdict to D.

**Issue:** Whether P’s case was hopeless because P didn’t show that the rule below didn’t apply, so that a directed verdict was appropriate.

**Plaintiff might argue:** D must have been doing something negligent, or this wouldn’t have happened, so D should have to pay.

**Defendant might argue:** D would argue that all four elements of the rule (below) were fulfilled.

**Law:** A person is not liable for negligence if

1. The person is suddenly stricken with an illness,
2. The person has no reason to anticipate the illness,
3. The person is driving the automobile, and
4. The illness makes it impossible for the person to control the car.

**Reasoning:** D (1) was suddenly stricken because he was driving along fine and then told his wife he felt sick; then he just fainted. So this attack overcame him without warning. He (2) didn’t have any reason to anticipate it because he was just driving, feeling fine, and having a conversation; he had never fainted before; he had eaten that day; and he didn’t feel sick until just before he passed out. Therefore, he didn’t have any reason to think that he was going to be unconscious in a minute. (3) D was driving. (4) He couldn’t control the car when he was unconscious. P didn’t produce any evidence at the trial to show that these things weren’t true, so P couldn’t possibly show that this rule didn’t apply; therefore, P couldn’t possibly win. So the trial judge was right to grant a directed verdict.

**Holding:** Trial court was correct in holding for defendant because plaintiff couldn’t refute the defense.
2. A Sample Brief of *Cohen v. Petty* in the New Case Briefing Format – the T-Chart

*Cohen v. Petty*, D.C. Court of Appeals, 1933

**Issue:** Whether P’s case was hopeless because P didn’t show that the rule didn’t apply, so that a directed verdict was appropriate.

<table>
<thead>
<tr>
<th>Reasoning</th>
<th>Law</th>
<th>Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>D was suddenly stricken because the attack overcame him without warning.</td>
<td>Rule: A person is not liable for negligence if</td>
<td>Procedure: Trial court granted a directed verdict to D</td>
</tr>
<tr>
<td>D didn’t have any reason to anticipate it because he was fine one minute and he fainted the next minute. Therefore, he didn’t have any reason to think that he was about to be unconscious.</td>
<td>(1) The person is suddenly stricken with an illness,</td>
<td>(1) D was driving along fine and then told his wife He felt sick, then he just fainted.</td>
</tr>
<tr>
<td>The element is met because nobody disputed it.</td>
<td>(2) The person has no reason to anticipate the illness,</td>
<td>(2) D was just driving, feeling fine, and having a conversation; he had never fainted before; he had eaten that day; and he didn’t feel sick until just before he passed out.</td>
</tr>
<tr>
<td>D couldn’t drive while unconscious.</td>
<td>(3) The person is driving the automobile, and</td>
<td>(3) D was driving.</td>
</tr>
<tr>
<td>P didn’t produce any evidence at the trail to show that these thins weren’t true, so P couldn’t possibly show that this rule didn’t apply; therefore, P couldn’t possibly win. So the trial judge was right to grant a directed verdict.</td>
<td>(4) The illness makes it impossible for the person to control the car.</td>
<td>(4) D was unconscious.</td>
</tr>
<tr>
<td>Held – Trial court was correct in holding for defendant because plaintiff couldn’t refute the defense.</td>
<td></td>
<td>P might argue: D must have been doing something negligent, or this wouldn’t have happened, so D should have to pay.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D might argue: D would argue that all four elements of the rule were fulfilled.</td>
</tr>
</tbody>
</table>
A Sample Brief of *Spano v. Perini Corp.* in the Traditional Case Briefing Format

*Spano v. Perini Corp., NY Court of Appeals, 1969*

**Facts:** Ps were the owner of a garage and a person whose care as in the garage. D was building a tunnel, and the blasting damaged the garage and the car. Ps sued but did not try to prove that D was negligent in how D conducted the blasting.

**Procedure:** (The procedure is not very clear.) The trial court found for Ps. One appeals court (the Appellate Term) reversed that decision and found for D; another appeals court (the Appellate Division) agreed with the first appeals court because Ps had not proved that D was negligent.

**Issue:** Should the court require P to prove that D was negligent when D’s blasting damages Ps’ property, or should the court hold that D is absolutely (strictly) liable?

**Plaintiff might argue:** Somebody should have to pay for the damage. P wasn’t doing anything wrong, and D was making money by blasting and should have known that blasting was likely to harm was caused by debris flying onto P’s property or whether it was caused by the concussion? The harm is done either way. So absolute (strict) liability makes sense.

**Defendant might argue:** D was being as careful as possible, and P couldn’t prove that D was negligent. People should not be held liable unless they are at fault. Furthermore, blasting is necessary for construction, and construction is necessary for society to progress. Courts shouldn’t hold people liable when they are helping society as a whole unless the blasting actually throws debris onto P’s property. Otherwise, the effect will be to discourage builders from building, and that would be a bad thing.

**Law:** The court gave two rules: the old rule (the New York rule) and the new rule that it was adopting (the rule that the rest of the country was using). Old rule: To win, P has to prove that D was negligent *unless* the blast caused rocks or other debris to be thrown onto P’s property and the debris caused the damage. New rule: To win, P has to prove (1) that the activity (here, blasting) is the kind of activity that is dangerous no matter how careful D is, and (2) that the activity caused the damage. It doesn’t matter whether the damage was caused by debris thrown onto the land (trespass) or whether it was caused by the blast itself. And P doesn’t have to prove, that D was negligent.

**Reasoning:** The old rule doesn’t make any sense. First, no other state does it this way. Second, the case that came up with the old rule (the *Booth* case) was inconsistent with New York cases that came before *Booth*. The older cases had not cared whether the damage was caused by debris or by the blast, so there was no reason for the *Booth* case to
care about that. Third, the reason the *Booth* case created the old rule was that if blasters had to pay for damage, then blasting would in effect become illegal, and there wouldn’t be new construction. But that’s dumb. The question isn’t whether blasting is legal – the question is who should pay for the damage. And the person who should have to pay is the person who did the blasting that caused the debris that harmed the building.
**A Sample Brief of Spano v. Perini Corp. in the New Case Briefing Format – the T-Chart**

*Spano V. Perini Corp.*, NY Court of Appeals (1969)

**Issue:** Should the court require P to prove that D was negligent when D’s blasting damages P’s property, or should the court hold that D is absolutely (strictly) liable?

<table>
<thead>
<tr>
<th>Reasoning</th>
<th>Law</th>
<th>Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>The old rule doesn’t make any sense. First, no other state does it this way. Second, the case that came up with the old rule (the Booth Case) was inconsistent with New York cases that came before Booth. The older cases had not cared whether the damage was caused by debris or by the blast, so there was no reason for the Booth Case to care about that. Third, the reason the Booth Case created the old rule was that if blaster had to pay for damage, then blasting would in effect become illegal, and there wouldn’t be new construction. But that’s dumb. The question is who should pay for the damage. And the person who should have to pay is the person who did the damage, not the poor neighbor who got hurt by it.</td>
<td>The court gave two rules: the old rule (the New York rule) and the new rule that it was adopting (the rule that the rest of the country was using). Old rule: To win, P has to prove that D was negligent <em>unless</em> the blast caused rocks or other debris to be thrown onto P’s property and the debris caused the damage. New rule: To win, P has to prove (1) that the activity (here, blasting) is the kind of activity that is dangerous no matter how careful D is, and (2) that the activity caused the damage. It doesn’t matter whether the damage was caused by debris thrown onto the land (trespass) or whether it was caused by the blast itself. And P doesn’t have to prove that D was negligent.</td>
<td>Facts: Ps were the owner of a garage and a person whose car was in the garage. D was building a tunnel, and the blasting damaged the car. Ps sued but did not try to prove that D was negligent in how D conducted the blasting.</td>
</tr>
</tbody>
</table>

D’s argument: D was being as careful as possible, and P couldn’t prove that D was negligent. People should not be held liable unless they are at fault. Furthermore, blasting is necessary for construction, and construction is necessary for society to progress. Courts shouldn’t hold people liable when they are helping society as a whole unless the blasting actually throws debris onto P’s property. Otherwise, the effect will be to discourage builders from building, and that would be a bad thing.

P’s argument: Somebody should have to pay for the damage. P wasn’t doing anything wrong, and D was making money by blasting and should have known that blasting was likely to harm the buildings. And what difference should it make whether the harm was caused by debris flying onto P’s property or whether it was caused by the concussion? The harm is done either way. So absolute (strict) liability makes sense.

Holding: The court adopted the new rule.
Comparison of the Traditional Brief and the T-Chart

Notice how the T-chart differs from the traditional brief. It is in a chart format to help you sort out where the most important pieces of information go. First, the law is arranged vertically in the “law” column. Then, the facts that go with each piece of law go next to that piece of law in the “facts” column. Then, the reasoning that goes with each piece of law goes next to that law in the “reasoning” column. So all the pieces are connected horizontally across the page. This helps your mind to think about each piece of law separately. This is important because, on an exam, you will have to do exactly the same thing: break the law into pieces, explain which facts fit each piece of law, explain why the facts do or do not prove that piece of law, and then go on to the next piece of law.

The other, less important parts of the brief, such as the procedure, the plaintiff’s and defendant’s arguments, and the issue, are simply put in wherever there is room. Here, they were put into the “facts” column because there was room there.

Incidentally, when you get called on in class, the professor often will want you to begin your recitation with a chronological overview of what events led up to the lawsuit. Telling this story requires you to sort the legally significant facts according to which piece of law they match, so they are often not chronological; furthermore, because legally unimportant facts are not included, the whole story is often not included in the T-chart brief. To solve this problem, many students write a short paragraph of facts, laid out chronologically, in a corner of the page. Some students put this fact paragraph on a separate page. Some simply make marginal notes in their casebook and take the facts from there.

It does not matter which briefing format you use. The T-chart is more visually explicit. The traditional format creates more “flow.” But no matter which format you use, by the time you finish briefing the case, you should be able to answer the following types of questions from memory:

(Law)
Where does the law begin?
How many ideas are there in this law?
How do these ideas fit together?
What does each idea mean?
How can I put each idea into my own words?
What would be an example of each idea?

(Reasoning)
Which idea is the court discussing at any given point?
Which facts does the court refer to for each idea?
How does the court describe those facts?
How does the court conclude on each piece of law? Is each piece proven, or not?
(Procedure)

Where did the case start?
What decisions were made there?
Did the case go to another court after that?
What decisions were made there?

(Arguments)

Does the court tell me what the parties argued?
If it didn’t, did it give me clues to the parties argument by the way it explained its reasoning?

(Holding)

What did the court ultimately decide in this case?

One other thing – you will get called on in class. To prepare for this, listen to the questions that your professor asks. See if you can figure out what categories of information your professor tends to ask about. If you professor tends to ask questions about the categories given in the list above, highlight those questions. If your professor tends to ask about things that are not on the list above, add those questions! For example, if your professor tends to quiz students about a lot of background facts in the cases, add that question so that you remember to pay attention to those details. If your professor always wants to know what court decided each case and when, add that to your list, and so on. The point is that good readers know what questions to ask themselves as they read.
Review: Answer the following questions:

1. What is the purpose of making a structured overview of a class?

2. What is a casebook?

3. What might make a court case difficult to read?

4. Why should law students pre-read using supplemental aids?

5. List the structural components of a typical case in a casebook.

6. What is the purpose of briefing?

7. What kinds of questions can you use to help you find, sort, and understand the law? The reasoning? The facts? The issue(s)? The procedure? The parties’ arguments? The holding?

8. Brief some of the cases for your first class assignment using both formats. Using the chart below, decide what advantages each briefing format offers you.

<table>
<thead>
<tr>
<th>Qualities</th>
<th>Traditional Case Brief</th>
<th>T-Chart Brief</th>
</tr>
</thead>
<tbody>
<tr>
<td>Helps me to find the parts of the case</td>
<td>More helpful</td>
<td>Less helpful</td>
</tr>
<tr>
<td>Helps me to break the law into its component ideas</td>
<td>Same</td>
<td>More helpful</td>
</tr>
<tr>
<td>Helps me to match facts to the specific parts of the law</td>
<td>Less helpful</td>
<td>Same</td>
</tr>
<tr>
<td>Helps me to understand the case as a whole</td>
<td>More helpful</td>
<td>Less helpful</td>
</tr>
</tbody>
</table>

9. How is reading in law school different from other reading that you have done in college or as a graduate student?

10. What new demands will law school place on your memory?