

INTRODUCTION

Welcome to law school! We look forward to working with you this year. The material in this introductory chapter is designed to ensure that you are properly prepared for your courses in general; although it uses examples from Torts, it is not otherwise specific to this class. We hope that by being most transparent about our assumptions and expectations at the outset, you will have the opportunity to do your best work and also to enjoy a most engaging intellectual and professional experience.

I. PREPARING FOR CLASS

Preparing for and “being prepared” for law school classes may be different from what you had to do to be successful in the past. At the risk of being too basic, this is because there are always different possible degrees of preparedness: You can be entirely unprepared because you didn’t read the assignment. You can be partially prepared because you only read a portion of the assignment, although you did that carefully. You can be generally prepared because you skimmed and maybe “book briefed”^{*} the entire assignment. Or you can be fully prepared because you read and briefed the entire assignment carefully. Like your future employers, your professors, especially your 1L professors, will expect you to be fully prepared every day, and they will consider you “unprepared” if your preparation falls short of this standard. Even in your 2 and 3L years, you will find that students who are consistently prepared in this sense are better able to engage the material. This translates, inevitably, into better lawyering skills, better grades, and a better reputation.^{**}

You want to be thought of by your fellow students, law school professors, and eventual employers as a person with an impeccable professional approach to your work. Preparedness is central to this approach, as is timeliness, courtesy toward peers and superiors, and the ability to work collaboratively in team settings, among other things. Notice that these attributes are separate from your substantive legal knowledge and analytical skills. You can get the equivalent of an “A” on every one of your exams, but if it’s clear to your professors that you weren’t professional in your approach to class on a daily basis, they won’t be there to write your letters of recommendation; by definition, the latter are designed to speak to more than just your grades since these are clear from your transcript. The same goes for your eventual work in the legal profession: although very bright lawyers are obviously an asset, the nature of the work is such that weak professional attributes will make difficult the case for hiring or promotion.

To be prepared for class on a daily basis, you must carefully read the assigned material and brief the assigned cases. The first year of law school is notoriously difficult, not because the

^{*} Editors’ note: Book briefing is explained below. Essentially, it means making margin notes in your casebook.

^{**} Editors’ note: Being prepared is important whether or not you are called on. Even if you are not called on, you are expected to engage — respond, analyze, critique — silently. You won’t be able to do this if you don’t prepare.

substance of the material is particularly complex or obscure, but because a lot of reading is assigned and a high level of preparation is expected. For many of you, these demands will be different from what you are accustomed to. You must embrace these demands. If you do, you will be rewarded with an appropriately sophisticated sense of and ability to work with the law. The 1L year is literally the foundation for all that you will do beginning in your 2L year and throughout your legal careers. Your goal this year should be to develop the strongest possible base from which to work in the future. The following provides the template for careful case briefing, which is the best way to ensure (big picture) that you do the groundwork necessary to establish this essential base, and (little picture) that you are appropriately prepared on a daily basis.

II. BRIEFING CASES

Why Lawyers and Law Students Brief Cases

Throughout your lives as law students and lawyers, you will be “briefing” cases. That is, you will be reading them to discover their various formally identifiable parts, and in most cases you will be reducing them — making them brief — so that they are easier to work with. Over time, you will acquire your own style of briefing cases, but even then, there are formal parameters that you will follow. This is necessary (and so even if you’re a free spirit you’ll toe the line) because law professors and other lawyers talk in a jargon that comprises in part the elements of a case brief, and you’ll need to communicate with them.

You should brief carefully for all of your classes this year because:

1. You want to be prepared for class in case you are called on and, even if you’re not, so that you can engage the material along with your classmates.
2. It is essential that you learn the law, which is frequently derived from rules as applied in cases.
3. Repeated briefing over time is necessary to the development of your ability to effectively and efficiently read, analyze, and synthesize cases. Relatedly, repeated briefing is also important to the development of your legal reasoning skills.

Note that only the second of these is directly relevant to exam taking; there is a lot more going on in law school and in your growth as lawyers than that.

Commercial materials are available that contain “canned” or already-prepared briefs; briefs for many cases are also available online. It is our strong recommendation that you resist relying on such materials. While they may be helpful either when you have not had adequate time to prepare or when you are not sure you understand a case, relying on them consistently and in lieu of your own preparation is problematic in two ways:

First, relying on the work of others will retard the development of your own ability to read, analyze, and synthesize cases. Because this is a big piece of what lawyers do in practice, the development of these skills is not optional. And it is certainly not something you want to

tackle for the first time when you are out of law school, when there are no more canned or prepared briefs available.

Second, although published materials will generally be correct in the sense that they will accurately represent the facts, issue, and rule of a case, they will not necessarily provide you with the detail or depth necessary to a particular professor's approach or class discussion. In this sense, they may function as effectively as skimming a case, but they may not be adequate otherwise.

Relying on others' briefs either much or all of the time is one of the four most frequent patterns we see with students who do not do as well on their exams as they would have expected or liked.

Companies that advise pre-law and first-year law students sometimes also recommend that students "book brief" — make margin notes — in lieu of preparing full case briefs. Whether this is an adequate strategy depends largely on the individual student/lawyer, her ability accurately and comprehensively to retain information that is not captured in the margin notes, and the eventual uses of the case material. In other words, book briefing works for some people sometimes, but not for everyone or for all purposes. It is our recommendation that you not book brief, at least not until you are adept at the skill of full case briefing and you have a good sense of what it is that your professors want from you. If you book brief before then, you are likely to be less-than-fully prepared.

How to Brief a Case

The standard or formal elements of a brief, indeed of all legal analysis, are often helpfully broken down into the acronym "IRAC." IRAC stands for Issue, Rule, Application, Conclusion. Specifically, IRAC requires that the lawyer derive the issue or issues to be resolved, find or develop the law or legal rule that is or should be used to address the issue(s), apply the rule to the facts, and reach a conclusion as to how the issue(s) is/are to be resolved and what happens next in the case. We are not being dramatic when we tell you that what we have just written comprises much of what you will be doing in every course throughout law school and otherwise throughout your legal careers: almost every case you analyze or "brief," and every memorandum, brief, or opinion you write, will follow a version of this paradigm.

As a threshold matter, IRAC assumes that the facts or factual background of a case have already been presented. For purposes of case briefing, however, it is essential always to have ready a good statement of the *relevant* facts. And so if you wish, you may refer to the briefing paradigm as FIRAC instead.

(F) IRAC breaks down this way:

(F) The facts of the case, also called “factual background” or “underlying facts.”

These are the underlying events that give rise to the lawsuit. The case facts are to be distinguished from the Procedural History (PH) of the case, that is, the facts that describe the course of the litigation once it has been initiated. In some courses, you may be asked by your professors to provide the procedural history of a case.

Note that proper legal analysis requires that you cull from the facts presented only those that are relevant to the issue(s) presented. For example, if the raw facts tell you that the suit is for damages arising out of a car accident, and that A, who is 20, and B, who is 16, were both passengers in the car, it is likely that their ages will be irrelevant to the analysis of whether their suits against the negligent driver will be successful. That is, their ages have nothing to do with the negligence of the driver. On the other hand, their ages might be relevant if the issue were whether their consents to medical treatment, signed as they were brought into the hospital, were valid as a defense to a battery claim brought against the physician who treated them. This is because the validity of consent may turn, in part, on the age of the person consenting.

(I) The legal issue that is implicated by those facts, also called “question presented.”

Lawyers, and certainly your professors, will sometimes break this component down and distinguish between the “procedural issue” and the “substantive issue” in the case. In a nutshell, the procedural issue is the question that arises relating to the stage of the trial or appellate process at which a substantive issue was disposed of; e.g., if the trial court dismissed the plaintiff’s case and she appeals the dismissal, an issue might be whether the judge correctly dismissed the case before all the witnesses had been deposed. The substantive issue or question presented relates to what the applicable law is or how it should be construed; e.g., if the case that was dismissed involved a claim for battery, the issue might be whether the plaintiff’s evidence amounted to a battery or the applicable law required additional facts plaintiff could not show.

Note that a single appeals court opinion may involve more than one issue. When you brief cases for class, you should focus on the issue most pertinent to the subject at hand. If it is not obvious, the chapter title and subheading under which the case appears should be helpful to you in identifying the issue. For example, if the case you are briefing is in the book to illustrate the rules that apply to offensive battery claims, and the case involves multiple issues including the issue whether the plaintiff has a viable claim for offensive battery, your brief should focus on that issue. Nevertheless, there is value to reading and making notes about peripheral issues; this is one of the ways lawyers learn about the law more generally, including about how different issues intersect with one another.

(R) The rule of law that is or should be used to address the issue, also called “law” or “applicable law.”

The applicable law is the law that the court uses to resolve the case. Applicable law generally falls into one of three categories:

Mostly, the courts resolve issues using their interpretation of existing law. Existing law for this purpose includes constitutional (state or federal), statutory (state or federal), and judicially- pronounced or common law. The law as it has been articulated in prior cases is often called “precedent” or “applicable precedent.”

Sometimes, the issue before the court is whether the existing law ought to be changed. Because lower courts have no power to change existing law, this issue is only properly before the state’s highest court, and even then, only if that law itself was judge-made rather than statutory.

On other occasions, there is no existing law on point. If a lower court is confronted with this situation, it will make new law — usually by borrowing the standard in another jurisdiction. Such lawmaking is subject to review by higher courts.

Developing the ability to identify and describe the applicable law and its source is part of what your legal training will be about. Correspondingly, where the law is not entirely clear, or where it might be subject to modification, your legal training also will involve developing the ability to argue convincingly that the court should adopt your position (rather than your opponent’s) on what the existing law means or what the newly declared law should be. All of this involves understanding the value of precedent in the law, as well as the ability to synthesize cases and analogize among related areas of law. (You will work most directly on these skills in your legal writing class, and your other professors will assume you are in fact developing them in that context. Thus, as you do your work both in and out of legal writing class, train yourself to think about how these skills apply, not only to your own writing, but also to the structure and articulation of judges’ opinions, and to the way advocates and judges in all subject matters engage their analyses.)

(A) The court’s application of the facts to the rule or law. This is also called the court’s analysis.

It is in this part of the case that the court considers the parties’ different arguments about how the law applies to the facts, and also the part in which the court resolves those arguments. This part also may contain the court’s rationale, or explanation for the ultimate holding and result.

While courts frequently work methodically through the parties’ arguments, sometimes the analysis that appears in the opinions you read will be incomplete or conclusory. When that happens, beyond describing whatever analysis the court provided, your task is to construct and briefly set out in your brief the best arguments for both the result reached and the result urged by the party that lost. Having done that, take care not to confuse the analysis that you’ve imagined — which will be important to you both in and out of class — with what the court actually wrote.

Note that this is usually the place in a case brief or other legal document (such as a memorandum or advocacy brief) where the lawyer is able to be the most creative; it is the place where facts are brought to bear — proof or evidence is proffered — in support of an argument that the law requires a particular outcome.

(C) The court's conclusion, also called the holding of the case.

This is your precise statement of the new rule that emerges as a result of the court's analysis. Think of the holding as what this court might want a later court to say was the precedent this case established. As with the issue, the conclusion or holding also may be broken down into both a procedural and a substantive holding. There is quite a science to developing the substantive holding in particular; you will spend a lot of time working on this skill, also most directly in your legal writing class. In this regard, note carefully that the conclusion or holding is to be distinguished from the result in the case, which is simply the "yes" or "no" answer to the issue, or more simply the answer to the question, who won in the end.

Final Notes on Briefing

When you work with your other professors, the IRAC formula may be presented a bit differently than we have here. But since we all speak the same language in the end, you should be able to reconcile the different formulas without much difficulty. Note also that while some of your professors will focus class discussion on critical analysis of cases including all the elements of case briefs, others will assume you have engaged this analysis on your own and will use that assumed analysis as a springboard for additional discussion — for example, of the policy implications of the law or its theoretical sources — while yet others will engage a hybrid approach. The professor's approach depends upon his or her pedagogical objectives for the class.

Finally, although critiques of/policy arguments about the law or its application to a particular set of facts may form part of a court's discussion (in the R/Rule and/or A/Application portions of its opinion) the IRAC template does not provide a place for you to do the same. A brief is a summary of the court's opinion, not yours. Nevertheless, intellectual engagement in class materials means more than just briefing. And so as you proceed, be sure to develop your own approach to thinking about and chronicling your (and your professors' and classmates') critiques and policy arguments. You even may wish to include these in a "notes" or "comments" section that you include at the end of your brief, but, again, take care not to conflate your analysis with the court's.