

# Legal Analysis *and* Writing

*Third Edition*



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## CHAPTER 4

# Case Law and Case Briefing

### Outline

- I. Introduction
- II. Court Opinions: In General
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### Learning Objectives

After completing this chapter, you should understand:

- The role and importance of court opinions
- The elements of a court opinion
- The role and importance of a case brief
- The elements of a case brief
- How to brief a case



After obtaining a degree in paralegal studies, Carolyn took time off to be with Josh, the newest addition to her family. Josh was born three days after Carolyn's last final examination. She was glad he waited until finals were over.

Carolyn decided it was important to give Josh her full attention for as long as she could. She was financially in a position to take a year off from work.

After the year had passed, a large law firm hired Carolyn and assigned her to the torts section of the paralegal department. Her first assignment was to brief several cases that another assistant

had located for possible use in a response to a motion to dismiss. The first case she was given was *Rael v. Cadena*. (This case is presented in the Court Opinion: Elements section of this chapter; see Exhibit 4–1.)

Carolyn knew it was important to do a good job on her first assignment. After reading *Rael v. Cadena*, she realized she needed to refresh her memory on case briefing. It had been a long time since she had briefed a case. She thought to herself, "How do I brief a case? What should a good case brief look like? Why is it important?"

## I. INTRODUCTION

The focus of this chapter is on court opinions. The chapter addresses the same questions Carolyn faced when undertaking her assignment—that is, what is a case brief, and what are the elements of a court opinion and a case brief? Throughout this chapter, a brief of a court opinion will be referred to as a case brief.

## II. COURT OPINIONS: IN GENERAL

As discussed in Chapter 1, the two major sources of law are enacted law (constitutions, laws enacted by legislative bodies, including ordinances, etc.) and the case law. **Case law** is the body of law on a particular subject created by the court opinions and is commonly referred to as **common law** or judge-made law. Case law is the most commonly used term and will be used throughout this chapter. Case law is found in the written opinions of the courts.

*Case law consists of the law made by courts when they interpret existing law or create new law.* It is composed of the legal rules, doctrines, and principles adopted by the courts. Courts often announce rules of law when interpreting statutory or constitutional provisions or create new law when there is no statutory or constitutional law governing a legal dispute.

### case law

The body of law created by courts. It is composed of the general legal rules, doctrines, and principles adopted by courts when interpreting existing law or when creating law in the absence of controlling enacted law.

### For Example

**Statutory Interpretation:** A statute uses the term *publication* but fails to define it. The court, addressing the issue of what constitutes *publication*, announces a rule of law that the term *publication* as used in the statute means communication to a third party.

### For Example

**Creating Law:** A state has not enacted legislation recognizing strict liability as a cause of action in tort. The highest court in the state, in a case before it, announces a rule of law adopting strict liability as a cause of action in the state.

### court opinion

The statement of a court of its decision reached in a case, the rule that applies, and the reasons for the court's decision.

A **court opinion** is a court's written statement explaining its decision in a case. It is the court's resolution of the legal dispute before the court and the reasons in support of its resolution. It usually includes a statement of fact, points of law, and rationale.

Often the terms *court opinion*, *case*, and *decision* are used interchangeably to refer to a court's resolution of an issue or a decision in a dispute. In this chapter, the terms *court opinion* and *case* are used to refer to the written opinion of a court.

### For Example

"The case stands for the principle that ..."; "The court opinion holds that flag-burning is protected under the Freedom of Speech provisions of the First Amendment."

### III. COURT OPINIONS: IMPORTANCE

Of the two major sources of law, enacted law and case law, case law constitutes the largest body of law, far larger in volume than constitutional or statutory law. In the broadest sense, it is essential to acquire a general familiarity with this body of law, since it represents such a large portion of the law. In a narrower sense, you must study case law because so many areas of law and legal issues are governed by case law.

There are numerous additional reasons reading and analyzing court opinions and studying case law are important. Overall, the major reasons are the following:

1. *To learn the case law.* Much of the law is court-made. In order to determine the elements of a cause of action for a court-made law, you must refer to case law. Case law may govern your client's fact situation. And to determine what law applies and the probable outcome, you must analyze case law.

**For Example** In most states, the cause of action for civil battery is a creation of case law, not statutory law. To identify the elements necessary to state a battery claim, you must research the case law.

2. *To interpret constitutional or statutory law.* Court opinions often announce rules of law that govern how a statutory or constitutional term or provision is interpreted or applied. Therefore, you must consult case law to understand how to interpret and apply statutes and constitutional provisions.

**For Example** The United States Supreme Court has issued many opinions on the types of speech protected by the First Amendment. To determine whether an individual who burns a state flag in front of the state capitol is protected by the First Amendment's freedom of speech provisions, you must consult Supreme Court opinions interpreting freedom of speech.

3. *To understand the litigation process.* Court opinions often address legal questions that arise in the context of the litigation process—either before, during, or after trial. Court opinions give insight into the process by explaining what conduct is appropriate, which arguments are successful, where errors are made, how procedural rules apply, how trials and motion hearings should proceed, and so on.
4. *To gain insight into legal analysis.* In a court opinion, the court often analyzes the law. The court discusses what law applies, how it applies, the reasons for its application, and how the reasons operate to govern the application of the law to the facts of the case. By studying court opinions, you learn how to assemble a legal argument, how to determine whether a law applies, and how to support a legal argument.
5. *To develop legal writing skills.* Judges are usually experienced in legal writing, and most opinions are well written. You may read opinions with an eye to how sentences and paragraphs are structured, how case law and statutory law are referred to and incorporated into legal writing, and how transitions

are accomplished. If you have a problem putting some aspect of your research into writing, look at an opinion to see how a court handled a similar matter.

**For Example** You are preparing a research memorandum. There is no case law in your jurisdiction governing the issue; however, there is strong persuasive precedent from another jurisdiction. You are unsure about how to introduce the persuasive precedent in your memorandum. By reading a court opinion where the court relied on persuasive precedent, you can study the language the court used to introduce the persuasive precedent and use the court's language as a guide to model your introduction.

**For Example** In *Smith v. Jones*, the court stated, "There is no case law in this jurisdiction interpreting the term 'publication' as used in § 55-5-67A. The state of Texas, however, has an identical statute, and the Supreme Court of Texas, in the case of *Frank v. Inex*, interpreted 'publication' to mean communication to a third party." You can use this language as a guide in your introduction of persuasive precedent.

For the above reasons and many others, the study of case law is important. Being able to analyze and apply case law correctly is essential to legal analysis.

#### IV. COURT OPINIONS: SOURCES

Where are court opinions printed, and how do you locate them? This text does not address the fundamentals of legal research. That subject by itself requires an entire text. Therefore, only a brief summary of where and how case law is found is provided here.

Court opinions are generally found in the law library. They are printed in reporters, advance sheets, and slip opinions (recent opinions). They are also available through various computerized sources, such as WESTLAW, LexisNexis, Law on Disc (for those states that have law on CD-ROM), and on the Internet.

**For Example** A California supreme court opinion may be found in the *California Reporter*, *Pacific Reporter*, or WESTLAW or LexisNexis.

A United States Supreme Court opinion may be found in the *United States Reports*, *Supreme Court Reporter*, *Supreme Court Reports—Lawyer's Edition*, WESTLAW, LexisNexis, and so on.

Some of the sources you may consult to help you locate a court opinion are digests, *American Law Reports* (ALRs), legal encyclopedias, treatises, looseleaf sources, legal periodicals, *Shepard's*, *Words and Phrases*, WESTLAW, LexisNexis, and CD-ROM

and Internet databases. Many of these sources that are helpful in locating a case also may be consulted to help you gain an understanding of the case.

**For Example** ALRs, legal encyclopedias, treatises, and legal periodicals often include a discussion of a court opinion along with the opinion and address the areas of law that are considered in the opinion.

## V. COURT OPINIONS: ELEMENTS

### A. *In General*

The first requirement in properly analyzing a court opinion is to be familiar with the elements of an opinion. A court opinion usually includes some or all of the following components:

1. the facts that gave rise to the legal dispute before the court
2. the procedural history and posture of the case—that is, what happened in the lower court or courts, who appealed the decision and why
3. the issue or issues that are addressed and resolved by the court
4. the rule of law that governs the dispute
5. the application of the rule of law to the facts—in other words, the holding
6. the reason or reasons supporting the court's application of the rule of law to the facts, that is, why the court decided as it did
7. the relief granted or denied. For example, "The judgment of the trial court is upheld."

### B. *Elements of a Reported Case*

West, a Cengage business, the publisher of the regional reporters and most of the federal reporters, follows a uniform format when publishing court opinions. A similar format is followed by LexisNexis in its publication of *Supreme Court Reports—Lawyer's Edition*.

Since the majority of court opinions are published by West, an example of an opinion published by West is presented in Exhibit 4–1. The case, *Rael v. Cadena*, is published in the *New Mexico Reports* and the *Pacific Reporter*. Note that the components of the case are identified in the left margin next to each section of the opinion. These components are summarized in the following text.

#### 1. Citation

The **citation** refers to the volume number, page number, and the name of the reporter where the case may be found. The citation for *Rael v. Cadena* is 93 N.M. 684, 604 P.2d 822. That means the printed opinion of this case is published and may be found in two reporters: volume 93 of the *New Mexico Reports* at page 684, and volume 604 of the *Pacific Reporter*, second series, at page 822. (See CITATION in Exhibit 4–1.)

Court decisions are increasingly available through court Web sites as official public domain citations (also referred to as medium-neutral citations or vendor-neutral citations). When this is the case an additional citation number may be present.

#### **citation**

Information that allows the reader to locate where a reference can be found. In case law, the term refers to the volume number, page number, and name of the reporter where a case may be found.

<b>CITATION</b>	604 PACIFIC REPORTER, 2d SERIES 822
	93 N.M. 684
<b>CAPTION</b>	Eddie RAEL, Plaintiff-Appellee, v. Emilio CADENA and Manuel Cadena, Defendants-Appellants.
<b>SYLLABUS</b>	<p>Defendant in action for battery appealed from judgment of the District Court, Valencia County, George H. Perez, J., holding him jointly liable with the active participant. The Court of Appeals, Lopez, J., held that defendant who yelled encouragement to the assailant while the latter was beating the victim was jointly liable with the assailant for the battery.</p> <p>Affirmed.</p>
<b>KEY NUMBERS</b>	<p>1. Assault and Battery 18</p> <p>Civil liability for assault and battery is not limited to the direct perpetrator but extends to any person who by any means aids or encourages the act.</p>
<b>HEADNOTES</b>	<p>2. Assault and Battery 18</p> <p>Although liability cannot be predicated upon mere presence at a battery, verbal encouragement at the scene gives rise to liability; defendant who yelled encouragement to the assailant while the latter was beating the victim was jointly liable with the assailant for the battery.</p> <p>3. Assault and Battery 35</p> <p>Testimony by victim that his assailant's uncle yelled to the assailant, in Spanish, "Kill him!" and "Hit him more!" was sufficient to sustain finding that the uncle verbally encouraged the assailant to beat the victim and to impose liability on the uncle for the battery.</p>
<b>ATTORNEYS</b>	<p>John A. Budagher, Albuquerque, for defendants-appellants.</p> <p>Leof T. Strand, Albuquerque, for plaintiff-appellee.</p>

**Exhibit 4-1**

Court Opinion—  
Rael v. Cadena



JUDGE — LOPEZ, Judge.

BODY OF  
THE  
OPINION

Defendant Emilio Cadena, a non-active participant in the battery of plaintiff Eddie Rael, appeals the judgment of the trial court finding him, along with the active participant, jointly and severally liable for the battery. We affirm.

The issue on appeal is whether a person present at a battery who verbally encourages the assailant, but does not physically assist him, is civilly liable for the battery.

On a visit in Emilio Cadena's home, Eddie Rael was severely beaten on the head and torso by Emilio's nephew, Manuel Cadena. As a result of the beating, he suffered a fractured rib and was hospitalized. Eddie Rael testified that once the attack had started, Emilio yelled to Manuel in Spanish, "Kill him!" and "Hit him more!" The trial court sitting without a jury found that Emilio encouraged Manuel while Manuel was beating Eddie. Based on this finding, the court held the Cadenas jointly and severally liable for the battery.

Emilio urges that in order for the trial court to have held him jointly liable for the battery, it had to find either that he and Manuel acted in concert, or that Manuel beat and injured Eddie as a result of Emilio's encouragement. This is a misstatement of the law.

[1] This is an issue of first impression in New Mexico. It is clear, however, that in the United States, civil liability for assault and battery is not limited to the direct perpetrator, but extends to any person who by any means aids or encourages the act. *Hargis v. Herrine*, 230 Ark. 502, 323 S.W.2d 917 (1959); *Ayer v. Robinson*, 163 Cal. App.2d 424, 329 P.2d 546 (1958); *Guilbeau v. Guilbeau*, 326 So.2d 654 (La.App.1976); *Duke v. Feldman*, 245 Md. 454, 226 A.2d 345 (1967); *Brink v. Purnell*, 162 Mich. 147, 127 N.W. 322 (1910); 6 Am.Jur.2d *Assault and Battery* § 128 (1963); 6A C.J.S. *Assault and Battery* § 11 (1975); Annot., 72 A.L.R.2d 1229 (1960). According to the Restatement:

[f]or harm resulting to a third person from the tortious conduct of another, one is subject to liability if he

\* \* \* \* \*

(b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself. \* \* \*

Restatement (Second) of Torts § 876 (1979).

[2] Although liability cannot be predicated upon mere presence at a battery, *Duke, supra*; 6 Am.Jur., *supra*, verbal encouragement at the scene gives rise to liability. *Hargis, supra*; *Ayer, supra*; *Brink, supra*.

[A] person may be held liable for the tort of assault and battery if he *encouraged* or incited *by words* the act of the direct perpetrator. \* \* \* (Emphasis added.)

6 Am.Jur., *supra* at 108. Because he yelled encouragement to his nephew while the latter was beating Eddie Rael, Emilio Cadena is jointly liable with his nephew for the battery.

[3] Contradictory evidence was offered as to whether Emilio Cadena did yell anything during the beating. Eddie Rael claimed that Emilio urged Manuel to beat him; Emilio denied that he said anything; and Manuel testified that he never heard Emilio. However, the trial court found that Emilio did verbally encourage Manuel to beat Eddie. Although the evidence was in conflict, the court could conclude from the testimony of Eddie Rael that Emilio Cadena verbally encouraged his nephew to attack. This testimony, if believed, is substantial evidence to support the trial court's finding. It is not the function of the appellate court to weigh the evidence or its credibility, or to substitute its judgment for that of the trial court. So long as the findings are supported by substantial evidence, they will stand. *Getz v. Equitable Life Assur. Soc. of U.S.*, 90 N.M. 195, 561 P.2d 468, *cert. denied*, 434 U.S. 834, 98 S. Ct. 121, 54 L. Ed.2d 95 (1977).

The judgment of the trial court is affirmed.

IT IS SO ORDERED.

SUTIN and ANDREWS, JJ., concur.

**Exhibit 4-1**



**For Example**

*State v. Foster*, 1998-NMCA-163, 126 N.M. 177, 976 P.2d 852. 1998-NMCA-163 is the public domain citation. The year of publication is 1998. NMCA is the court—the New Mexico Court of Appeals. The last number, 163, is the case number.

## 2. Caption

**party**

A plaintiff or defendant in a lawsuit.

The **caption** includes the name of each **party** to the lawsuit and their court status. Eddie Rael was the plaintiff at the trial court level, and he is the appellee on appeal. (The appellee is the person against whom the appeal is filed, the person who won at the trial court level.) Emilio Cadena was the defendant at the trial court level and is the appellant on appeal. (The appellant is the person who lost at the trial court level and the person who filed the appeal.) Manuel Cadena is listed as a defendant-appellant, but he is not involved in the appeal. The caption of the case used on appeal is usually the same as the caption used in the trial court. The caption of the case in the trial court includes both Cadenas as defendants, and therefore the caption on appeal is the same. Note that the plaintiff's and defendant's last names are printed in all capitals. (See CAPTION in Exhibit 4–1.) When referring to or citing the case, only the names in all capitals are used.

**For Example**

When citing this case, the citation should read: *Rael v. Cadena*, 93 N.M. 684, 604 P.2d 822 (Ct. App. 1979).

Note that below the caption is “No. 3921.” This is the docket number of the case assigned by the court of appeals. Below the docket number is the name of the court that decided the case and the date of the decision. This is indicated in the citation as (Ct. App. 1979). If the decision had been rendered by the highest court in the jurisdiction, such as the supreme court of New Mexico, only the year of the decision would appear in the parentheses: (1979). If the citation does not include a state reporter citation, a reference to the state is included in the parentheses.

**For Example**

*Smith v. Jones*, 292 S.W.2d 425 (Tex. 1980).

## 3. Syllabus

The **syllabus** is a brief summary of the opinion. It is written by West, not the court, and cannot be relied upon as the holding of the court. It is presented as a useful aid in providing the reader with a brief overview of the opinion. (See SYLLABUS in Exhibit 4–1.)

**headnotes**

Summaries of the points of law discussed in a court opinion prepared by the publisher of the opinion.

## 4. Headnotes

The **headnotes** are summaries of the points of law discussed in the case. Headnotes follow in sequential order the relevant paragraphs of the opinion. The number to the

left of the headnote corresponds to the bracketed number in the body of the opinion. (See HEADNOTES in Exhibit 4–1.)

**For Example** In *Rael v. Cadena*, headnote 1 contains a summary of the point of law discussed in the body of the opinion between [1] and [2]. Headnote 2 is a summary of the point of law discussed in the opinion between [2] and [3]. Headnote 3 is a summary of the law discussed in the opinion between [3] and the end of the opinion.

Note that headnotes are prepared by West. They are prepared for the convenience of individuals researching the case and are useful in providing a quick overview of the law and legal principles addressed in the opinion. They are not the opinion of the court and have no authority of law. *Any reference to or quote from an opinion must be taken from the opinion itself, not from the headnotes.*

## 5. Key Numbers

In bold print next to the headnote number are a few words indicating the area of law addressed in the headnote. Next to this bold print description of the area of law is a small key symbol and a number. (See KEY NUMBERS in Exhibit 4–1.) West has divided all areas of American law into various topics and subtopics. Each area is identified by a topic name (the bold print), and each specific topic or subtopic is assigned a key number. West publishes separate volumes called digests that contain summaries of court opinions organized by topic and subtopic.

**For Example** Next to headnote 1 in *Rael v. Cadena* is “Assault and Battery,” followed by a key symbol and the number 18. The key symbol and the number 18 refer to a specific subtopic of assault and battery. The subject of this subtopic can be determined by consulting the index to “Assault and Battery” in the digest. In the body of the opinion between [1] and [2], the area of law covered is assault and battery in general. A reference to the digest reveals that key number 18 is the specific subtopic of assault and battery concerning the liability of persons who aid or encourage an assault or battery. If you want to read other court opinions in which liability for battery was based upon the conduct of aiding or encouraging a batterer at the scene of a battery, refer to the volume of the digest containing the topic “Assault and Battery.” Look to subtopic key number 18. Under that key number is a summary of all court opinions that have addressed this subtopic and the citations of those opinions.

### key numbers

West Publishing has divided all areas of American law into various topics and subtopics. Each area is identified by a topic name, and each specific topic or subtopic is assigned a number, called a key number.

Through this system you have easy access to all court opinions dealing with the question you are considering. The key number system is an invaluable research tool.

## 6. Attorneys

This section provides the names and cities of the attorneys in the case and the parties they represent. (See ATTORNEYS in Exhibit 4–1.)

## 7. Judge

At the beginning of the opinion is the name of the judge who wrote it. (See JUDGE in Exhibit 4–1.)

## 8. Body of the Opinion

The **body of the opinion** usually includes the facts of the case, the prior proceedings, the issue or issues addressed by the court, the rule of law governing the dispute, the holding, the reasoning in support of the holding, and the relief granted. (See BODY OF THE OPINION in Exhibit 4–1.)

There are no hard-and-fast rules dictating what must be contained in a court opinion, and often one or more of the elements listed here may be missing. Each of the elements of the body are discussed separately below:

1. *Facts.* Opinions usually include the facts that gave rise to the legal dispute. Often the opinion may include very few facts or more facts than appear relevant to the matter decided.
2. *Prior Proceedings.* In this part of the opinion, the court presents a summary of what happened in the lower court and who appealed. This may be a very brief summary, as in *Rael v. Cadena*, or it may be extensive and detailed.
3. *Issue or Issues.* The **issue** is the legal question addressed by the court in the opinion. The court may present the issue narrowly in the context of the facts.

### issue

The precise legal question raised by the specific facts of a dispute.

**For Example** Under New Mexico tort law, does a battery occur when an individual, present at a battery, verbally encourages the assailant by yelling “Kill him!” and “Hit him more!” but does not in any other way participate in the battery?

Or the court may state the issue broadly, merely phrasing the issue in the context of the area of law.

**For Example** Did the defendant commit a civil battery?

In many instances, a case addresses more than one legal issue. Also, the court may not present a statement of the issue or issues at all, and it may be difficult to determine what they are.

Identifying and understanding the issue is the most important task of reading an opinion. If the issue is not understood, the rule of law applied by the court may not be understood, and the opinion consequently may be misanalyzed and misapplied.

4. *Rule of Law.* The rule of law is the law that governs the issue. It may be a statutory or constitutional provision or a case law doctrine, rule, principle,

and so on. In *Rael v. Cadena*, case law governs the law of civil assault and battery.

5. *Holding*. The **holding** is the court's application of the rule of law to the facts of the case. The holding is usually presented immediately after the rule of law in the opinion or after the reasoning at the end of the opinion.
6. *Reasoning*. The **reasoning** is the court's explanation of how or why the rule of law applies to the dispute. On occasion the reasoning is difficult to follow. Often it is helpful to read the holding first and determine how the court ruled, then read the reasoning. By first understanding what decision was reached, you may be better able to understand the reasoning in support of the decision.
7. *Disposition/Relief Granted*. The relief granted is usually a one-sentence statement by the court that includes the order of the court as a result of the holding.

#### holding

The court's application of the rule of law to the legal question raised by the facts of a case. The court's answer to the legal issue in a case.

**For Example** In *Rael v. Cadena*, next to the last sentence where the court states, "The judgment of the trial court is affirmed," the court presents the relief granted.

A court has several options when granting relief:

- It may agree with the trial court and *affirm* the trial court's decision.
  - It may disagree with the trial court and *reverse* the trial court's decision. If it reverses the decision, it will *remand*, that is, send the case back to the trial court. When a case is remanded, the appellate court may order the trial court to:
    1. enter a judgment or order in accordance with the appellate court decision.
    2. retry the case (conduct a new trial).
    3. conduct further proceedings in accordance with the appellate court decision.
  - If there are several issues, it may affirm the trial court on some of the issues and reverse the trial court on other issues.
8. *Concurring Opinion*. In some instances, a judge may agree with the majority holding but for different or additional reasons than those presented by the majority. The judge may then set out his or her reasons in support of the majority in what is called a concurring opinion. There may be more than one concurring opinion if other judges also agree with the majority conclusion but for different or additional reasons.
  9. *Dissenting Opinion*. If a judge disagrees with the majority decision, the judge may present his or her reasons in what is called a dissenting opinion. Since a dissenting opinion does not agree with the majority view, it does not have the force of law. It is valuable, however, because it may help a reader understand the majority opinion.

**For Example**

The dissent may summarize what the court stated in the majority opinion. Note, however, that since the dissent disagrees with the majority view, it may mischaracterize the majority opinion.

The dissenting opinion is also important because it may become the majority view in the future when the composition of the court changes or there is a shift in the court's position. The dissent may provide the basis for future arguments in support of overruling outdated precedent. Remember, at one time the United States Supreme Court ruled that segregation on the basis of race was legal, *Plessey v. Ferguson*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896). Now, segregation on the basis of race is illegal, *Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954).

## VI. COURT OPINIONS: BRIEFING (CASE BRIEF)

### A. Introduction

As a paralegal, you may be assigned the task of reading and briefing court opinions. Since a court opinion is usually called a case, a brief of a court opinion is usually called a case brief or a case abstract. A **case brief** is a written summary identifying the essential components of a court opinion.

#### **case brief**

A written summary identifying the essential components of a court opinion.

### B. Importance of Briefing

The process of briefing a case serves several useful purposes and functions:

1. *Analysis/Learning.* Writing a summary of the essential elements of an opinion in an organized format leads to better understanding of the case and the reasoning of the court. Opinions are often complex, and the reasoning is hard to identify, difficult to follow, or spread throughout the opinion. The preparation of a case brief requires study of the opinion, identification of what is essential, and elimination of the nonessential. This process of studying a case and analyzing it helps the reader gain a better understanding of it. The analytical process of focusing on the heart of the structure of the case helps you gain an understanding of the reasoning, thereby assisting your analysis of the law.
2. *Research/Reference.* A case brief is a time-saving research tool. It provides a summary of the essentials of a case that can be quickly referred to when reviewing the case. This saves the time that would be spent rereading and reanalyzing the entire case to remember what the court decided and why. When working on a complex legal problem involving several court opinions or when time has passed since a case was read, the availability of case briefs can result in a considerable saving of time because it is often difficult to remember which opinion said what.

A case brief is a valuable tool for the attorney assigned to the case. The attorney may not need to read all the cases related to an issue. The attorney can read the case briefs prepared by the paralegal and save time by quickly weeding out those cases that are not key and identify and focus on the cases that should be read.

3. *Writing.* The process of briefing a case serves as a valuable writing tool. It provides you with an exercise in which you learn to sift through a court opinion, identify the essential elements, and assemble your analysis into a concise, written summary.

### C. How to Read a Case

Before you can brief a case, you must first read it *carefully*. Sometimes it is necessary to read the entire opinion or parts of it several times to gain an understanding of the decision and the court's reasoning. You cannot expect to skim or quickly read an opinion and hope to understand it. It cannot be read like a newspaper or novel for several reasons:

1. Judges write opinions with the assumption that the reader has an understanding of the law, legal terminology, and the legal system. If you are a beginner, you are slowed by having to look up the meaning of legal terms and become familiar with the style of legal writing.

#### For Example

In the first sentence of *Rael v. Cadena*, the court uses the phrase *jointly and severally liable*. Without a legal background, a novice would have to stop reading and look up these terms before continuing to read the case.

Do not get discouraged if at first it takes a long time to read and understand case law. It is normal to “crawl through” court opinions when you are a novice at reading them. As you become familiar with the terminology and style of legal opinions, you will read them faster and with greater understanding. The process, however, is gradual and usually takes months rather than days to learn. No matter how skilled you are, cases *always* must be read carefully to be fully understood.

2. Some opinions are difficult to read and take time because they involve complex, abstract, or unfamiliar subjects involving multiple issues. In such instances, you may have to read the entire case or portions of it several times. You may have to prepare outlines or charts as you read to help you follow and understand the court's reasoning. You may have to refer to a treatise, encyclopedia, or other research tool to obtain an understanding of the area of law involved in the case.
3. Some opinions are difficult to read because they are poorly written. Not all judges are great writers. The reasoning may be scattered throughout the case or not completely presented.
4. Some opinions are difficult to read and understand because the court may have incorrectly interpreted or applied the law. You may be surprised when you read the holding that the court reached a conclusion that is the opposite of the outcome you expected. Remember, some decisions are overruled because a higher or subsequent court determined that the earlier opinion was incorrect. Therefore, it is important to read each case with a critical eye.

In regard to the reasons presented in 3 and 4 above, the difficulty in reading and understanding an opinion may have nothing to do with your ability to read the case.



The purpose of reading a court opinion is to obtain an understanding of the law or principle addressed by the court. To gain this understanding, cases must be read and analyzed with *close scrutiny*. This is a must. The ability to read cases with greater understanding and speed comes with experience.

Several chapters in this text present specific guidelines to assist the reader in reading, interpreting, and analyzing court opinions:

1. Identifying the key facts of a court opinion is discussed in the Key Facts Identification: Case Law section of Chapter 5.
2. Identifying the issue in a court opinion is addressed in the Issue Identification: Case Law section of Chapter 6.
3. How to determine whether a court opinion is on point and may be used as precedent is covered in the Determining Whether a Case Is on Point section of Chapter 8.
4. Counteranalysis and case law is discussed in the Case Law section of Chapter 9.

#### ***D. Case Brief: Elements***

There is no standard form for a brief of a court opinion, nor are there any hard-and-fast rules governing format. Some texts recommend that case briefs contain as few as five parts, some as many as sixteen. The style of a case brief may vary from individual to individual and office to office. Be prepared to adapt to different styles.

The goal of a good case brief is a concise summary of the essentials of the court opinion that may be used as a quick reference in the future. Therefore, the brief should be concise. It certainly should not be as long as or longer than the case. Do not fill the brief with excessive quotes from the case or long summaries. Spend more time thinking than writing. Reduce the opinion to its essence.

A recommended outline for a case brief format is presented in Exhibit 4–2. This format should be viewed as a basic outline of the essential parts of a case brief. It can be adapted as necessary to meet your needs. A discussion of each section of the outline follows.

<b>Case Brief Format</b>	
<b>Citation</b>	Name of case and where it can be found.
<b>Parties</b>	Names and legal status of the parties.
<b>Facts</b>	A summary of those facts that describe the history of events that caused the parties to be in court (background facts), and those facts to which the law applies and are essential to the decision reached by the court (key facts).
<b>Prior Proceedings</b>	What happened in the lower court or courts.
<b>Issue</b>	The specific question(s) addressed and answered by the court. State the issue as narrowly and concretely as possible in the context of the case facts. It should include the rule of law and the key facts.
<b>Holding</b>	The court's answer to the issue.
<b>Reasoning</b>	Why the court ruled as it did. This is the court's application of the case or statutory law to the facts of the case. It should include: <ol style="list-style-type: none"> <li>a. The rule of law that applies.</li> <li>b. How the court applied the rule of law to the facts.</li> </ol>
<b>Disposition</b>	What order was entered as a result of the holding, for example, "The judgment of the trial court is reversed."
<b>Comments</b>	Observations concerning the opinion.

#### ***Exhibit 4–2***

##### *Case Base Format*



## 1. Citation

The citation includes the name of the parties, where the case can be found, the court that issued the opinion, and the year of the opinion.

**For Example** In *Rael v. Cadena*, the citation is *Rael v. Cadena*, 93 N.M. 684, 604 P.2d 822 (Ct. App. 1979).

- *Rael v. Cadena*—name of the case
- 93 N.M. 684, 604 P.2d 822—the volume and page numbers of the books where the case can be found. This case can be found in volume 93 of the *New Mexico Reports* at page 684, and in volume 604 of the *Pacific Reporter*, second series, at page 822
- (Ct. App. 1979)—the court that rendered the opinion and the year of the opinion The New Mexico Court of Appeals rendered the opinion in 1979. If the date alone appears in parentheses—(1979)—the highest court of the state wrote the opinion. If there is no reference to a state reporter, a reference to the state would also be included with the date: (N.M. Ct. App. 1979)

## 2. Parties

The caption at the beginning of the opinion gives the full name and legal status of each party.

**For Example**

- Eddie Rael, Plaintiff-Appellee
- Emilio Cadena, Defendant-Appellant
- Manuel Cadena, Defendant-Appellant

The legal status refers to the litigation status of the parties. This includes the status at the trial and appellate court level. The status is usually indicated in the caption. The plaintiff is the person who brought the lawsuit, and the defendant is the party against whom the suit is brought. Often terminology other than *plaintiff* and *defendant* is used.

**For Example** *Petitioner* and *respondent* are often used in divorce cases. The petitioner is the party who filed the divorce petition, and the respondent is the person against whom the divorce petition is filed.

The appeal status of the parties immediately follows the trial court status in the caption.

**For Example** In *Rael v. Cadena*, Eddie Rael was the plaintiff at trial (he filed the lawsuit), and he is the party against whom the appeal was filed (he won at the trial level).

### 3. Facts

The fact section of a case brief includes a summary of those facts that describe the history of the events giving rise to the litigation. The fact section should include key and background facts.

**Key Facts.** The key facts are those facts in the opinion to which the law applies and that are essential to the decision reached by the court. They are those facts upon which the outcome of the case is determined. If the key facts were different, the outcome of the case would probably be different.

**Background Facts.** Background facts are those facts that put the key facts in context. They are facts necessary to make sense of the story and thereby provide the reader with an overall context within which the key facts occur, an overall picture of the events of the case.

#### For Example

In an automobile collision case, where the impact took place on a country road, the fact that the collision took place on a country road may not be a key fact, but its inclusion in the fact section of the brief helps provide the reader with an overview of the context and scene of the collision.

In some texts, the case brief format presents the prior proceedings before the facts. It is recommended that the facts section precede the prior proceedings section of the brief. Since the facts of the case are the events that led to the litigation and, therefore, occurred prior to the litigation, it is logical that in the case brief format they should precede the court events (the prior proceedings). Also, it is easier, from a briefing standpoint, to identify what happened before the matter went to the trial court, then identify what happened in court.

### 4. Prior Proceedings/Procedural History

**Prior proceedings** are those events that occurred in each court before the case reached the court whose opinion you are briefing. Most opinions are not written by trial courts; they are written by courts of appeals reviewing the decision(s) of a trial court—either:

- an intermediary court of appeals, such as the United States Court of Appeals, or
- the highest court of the jurisdiction, such as the United States Supreme Court.

Therefore, there are usually prior proceedings. If you are briefing an opinion of a trial court, there may be no prior proceedings because the trial court was the first court to hear the case.

The prior proceedings should include:

1. the party initiating the proceeding and the cause of action.
2. the court before which the proceeding was brought.
3. the result of the proceeding.
4. the party appealing and what is being appealed.

#### prior proceedings

The events that occurred in the litigation in a lower court or administrative hearing.

**For Example** “The plaintiff sued the defendant, claiming medical malpractice. The trial court granted the defendant’s motion to dismiss, ruling that the statute of limitations had run. The plaintiff appealed the trial court’s ruling that the statute had run.”

## 5. Issue or Issues

The **issue** is the legal question addressed and answered by the court. It is the precise legal question raised by the specific facts of the case. The issue should be stated as narrowly and concisely as possible in the context of the facts of the case. A court opinion may address several issues. Identify each issue separately in the case brief unless you are instructed to brief only one rather than all of the issues.

### **issue**

The precise legal question raised by the specific facts of a dispute.

**For Example** In an opinion involving an automobile collision case, the court addresses several issues, some involving insurance, some involving evidence, some involving negligence, and some involving battery. The attorney working on a client’s case is interested only in the court’s resolution of an evidentiary question raised by the facts in the court case. The client’s case involves an evidentiary question and fact situation similar to that addressed in the court opinion. Therefore, the paralegal may be instructed to provide a case brief of only that portion of the opinion that addresses the evidentiary question. Although the opinion involves several issues, the case brief will address only one issue.

## 6. Holding

The holding is the court’s resolution of the issue. It is the decision of the court, the answer to the issue. There should be a separate holding for each issue identified in the issue section of the case brief. In some brief formats the holding is a simple, one-word, “yes” or “no” response to the issue. The holding should be presented as a complete response to the issue, which means that the presentation of the holding should include all the elements of the issue and should be in the form of a statement.

**For Example** The issue in the case is “Under Indiana’s probate code, Ind. Code § 29-1-5-2, is a will valid if the witnesses are brothers of the testator?” If the court ruled that the will was valid, the holding should be presented as follows: “Under Indiana’s probate code, Ind. Code § 29-1-5-2, a will is valid if the witnesses are brothers of the testator as long as there is no evidence of undue influence.”

## 7. Reasoning

Usually the largest part of an opinion is the court’s presentation of the reasons in support of the holding. Just as for each issue there is a holding, for each holding there should be reasons explaining why the holding was reached.

The reasoning portion of an opinion usually consists of two parts:

1. the rule of law that governs the facts of the dispute. It may be constitutional, legislative, or case law, and it may consist of any legal principle, doctrine, or rule of law that applies to the issue in the case.
2. the court's application of the rule to the facts of the case.

**For Example**

The issue in the case is "Under state tort law, does a battery occur when law enforcement officers, while making a lawful arrest, encounter resistance, use force to overcome that resistance, and continue to use force after the resistance ceases?"

The reasoning presented in the opinion is as follows:

- rule of law—"In *Smith v. Jones*, the supreme court ruled that a civil battery occurs whenever unauthorized harmful contact occurs."
- application of this rule to the facts of the case—"The defendants argue that inasmuch as they were making a lawful arrest, they were authorized to use force; and therefore, their conduct was not unauthorized within the meaning of *Smith v. Jones*. In this case, however, although the officers were making a lawful arrest, their conduct ceased to be lawful when they continued to use force against plaintiff after plaintiff ceased resisting. Law enforcement officers are authorized to use the amount of force necessary to overcome resistance. Once resistance ceases, any continued use of force is unauthorized within the meaning of *Smith v. Jones* and constitutes a civil battery."

In some instances, it is difficult to identify the reasoning in a court opinion because it is scattered throughout the opinion. A helpful approach is to work backward from the holding. Look to the holding first, and keep it in mind while reading the case. It may be easier to see how the court assembled the reasons in support of the holding if you know the holding or outcome while reading the case.

Also, the rule of law or legal principle governing the issue is usually clearly stated by the court and is easy to identify. The reasons for the application of the rule or principle to the facts of the case usually follow the presentation of the governing law. Therefore, identification of the governing law may also help you locate the reasoning.

The reasoning section of the case brief should include the rule of law and a summary of the court's application of the rule of law to the facts—how the rule of law applies to the facts of the case. Lengthy quotations from the case should be avoided. The reasoning should be summarized.

**For Example**

In the excessive force example presented in the preceding example, the reasoning section of the case brief is as follows: "A civil battery occurs whenever unauthorized harmful contact occurs. *Smith v. Jones*. Law enforcement officers are authorized to overcome resistance. Once resistance ceases, any continued use of force is unauthorized and constitutes a civil battery."

Also included in the reasoning section is a summary of the reasoning of any concurring opinion.

## 8. Disposition

In this section, include the relief granted by the court, which is the order entered by the court. This is usually located at the very end of the opinion.

**For Example** The judgment of the trial court was affirmed.

## 9. Comments

Include in this section of the case brief any observations you may have concerning the court opinion. This could include any of the following:

1. why you agree or disagree with the decision.
2. a summary of any dissenting opinions. Does the dissenting opinion contain information that is useful in understanding the majority opinion? Does the dissenting opinion contain valuable legal arguments that may be useful in arguing against the use of the case as precedent? This is especially helpful if the holding of the court goes against your client's position. Note that some case brief formats have a separate section for dissenting opinions.
3. why the case may or may not be on point.

**For Example** Referring to the excessive force example, assume that in the client's case there is evidence that the client never ceased resisting. You might include the following comment in the comment section of the brief: "It is questionable whether this case can be relied on as precedent due to the differences between the facts of the case and our client's facts. In the court case, force continued after resistance ceased, and the court held that the continued use of force constituted a battery. Inasmuch as in our case there is evidence that resistance never ceased, the court opinion may not be applicable."

4. references to the opinion in subsequent cases or secondary sources, such as a law review article.
5. any information updating the case, that is, concerning whether the case is still good law. This is discussed in the next section.

## E. Case Brief: Updating

Whenever an assignment requires you to brief a case, you should determine whether the case is still good law, which means you must check to determine whether the opinion has been reversed, modified, or in any way affected by a later court decision. The primary method of accomplishing this is through the use of the appropriate *Shepard's* citator.

*Shepard's* citators are published by LexisNexis. A paralegal must be familiar with *Shepard's* citations in order to update a court opinion. Instructions on how to use a *Shepard's* citator are included in the beginning of each volume.

In addition, there are computerized services that provide online citators that are usually more up-to-date than the *Shepard's* printed citators. Among these online services are the following:

- *LexCite*—includes a list of the recent cases citing a case (available through LexisNexis).
- *Insta-Cite*—provides a summary of the prior and subsequent history of a case and includes references to the case in *Corpus Juris Secundum* (available through Westlaw).
- *KeyCite*—includes a list of all cases citing a case (available through Westlaw).
- *Shepard's Citator Services*—presents information not yet included in the
- *Shepard's* printed volumes (available through both Westlaw and LexisNexis).

## VII. Key Points Checklist: *Reading and Briefing Court Opinions*

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- ☐ Read opinions carefully and slowly. You cannot speed-read case law. Often you may have to take notes as you read a case.
- ☐ If you have a problem identifying the key facts, refer to Chapter 5.
- ☐ Watch for the court's statement of the issue. The court may state the issue in a broad or procedural context. If you have a problem identifying or stating the issue, refer to Chapters 6 and 7.
- ☐ If you have trouble understanding the majority opinion, often the concurring or dissenting opinion will summarize and clarify the arguments and reasoning adopted by the majority. Be aware that the dissenting opinion may mischaracterize the majority opinion in support of its own position.
- ☐ If you have trouble understanding the opinion, Shepardize the case to determine whether there are any other cases, law review articles, ALR citations, or other secondary sources of information concerning the case. Consult a treatise that discusses the area of law involved in the opinion. Refer to the digest for other cases addressing the same area of law.
- ☐ Do not be discouraged if you have trouble reading and understanding opinions. It takes time and experience. The more you read opinions, the easier it becomes. Your skill improves only through doing. Therefore, read as many cases as possible.
- ☐ Read opinions with a critical eye. Court opinions are just that—opinions. On occasion, courts are wrong. Do not read with unquestioning blind faith. Read critically. Question! Ask yourself, “Does the reasoning support the conclusion?”

## VIII. Application

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This section applies the principles presented in the case briefing section of this chapter to two cases: *Rael v. Cadena*, the case assigned to Carolyn in the hypothetical presented at the beginning of this chapter (see Exhibit 4-1), and *Sterling Computer Systems of Texas, Inc. v. Texas Pipe Bending Company*, which is reprinted in this section.

### A. Brief of *Rael v. Cadena*

The sample brief is presented first, followed by comments on the brief.

<b>Citation:</b>	<i>Rael v. Cadena</i> , 93 N.M. 684, 604 P.2d 822 (Ct. App. 1979)
<b>Parties:</b>	Eddie Rael, Plaintiff-Appellee Emilio Cadena and Manuel Cadena, Defendants-Appellants
<b>Facts:</b>	While visiting Emilio Cadena's home, Eddie Rael was beaten by Emilio's nephew, Manuel Cadena. After the attack began, Emilio yelled to Manuel "Kill him!" and "Hit him more!" Emilio never actually struck Rael or physically participated in the battery. Rael was hospitalized as a result of the beating.
<b>Prior Proceeding:</b>	Eddie Rael sued Emilio and Manuel Cadena for battery. The trial court, sitting without a jury, found Emilio jointly liable with Manuel for the battery. Emilio appealed the judgment of the trial court.
<b>Issue:</b>	Under New Mexico tort law, does a battery occur when an individual, present at a battery, encourages the perpetrator of the battery by yelling "Kill him!" and "Hit him more!" but does not in any other way participate in the battery?
<b>Holding:</b>	Yes. An individual may be liable for battery by encouraging or inciting the perpetrator by words or acts.
<b>Reasoning:</b>	The rule of law in the United States is that civil liability for assault and battery is not limited to the direct perpetrator but extends to any person who by any means aids or encourages the act. The act of verbal encouragement at the scene may give rise to liability. The trial court found that Emilio Cadena yelled encouragement to his nephew while the nephew was beating Rael and, therefore, under the rule of law, is jointly liable for the battery.
<b>Disposition:</b>	The judgment of the trial court was affirmed.
<b>Comments:</b>	If, in the client's case, less aggressive language was used, it may be valuable to review other cases to determine the type of encouragement necessary to constitute a battery. Here, Emilio's comments were very aggressive. Would he have been liable for battery had he merely said, "Go ahead, Manuel"?

### Comments on the Case Brief

Note that the brief includes the essential information of the case:

1. the name of the case and where it can be found
2. the names of the parties and their status before the court
3. the facts that gave rise to the dispute
4. what the trial court did
5. the issue, or legal question
6. the holding
7. the law governing the issue and the application of that law to the facts of the dispute
8. the disposition
9. relevant comments

You may include in the comments section a notation that the issue in the case was a matter of first impression in New Mexico—that is, the issue addressed in the case had never been decided by New Mexico courts. That is why the reasoning refers



to non-New Mexico law and secondary authority rather than to New Mexico law. See the reasoning section of the brief.

### **B. Brief of Sterling Computer Systems of Texas, Inc. v. Texas Pipe Bending Company**

A second example of the application of the principles presented in this chapter is illustrated with the brief of the *Sterling Computer Systems* case. The case is presented in the following text. Comments concerning the case brief follow the brief.

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STERLING COMPUTER SYSTEMS OF  
TEXAS, INC., Appellant,

v.

TEXAS PIPE BENDING COMPANY,  
Appellee.

No. 965.

Court of Civil Appeals of Texas.

Houston (14th Dist.).

March 20, 1974.

Rehearing Denied April 10, 1974.

507 S.W.2d 282 (Tex. Ct. App. 1974)

Action for breach of contract for data-processing service.

The District Court, Harris County, Paul Pressler, J., granted summary judgment for defendant, and plaintiff appealed. The Court of Civil Appeals, Tunks, C. J., held that contract, which contained an express provision that plaintiff would not be liable for an outright refusal to perform data-processing services for defendant, and which contained no requirements that plaintiff make a reasonable effort to perform, failed for want of mutuality, and was unenforceable.

Affirmed.

#### **Contracts** 10(2)

Contract, which contained an express provision that plaintiff would not be liable for an outright refusal to perform data-processing services for defendant, and which contained no requirement that plaintiff make a reasonable effort to perform, failed for want of mutuality, and was unenforceable.

Alvin L. Zimmerman, Houston, for appellant.

Robert H. Singleton, Percy D. Williams, Houston, for appellee.

#### **TUNKS, Chief Justice.**

The issue in this case is the propriety of a summary judgment for the defendant in a breach of contract suit, which was granted on the theory that the contract lacked mutuality.

The appellant, Sterling Computer Systems of Texas, Inc., brought suit for breach of contract against the appellee, Texas Pipe Bending Company. In essence, the contract in question provided that Texas Pipe Bending was to provide Sterling with digitized cards and computer programs each month, with which Sterling was to perform data-processing services for Texas Pipe Bending. Certain prices were quoted in the agreement, which were “based on a minimum of 20,000 digitized cards per month.” The term of the agreement was to have been for one year, but after providing cards and paying in full for eight months, Texas Pipe Bending refused to further provide Sterling with digitized cards. The trial court granted Texas Pipe Bending’s motion for summary judgment. Although the judgment does not so recite, it was apparently based on the argument proposed by Texas Pipe Bending that the contract was unenforceable because of the lack of mutuality. Sterling has appealed.

The relevant portion of the contract is found in a clause denominated as “LIMITATION OF LIABILITY.” This clause provides in part as follows:

SCS [Sterling] shall not be liable for its failure to provide [*sic*] the services herein and shall not be liable for any losses resulting to the client [Texas

Pipe Bending] or anyone else by reason of such failure.

The general rule as stated in *Texas Farm Bureau Cotton Ass'n v. Stovall*, 113 Tex. 273, 253 S.W. 1101, 1105 (1923), is:

[A] contract must be based upon a valid consideration, and ... a contract in which there is no consideration moving from one party, or no obligation upon him, lacks mutuality, is unilateral, and unenforceable.

Under the express terms of the contract in question Sterling would not be liable for an outright refusal to perform the data-processing services. This fact renders its obligation a nullity.

Sterling cites various cases that purportedly support its position that the trial court erred in granting summary judgment for Texas Pipe Bending. The gist of these cases is that although a contract may not expressly obligate a party to perform, such an obligation may be implied by its terms. In *Texas Gas Utilities Company v. Barrett*, 460 S.W.2d 409 (Tex. Sup. 1970), the Texas Supreme Court held, under a similar contention, that there was a mutuality of obligation. In that case the contract provided that the Gas Company would not be liable for failure to deliver when such failure was "caused by conditions beyond its reasonable control," and then enumerated certain situations that exemplified the above phrase (over none of which would the Gas Company have control). The Court noted, "It [Gas Company] was bound, however, to supply *available* natural gas to respondents ... ." *Texas Gas Utilities Company v. Barrett*, *supra* 460 S.W.2d at 413. In the present case there

existed no requirement that Sterling make a reasonable effort to perform. The exculpatory clause allowed Sterling to refuse to perform with impunity.

*Clement v. Producers' Refining Co.*, 277 S.W. 634 (Tex.Comm'n App. 1925, jdgmt adopted), was another case in which mutuality was found. That case involved a contract for an agent's commission. By the terms of the agreement the principal was to pay the agent a commission on goods that "may be supplied" by the principal. Notwithstanding this provision the Commission of Appeals held that the contract impliedly obligated the principal to supply goods to the agent. However, the Court stated:

[A]s there is no language used which would clearly indicate that the company was not obligated to furnish goods and products, the courts are not warranted in holding that no such obligation was imposed ... by its terms. *Clement v. Producers' Refining Co.*, *supra* at 635.

The case at bar is distinguishable because the contract contained an express provision that Sterling would not be liable if it did not perform. Various other cases cited by appellant are similarly distinguishable because in those cases contracts were involved that did not expressly provide that one of the contracting parties could fail to perform without incurring liability.

As a matter of law the contract in question fails for want of mutuality. The trial court correctly granted summary judgment for the defendant, Texas Pipe Bending Company.

Affirmed.

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<b>Citation:</b>	<i>Sterling Computer Systems of Texas, Inc. v. Texas Pipe Bending Company</i> , 507 S.W.2d 282 (Tex. Ct. App. 1974).
<b>Parties:</b>	Sterling Computer Systems of Texas, Inc., Plaintiff-Appellant Texas Pipe Bending Company, Defendant-Appellee
<b>Facts:</b>	Sterling Computer Systems (Sterling) entered into a contract with Texas Pipe Bending (Texas Pipe) under which Texas Pipe was to provide Sterling with digitized cards and computer programs each month with which Sterling was to perform data-processing services

	for Texas Pipe. After complying for eight months, Texas Pipe refused to provide Sterling with the cards. The contract contained the following provision, “SCS [Sterling] shall not be liable for its failure to provide [ <i>sic</i> ] the services herein and shall not be liable for any losses resulting to the client [Texas Pipe] or anyone else by reason of such failure.”
<b>Prior Proceedings:</b>	Sterling sue Texas Pipe for breach of contract. Texas Pipe moved for summary judgment, arguing that the contract was unenforceable because it lacked mutuality.
<b>Issue:</b>	The trial court granted the motion. Sterling appealed. Under Texas contract law, does a contract lack consideration and, therefore, become unenforceable if it contains a limitation of liability clause that provides that a party “shall not be liable for its failure to provide the services herein and shall not be liable for any losses resulting ... by reason of such failure”?
<b>Holding:</b>	Yes. Under Texas contract law, a contract lacks consideration and is unenforceable if it contains a limitation of liability clause that provides that a party “shall not be liable for its failure to provide the services herein and shall not be liable for any losses resulting ... by reason of such failure.”
<b>Reasoning:</b>	The rule of law presented in <i>Texas Farm Bureau Cotton Association v. Stovall</i> , 113 Tex. 273, 253 S.W. 1101 (1923), is that where there is no obligation upon a party to a contract, the contract lacks mutuality, is unilateral, and is unenforceable. Under the limitation clause, Sterling is not liable for its refusal to perform. Therefore, as a matter of law, the contract fails for want of mutuality.
<b>Disposition:</b>	The trial court’s granting of the motion for summary judgment was affirmed.
<b>Comments:</b>	The court did not address any potential avenues of relief that may be available to Sterling in equity, such as equitable restitution or reliance. Such avenues may be available in our case and should be explored. Also, does Sterling have a claim against the drafters of the contract for legal malpractice?

### ***Comments on the Case Brief:*** Procedural v. Substantive Issues

Note that the court identifies the issue as follows: “The issue in this case is the propriety of a summary judgment for the defendant in a breach of contract suit. ...” The actual issue in the case, however, is whether a contract is enforceable when it contains a clause that allows a party to escape liability when it fails to perform. Often a court will state the issue in the procedural context of how the matter came before the court.

#### **For Example**

“The issue in this case is whether the motion for summary judgment was properly granted by the trial court.” This is how the matter came before the court procedurally: an appeal was taken from the trial court’s ruling on the motion for summary judgment.

The real issue involves a question of whether, in light of the facts and the applicable law, there was a sufficient basis for the court to rule as it did. In answering

the procedural question, the court actually addresses the substantive question raised by the facts of the case. The substantive question is what the case is actually about. In this case, summary judgment was granted because, as a matter of law, the contract failed for want of mutuality (lack of consideration) owing to the limitation of liability clause. Therefore, Sterling could not enforce the contract because it was not valid. The substantive issue addressed by the court was whether the clause rendered the contract unenforceable owing to the lack of consideration. *Always* look for the substantive issue when the court states the issue in a procedural context.

## Quick References

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body	000	holding	000
caption	000	issue	000
case brief	000	key numbers	000
case law	000	party	000
citation	000	prior proceedings	000
common law	000	reasoning	000
court opinion	000	<i>Shepard's</i>	000
disposition	000	syllabus	000
headnotes	000		

## Summary

A court opinion, often referred to as a case, is the court's resolution of a legal dispute and the reasons in support of its resolution. When resolving disputes, courts often interpret constitutional or statutory provisions or create law when there is no governing law. The body of law that emerges from court opinions is called the case law. It constitutes the largest body of law in the United States, far larger than constitutional, legislative, or other sources of law.

Because you must read court opinions to learn the case law, it is necessary to become familiar with and proficient at reading and analyzing case law. There are several additional reasons, however, for reading opinions. A court opinion:

1. helps you understand and interpret constitutional provisions and statutory law.
2. helps you understand the litigation process.
3. helps you gain insight into the structure of legal analysis and legal argument.
4. provides a guide to proper legal writing.

Most court opinions are composed of the facts of the case, the procedural history of the case (what happened in the lower court), the legal questions (issues) addressed by the court, the decision or holding of the court, the reasons for the decision reached, and the disposition (the relief granted).

A case brief is a written summary of a court opinion that presents, in an organized format, all the essential information of the opinion. A paralegal may be assigned the task of briefing a case. A case brief is valuable because it:

1. saves an attorney the time of reading the case. The brief may so sufficiently inform the attorney of the contents of the opinion that he or she will not need to read the case.
2. serves as a valuable learning tool. The process of briefing a case forces the reader to study the case and analyze it piecemeal. A better understanding of the opinion is usually gained as a result of this process.
3. is a reference tool. A case brief serves as a valuable reference guide, allowing the paralegal to avoid having to reread an entire case in order to remember what the court decided and why.
4. is a writing tool. It provides an exercise in assembling a written summary of a court decision.

The first and possibly most important step in briefing a case is to read it carefully and slowly. Reading case law is often a difficult process, especially for the beginner. It becomes easier as more opinions are read.

The elements of a case brief are as follows:

- citation
- parties
- facts
- prior proceedings
- issue
- holding
- reasoning
- disposition
- comments

Chapters 5–8 provide guidelines that are helpful in identifying many of these elements of a case brief.

The importance of case law cannot be overemphasized. The difficulties you encounter in reading and briefing court opinions can be lessened through the use of the guidelines presented in this chapter.

## Internet Resources

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<http://supct.law.cornell.edu/>

United States Supreme Court opinions can be located at this site

<http://www.oyez.org>

Hear the oral arguments or read the court briefs of United States Supreme Court cases

<http://www.law.emory.edu>

Access to United States Federal Court cases

<http://www.uscourts.gov>

Homepage for the Federal Courts

<http://www.findlaw.com/>

Locate court cases

<http://www.courts.net>

Access Web sites maintained by courts nationwide

## Exercises

*Additional assignments are located on the Online Companion and the Student CD-ROM accompanying the text*

### ASSIGNMENT 1

List and describe the elements of a case brief.

### ASSIGNMENT 2

Why are court opinions important?

### ASSIGNMENT 3

Describe the importance of briefing a case.

### ASSIGNMENT 4

Refer to *In Re Maltby* at the end of Chapter 6. Identify the citation, holding, and disposition.

### ASSIGNMENT 5

Refer to *People v. Sanders* and *United States v. Martinez-Jimeniz* in Appendix A. For each of these cases identify the parties, citation, holding, and disposition.

### ASSIGNMENT 6

Following the format presented in this chapter, read and brief the following court opinions.

- A. *United States v. Leon* (see Appendix A)
- B. *Acacia Mutual v. American General* (see Chapter 6)
- C. *Commonwealth v. Shea* (see Appendix A). Brief only the issue of whether the ocean can be considered a deadly weapon.
- D. *Atlantic Beach Casino, Inc. v. Morenzoni* (see Chapter 13). Brief only the issue concerning the constitutionality of the municipal ordinances.
- E. *Cardwell v. Gwaltney* (see Appendix A)
- F. *State v. Benner* (see Appendix A). Brief only the issue of the sufficiency of the evidence to support the conviction.
- G. *McClain v. Adams* (see Appendix A)
- H. *Cooper v. Austin* (see Appendix A). Brief only the issue of the validity of the codicil.



For additional resources, visit our Web site at [www.paralegal.delmar.cengage.com](http://www.paralegal.delmar.cengage.com)



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