Appendix

# Reading and Briefing Cases

## Introduction

A unique aspect of studying criminal law is that you have the opportunity to read actual court decisions. Reading cases likely will be a new experience and although you may encounter some initial frustrations, in my experience students fairly quickly master the techniques of legal analysis.

The case method was introduced in 1870 by Harvard law professor Christopher Columbus Langdell and is the primary method of instruction in nearly all American law schools. This approach is based on the insight that students most effectively learn the law when they study actual cases. Langdell encouraged instructors to employ a question and answer classroom technique termed the **Socratic method.** The most challenging aspect of this approach involves posing **hypothetical** or fictitious examples that require students to apply the case material to new factual situations.

The study of cases assists you to:

* Understand the principles of criminal law
* Improve your skills in critical reading and thinking
* Acquaint yourself with legal vocabulary and procedures
* Appreciate how judges make decisions
* Learn to apply the law to the facts

The cases in this textbook have been edited to highlight the most important points. Some non-essential material has been omitted to assist you in reading and understanding the material. You may want to read the entire, unedited case in the library or on-line.

The cases you read are the products of an **adversary system**in whichthe prosecutors and defense attorneys present evidence and examine witnesses at trial. The evaluation of the facts is the responsibility of the jury or, in the absence of a jury, the judge. A case heard by a judge without a jury is termed a **bench trial.** The adversary system is premised on the belief that truth will emerge from the clash between two dedicated attorneys “zealously presenting their cause.”

The lowest courts in the judicial hierarchy are **trial courts.** The proceedings are recorded in **trial transcripts** that recite the selection of jurors, testimony of witnesses, arguments of lawyers and rulings by the judge. Individuals convicted before a trial court may appeal the guilty verdict to **appellate** (or appeal) courts. The cases you read in this text in most instances are the decisions issued by appellate court judges reviewing a guilty verdict entered against a defendant at trial. These reviews are based on transcripts and **briefs. Briefs** are lengthy written arguments submitted to the court by the prosecution and defense. The two sides also may have the opportunity to engage in an **oral argument** before the appellate court. The appellate court in issuing a decision will accept as established those facts that are most favorable to the party that prevailed at the trial court level.

Defendants appealing a verdict by a trial court ordinarily file an appeal with the intermediate court of appeals which in many states provides the defendant with a new trial or trial **de novo**. The losing party then may file an additional appeal to the state supreme court. The party who is appealing is termed the **appellant** and the second name typically is the party against whom the appeal is filed or the **appellee**. You also will notice the insertion of “v” between the names of the parties that is an abbreviation for the Latin **versus.**

Individuals who have been convicted and have exhausted their state appeals may file a constitutional challenge or **collateral attack**against their conviction in federal court. The first name in the title is the name of the prisoner bringing the case, or the **petitioner**, while the second name, or **respondent,** typically is the warden or individual in charge of the prison in which the petitioner is incarcerated.

In a collateral attack, an inmate bringing the action files a petition for **habeas corpus**review requesting a federal court to issue an order requiring the state to demonstrate that the petitioner is lawfully incarcerated. The ability of a petitioner to compel the state to demonstrate that he or she has been lawfully detained is one of the most important safeguards for individual liberty and is guaranteed in Article 1, Section 9, Clause 2 of the U.S. Constitution.

Federal courts also may preside over criminal cases charging a defendant with a violation of a federal statute. There are three levels of federal courts. First, there are 94 district courts which are the trial courts. Appeals may be taken to the 13 court of appeals and ultimately to the United States Supreme Court. The United States Supreme Court generally has the choice whether to review a case. Four of the nine judges must vote to grant a **writ of *certiorari*** or an order to review the decision of a lower court*.*

## The Structure of Cases

A case is divided into an **introduction** and **judicial** **opinion**. These two sections have several component parts which you should keep in mind.

INTRODUCTION

The initial portion of a case is divided into title, citation, and identification of the judge.

Title

Cases are identified by the names of the parties involved in the litigation. At the trial level this typically involves the prosecuting authority, either a city, county, state, or the federal government, and the name of the defendant. On direct appeals, the first name refers to the appellant who is bringing the appeal and the second to the appellee who is defending against the appeal. On collateral attack, remember that the parties are termed petitioners and respondents. You will notice that judicial decisions often utilize a short-hand version of a case and only refer to one of the parties, much like calling someone by their first or last name.

Citation

Immediately following the names you will find the citation which directs you to the book or **legal reporter** where you can find the case in a law library. Cases also increasingly are available online. The standard form for citations of cases, statutes, and law journals is contained in the “blue book” published by the Harvard Law Review Association.

Judge

The name of the judge who wrote the opinion typically appears at the beginning of the case. An opinion written by a respected judge may prove particularly influential with other courts. The respect accorded to a judge also may be diminished by the fact that his or her decisions frequently are reversed by appellate courts.

Outline

The full, unedited cases in legal reporters typically begin with a list of numbered paragraphs or **head notes** that outline the main legal points in the case. There also is a summary of the case and of the decisions of other courts which have heard the case. These outlines have been omitted from the edited cases reprinted in the text.

JUDICIAL OPINION

The judge’s legal discussion is referred to as the opinion, judgment, or decision. The opinion usually is divided into history, facts, and law. These component parts are not always neatly distinguished and you may have to organize the material in your mind as you read the case.

History

The initial portion of a case typically provides a summary of the decisions of the lower courts that previously considered the case and the statutes involved.

Facts

Each case is based on a set of facts that present a question to be answered by the judge. This question, for instance, may involve whether a defendant acted in self-defense or whether an individual cleaning his or her rifle intentionally or accidentally killed a friend. This question is termed the **issue.** The challenge is to separate the **relevant** from the **irrelevant** facts. A relevant fact is a fact which assists in establishing the existence or nonexistence of a **material fact** or element of the crime that the government is required to prove beyond a reasonable doubt at trial. For instance, in the gun example, whether the defendant possessed a motive to kill the victim would be relevant in establishing the materialelement of whether the defendant possessed a specific intent to kill.

Law

The judge then applies the legal rule to the facts and reaches a **holding** or decision. The **reasoning** is the explanation offered by the judge for the holding. Judges also often include comments and observations (in Latin ***obiter dicta***or comments from the bench) on a wide range of legal and factual concerns that provide important background, but which may not be central to the holding. These comments may range from legal history to a discussion of a judge’s philosophy of punishment.

Judges typically rely on **precedents** or the holdings of other courts. Precedent or “***stare decisis*** *et no quieta movere”* literally translates as “to stand by precedent and to stand by settled points.” The court may follow a precedent or point out that the case at hand is **distinguished** from the precedent and calls for a different rule.

Appellate courts typically are comprised of a **multiple judge panel** consisting of three or more judges, depending on the level of the court. The judges typically meet and vote on a case and issue a **majority opinion** which is recognized as the holding in the case. Judges in the majority may choose to write a **concurring opinion** supporting the majority, which typically is based on slightly different grounds. On occasion, a majority of judges agree on the outcome of a case, but are unable to reach a consensus on the reasoning. In these instances, there typically is a **plurality opinion** as well as one or more **concurring opinions**. In cases in which a court issues a plurality opinion, the decisions of the various judges in the majority must be closely examined to determine the precise holding of the case.

A judge in the minority has the discretion to write a **dissenting opinion.** Other judges in the minority also may issue separate opinions or join the dissenting opinion of another judge. In those instances in which a court is closely divided, the dissenting opinion with the passage of time may come to reflect the view of a majority of the members of the court. The dissent also may influence the majority opinion. The judges in the majority may feel compelled to answer the claims of the dissent or to compromise in order to attract judges who may be sympathetic to the dissent.

You should keep in mind that cases carry different degrees of authority. The decisions of the Ohio Supreme Court possess **binding authority** on lower courts within Ohio. The decision of a lower level Ohio court that fails to follow precedent likely will be appealed by the losing party and reversed by the appellate court. The decisions of the Ohio Supreme Court, however, are not binding on lower courts outside of Ohio, but may be considered by these other tribunals to possess **persuasive authority**. Of course, precedents are not “written in stone” and courts typically will adjust the law to meet new challenges.

*In reading the edited cases reprinted in this text you will notice that the cases are divided into various sections. The “facts” of the case and the “issue” to be decided by the court are typically followed by the court’s “reasoning” or justification and “holding” or decision. A number of questions appear at the end of the case to help you understand the opinion.*

## Briefing a Case

Your instructor may ask you to **brief** or summarize the main points of the cases reprinted in the text. A student brief is a concise, short-hand written description of the case and is intended to assist you in *understanding* and *organizing* the material and *in preparing for class and examinations*. A brief generally includes several standard features. These, of course, are only broad guidelines and there are differing opinions on the proper form of a brief. Bear in mind that a particular case that you are reading also may not be easily reduced to a standard format.

1*. The name of the case and the year the case was decided*. The name of the case will help you in organizing your class notes. Including the year of decision places the case in historical context and alerts you to the fact that an older decision may have been revised in light of modern circumstances.

2. *The state or federal court deciding the case and the judge writing the decision.* This will assist you in determining the place of the court in the judicial hierarchy and whether the decision constitutes a precedent to be followed by lower level courts.

3. *Facts*.Write down the relevant facts.You should think of this as a story which has a factual beginning and conclusion. The best approach is to put the facts into your own words. *Pay particular attention to*:

a. *The background facts leading to the defendant’s criminal conduct.*

b. *The defendant’s criminal act, intent and motives*.

c. *Distinguish the relevant from the irrelevant facts.*

4. *Criminal charge*. The crime with which the defendant is charged and text of the criminal statute.

5. *Determine the issue which the court is addressing in the case.* This customarily is in the form of a question in the brief and typically is introduced by the word “whether.” For instance, the issue might be “whether Section 187 of the California criminal code punishing the unlawful killing of a human being includes the death of a fetus.”

6. *Holding*. Write down the legal principle formulated by the court to answer the question posed by the issue. This only requires a statement that the “California Supreme Court ruled that section 187 does not include a fetus.”

7. *Reasoning*. State the reasons that the court provides for the holding. Note the key precedents the court cites and relies on in reaching its decision. Ask yourself whether the court’s reasoning is logical and persuasive.

8. *Disposition*. An appellate court may *affirm* and uphold the decision of a lower court or r*everse* the lower court judgment. In addition, a lower court’s decision may be *reversed in part and affirmed in part.* Lastly, the appellate court may *reverse* the lower court and *remand* or return the case for additional judicial action. Take the time to understand the precise impact of the court decision.

9. *Concurring and dissenting opinions*. Note the arguments offered by judges in concurring and dissenting judges.

10. *Public policy and psychology*.Consider the impact of the decision on society and the criminal justice system. In considering a court decision do not overlook the psychological, social, and political factors that may have affected the judge’s decision.

11. *Personal opinion*. Sketch your own judicial opinion and note whether you agree with the holding of the case and the reasoning of the court.

## Approaching the Case

You most likely will develop a personal approach to reading and briefing cases. There are some points which you might keep in mind.

* *Skim the case* to develop a sense of the issue, facts, and holding of the case.
* *Read the case slowly a second time*. You may find it helpful in the beginning to read the case out loud and to write notes in the margin.
* *Write down the relevant facts in your own words.*
* *Identify the relevant facts*, *issue*, *reasoning*,and *holding. You should not merely mechanically copy the language of the case.* Most instructors suggest that you express the material in your own words in order to improve your understanding. You should pay careful attention to the legal language. For instance, there is a significant difference between a statute that provides that an individual who “reasonably believes” that he or she is being attacked is entitled to self-defense and a statute which provides that individual who “personally believes” that she is being attacked is entitled to self-defense. The first is an objective test measured by a “reasonable person” and the second a “subjective test” measured by the victim’s personal perception. Can you explain the difference? You should incorporate legal terminology into your brief. The law, like tennis or music, possesses a distinctive vocabulary that is used to express and communicate ideas.
* *Consult the glossary or a law dictionary for the definition of unfamiliar legal terms and write down questions which you may have concerning the case.*
* *The brief should be precise and limited to essential points. You should bring the brief to class and compare your analysis to that of the instructor.* Modify the brief to reflect the class discussion and provide space for insights developed in class.
* *Each case commonly is thought of as “standing for a legal proposition.”* Some instructors suggest that you write the legal rule contained in the case as a “banner” across the first page of the brief.
* *Consider why the case is included in the textbook and how the case fits into the general topic covered in the chapter. Remain an “active” and “critical” learner and think about the material you are reading.* You also should consider how the case relates to what you learned earlier in the course. Bring a critical perspective to reading the case and resist mechanically accepting the court’s judgment. Keep in mind that there are at least two parties involved in a case each of whom may have a persuasive argument. Most importantly, briefing is a learning tool and should not be so time-consuming that you fail to spend time understanding and reflecting on the material.
* *Consider how the case may relate to other areas you have studied*. A case on murder may also raise interesting issues concerning criminal intent, causality and conspiracy. Thinking broadly about a case will help you integrate and understand criminal law.
* *Outline the material*. Some instructors may suggest that you develop an outline of the material covered in class. This then can be used to assist you in preparing for the examinations.

## Locating Cases

The names of the cases are followed by a set of numbers and alphabetical abbreviations. These abbreviations refer to various **legal reporters** in which the cases are published. This is useful in the event that you want to read an unedited version in the library. An increasing number of the cases also are available online. The rules of citation are fairly technical and only are of immediate concern to practicing attorneys. The discussion below presents the standard approach followed by lawyers. Those of you interested in additional detail should consult *The Bluebook: A Uniform System of Citation* (Boston: Harvard Law Review Association, 2000).

The first number you encounter is the volume in which the case appears. This is followed by the abbreviation of the reporter and by the page number and year of the decision. State cases are available in “regional reporters” that contain appellate decisions of courts in various geographic areas of the United States. These volumes are cited in accordance with standard abbreviations: Atlantic (A.); North East (N.E.); Pacific (P.); South East (S.E.); S. (South); South West (S.W.). The large number of cases decided has necessitated the organization of these reporters into various “series” (P.2d and P.3d).

Individual states also have their own reporter systems containing the decisions of intermediate appellate courts and state supreme courts. Decisions of the Nebraska Supreme Court appear in the Northwest Reporter (N.W. or N.W.2d) as well as in the Nebraska Reports (Neb.). The decisions of the Nebraska Court of Appeals are reprinted in Nebraska Court of Appeals (Neb. Ct. App.). These decisions usually are cited to the Northwest Reporter, for example, *Nebraska v. Metzger*,319 N.W.2d 459 (Neb. 1982). New York and California cases appear in state and regional reporters as well as in their own national reporter.

The federal court reporters reprint the published opinions of federal trial as well as appellate courts. District court (trial) opinions appear in the Federal Supplement Reporter (F. Supp) and appellate court opinions are reprinted in the Federal Reporter (F.), both of which are printed in several series (F.Supp.2d; F.2d and F.3d). These citations also provide the name of the federal court that decided the case. The Second Court of Appeals in New York, for instance, is cited as *United States v. MacDonald*,531 F.2d 196 (2nd Cir. 1976). The standard citation for United States Supreme Court decisions is the United States Report (U.S.). For example, *Papachristou v. Jacksonville*,405 U.S. 156 (1971). This is the official version issued by the Supreme Court and the decisions also are available in two privately published reporters, the Supreme Court Reporter (S.Ct.) and Lawyers edition (L.Ed.).

There is a growing trend for cases to appear online on commercial electronic databases. States also are beginning to adopt “public domain citation formats” for newly decided cases that appear on state court web pages. These are cited in accordance with the rules established by the state judiciary. The standard format includes the case name, the year of decision, the state’s two digit postal code, the abbreviation of the court in the event that this is not a state supreme court decision, the number assigned to the case and the paragraph number. A parallel citation to the relevant regional reporter also is provided. The *Blue Book* provides an example of this format, *Gregory v. Class*,1998 SD 106, ¶ 3, 54 N.D. 873, 875.

## Legal Terminology

Appellant

appellee

appellate courts

bench trial

binding authority

briefs

certiorari

collateral attack

concurring opinion

distinguishing precedents

dissenting opinion

federal criminal code

habeas corpus

head notes

holding

legal reporters

majority opinion

multiple judge panel

nolo contendere

nullum crimen sine lege, nulla poena sine lege

obiter dicta

oral argument

petitioner

persuasive authority

precedent

plurality opinion

reasoning

relevant

respondent

Socratic method

stare decisis

trial de novo

trial transcript