

# *How to Read a Judicial Opinion: A Guide for New Law Students*

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This essay is designed to help entering law students understand how to read cases for class. It explains what judicial opinions are, how they are structured, and what you should look for when you read them. Part I explains the various ingredients found in a typical judicial opinion, and is the most essential section of the essay. Part II discusses what you should look for when you read an opinion for class. Part III concludes with a brief discussion of why law schools use the case method.

## *I. What's in a Judicial Opinion?*

Judicial opinions (also known as legal opinions, legal decisions, or cases) are written decisions authored by judges explaining how they resolved a particular legal dispute and explaining their reasoning. An opinion tells the story of the case: what the case is about, how the court is resolving the case, and why. Most legal opinions follow a simple formula that will seem odd to you at first, but will quickly become second nature. In this section, I'll take you through the basic formula.

Let's start with the preliminary stuff before the body of the opinion. This part isn't very important in most cases, but it's helpful to know anyway.

**The Caption:** The caption is the title of the case, such as *Brown v. Board of Education*, or *Miranda v. Arizona*. In most cases, the caption reflects the last names of the two parties to the dispute, and it tells you who was involved in the case. If Ms. Smith sues Mr. Jones, the case caption may be *Smith v. Jones* (or, depending on the court, *Jones v. Smith*). In a criminal case, the government brings the case, and the government itself is listed as a party. If the federal government charges Sam Jones with a crime, for example, the case caption would be *United States v. Jones*.

**The Case Citation:** Underneath the case name, you will find a legal citation that tells you the name of the court that decided the case, the law book in which the opinion was published (and therefore can be found), and also the year in which the court decided the case. For example, "U.S. Supreme Court, 485 U.S. 759 (1988)" refers to a U.S. Supreme Court case decided in 1988 that appears in Volume 485 of the United States Reports, starting at page 759.

**The Author of the Opinion:** The next bit of information is the name of the judge who authored the opinion. In most cases, the opinion will simply state a last name, followed by the initial “J.” No, judges don’t all have the first initial “J”; the letter stands for “Judge” or “Justice,” depending on the court. For example, “Hand, J.” refers to Judge Hand, and “Holmes, J.” is Justice Holmes. In those jurisdictions where the judges are not called “judges,” you may see a different initial. For example, some courts call their judges “Chancellors,” so the initial will be a “C” instead of a “J.” You will also see variations like “C.J.” for Chief Judge, “V.C.” for Vice Chancellor, etc. On occasion, the opinion will have the Latin phrase *per curiam* in place of the judge’s name. This phrase means “by the court,” and generally means that the opinion reflects a common view held by all of the court’s judges, rather than the writings of a single judge.

Okay, enough of the preliminary stuff. Let’s get to the body of the opinion.

**The Facts of the Case:** The first part of the body of the opinion is usually devoted to presenting the facts of the case. In other words, what happened? Surprisingly, there are no particular rules for what a judge must include in this section. Sometimes the fact sections are long, and other times they are short; sometimes they are clear and accurate, and other times they are vague or incomplete. Typically, the facts tell you the judge’s understanding of the case and what the judge thought was an important aspect of the case that helped the judge reach the decision.

The “facts” of a case consist mostly of the events that occurred *before* the legal case was filed in court, and that led to the filing of the case. For example, the facts might be that A pulled out a gun and shot B, or that A agreed to give B \$100 and then changed her mind. However, most opinions also include a section on the *procedural history* of the case: that is, what happened in the case *after* the case was filed in court. The procedural history usually consists of various motions, hearings, trials, and proceedings that went on in the case before the court that is writing the opinion was asked to resolve the dispute at issue. You should pay very close attention to the procedural history when you read cases for your civil procedure class (note the word “procedure”); generally speaking, it is less important when you read a case for your other classes.

Some opinions may make your life a bit difficult by calling the parties to a case by special legal names, such as *appellant*, *appellee*, *petitioner*, *respondent*, *plaintiff*, *defendant*, and the like. You will get used to this eventually. For now, however, it may help to keep in mind a few simple guidelines. First of all, when parties first appear in court they are labeled using a pretty simple convention: in civil cases, where someone is bringing a lawsuit, the person bringing the lawsuit is known as the *plaintiff*,<sup>1</sup> and the person sued is the *defendant*. In criminal cases, where

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<sup>1</sup> Plaintiff is a French word, and its use in American law is a holdover from the Norman conquest of the Saxons in 1066 in what is today England. The Normans spoke French: the Saxons spoke Old English. For several centuries after the French-speaking Normans took over England, lawyers and judges in English courts spoke mostly in law French. When the American colonies inherited the English legal system, we also inherited this French tradition. Many of the distinctive legal words you will learn in your first year of law school are French in origin. Examples include: plaintiff, defendant, tort, contract, crime, suit, judge, attorney, court, verdict, allegation, party, plead, damages, appeal, assault, felony, larceny, counsel, evidence, arrest, and jury. So, if you don’t like legalese, blame it on William the Conqueror.

a criminal charge is filed by the government, the person who has been charged is still known as the defendant. There are no plaintiffs in criminal cases, however; the cases are brought by the government, which is referred to as “the state,” “the prosecution,” or simply “the government.”

After the original court has resolved the case, the losing party may wish to seek review of that decision by filing an appeal before a higher court. An appeal is a legal proceeding before the higher court to review the decision of the original court. The original court is known as the trial court (because that’s where the trial occurs, if there is one), and the higher court is known as the appellate or appeals court. A single judge presides over the trial court proceedings; however, appellate cases are decided by panels of several judges. For example, in the Federal court system, a single trial judge known as a District Court judge oversees the trial stage, and cases can then be appealed to the next higher court, the Court of Appeals, where cases are decided by panels of three judges known as Circuit Court judges. Finally, cases can then be appealed from the Court of Appeals to the U.S. Supreme Court, where cases are decided by nine judges. At the Supreme Court, the judges are called Justices, not Judges.

During the proceedings before the higher court, the party that lost at the original court ordinarily is called the *appellant* – that is, the one bringing the appeal – and the party that won is known as the *appellee* (accent on the last syllable, by the way) – the party whose victory has been appealed. Some older opinions may refer to the appellant as the “plaintiff in error” and the appellee as the “defendant in error.” Finally, for historical reasons, some courts– including the U.S. Supreme Court– label an appeal as a “petition,” and require the losing party to petition the higher court for relief. In these cases, the party that lost before the lower court is called the *petitioner*, and the party that won before the lower court is called the *respondent* (that is, the one who appears before the higher court to *respond* to the losing party’s petition). It’s all somewhat confusing, but you’ll get used to it in time.

**The Law of the Case:** After the opinion has presented the facts, it will then discuss the law. This section of the opinion describes the legal principles that the judge will use to decide the case and reach a particular outcome. In many cases, the law is presented in two stages: first the opinion will discuss the general principles of law that are relevant to the case given its facts, and next the court will apply the law to the facts and reach the court’s outcome.

As you read the law section of the opinion, you should think about what source of law the court is using to resolve the dispute before it. Some cases interpret the *Constitution*, the founding charter of the government. Other cases interpret *statutes*, which is a fancy name for written laws passed by legislative bodies such as Congress. Still other cases interpret the *common law*, which is a term that usually refers to the body of prior case decisions (known as *precedents*) that derive ultimately from pre-1776 English law that the Colonists brought over from England.<sup>2</sup> The source of the law can be quite important because Constitutional rules trump statutory (statute-based) rules, and statutory rules trump common law rules. As a result, the

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<sup>2</sup>The phrase “common law” started being used about a thousand years ago to refer to laws that were common to all English citizens. Thus, the word “common” in the phrase “common law” means common in the sense of “shared by all,” not common in the sense of “not very special.” The “common law” was announced in judicial opinions. As a result, you will sometimes hear the phrase “common law” used to refer to areas of judge-made law as opposed to legislatively-made law.

source of the court's authority can help determine the significance of the court's opinion. In your first year, cases that you read in torts, contracts, and property law will mostly be interpreting the common law. Cases that you read in criminal law mostly will be interpreting the common law or statutes. Finally, cases that you read in civil procedure will mostly interpret statutory law and the Constitution.

You should also look out for the method (or methods) of reasoning that the court offers to justify its decision. For example, courts may justify their decision on grounds of public policy. This is particularly likely in common law cases: the idea here is that the court believes that the legal rule it adopts is a good rule because it will lead to better results than any other rule. Courts may also justify their decisions based on the court's understanding of the narrow function of the judiciary. When a case is governed by a statute, for example, courts may conclude that a result is required because that is what the legislature's statute says, no matter what the court thinks would be the best rule. Similarly, when past courts have already answered similar questions before, a court may conclude that it is required to reach a particular result because it is bound by the past precedents. This is an application of the judicial practice of *stare decisis*, an abbreviation of a Latin phrase meaning "That which has been already decided should remain settled." Other courts will rely on morality, fairness, or notions of justice to justify their decisions. Many courts will mix and match, relying on several or even all of these justifications.

Two important ingredients you should be looking for in the legal section of the opinion are the *holding* of the case, if there is one, as well as any *dicta* the opinion may contain. The holding is the core legal principle that the case represents. It is the conclusion that the case stands for, the court's resolution of the key legal dispute that it faced. (I'll talk more about holdings of cases later on in the essay.) At the opposite end of the spectrum from the holding of the case is *dictum*, or, to use the more common plural form, *dicta*. *Dictum* is an abbreviation of the Latin phrase "obiter dictum," which means "a remark by the way." *Dicta* are statements in an opinion that are not actually required to resolve the case before it. The distinction between the holding and *dicta* can be important because the holding of a case is more important than *dicta*. In fact, you will often hear lawyers try to minimize the importance of language in past decisions by characterizing that language as "merely *dicta*."

**The Disposition:** The disposition usually appears at the end of the main opinion, and tells you what action the court is taking with the case. For example, an appeals court may *affirm* the lower court decision, upholding it; or it may *reverse* the decision, overturning it, and *remand* the case, sending it back to the lower court for further proceedings. For now, you should keep in mind that when a higher court *affirms* it means that the lower court had it right (in result, if not in reasoning). Words like *reverse*, *remand*, and *vacate* means that the higher court though the lower court had it wrong.

**Concurring and/or Dissenting Opinions.** Concurring and dissenting opinions (a.k.a. "concurrences" and "dissents") are opinions by judges who did not see entirely eye-to-eye with the other judges of the court, and wish to express a slightly or even dramatically different view of the case. In general, a concurring opinion is an opinion by a judge who would have reached the same result as the majority, but for a different reason. Dissenting opinions are opinions by judges who disagree with the majority's result entirely. In most cases, dissenting opinions try to persuade the reader that the majority's decision was simply incorrect.

You probably won't believe me at first, but concurrences and dissents are very important. You need to read them carefully. When they're not important, concurrences and dissents usually are edited out by casebook authors just to keep the case from being too long. When they are included, it means that they offer some valuable insights and raised important arguments. Sometimes your professor will believe that the concurrence or dissent is the opinion that had the better argument. In fact, a strong dissent that points out a fatal flaw in the majority's reasoning sometimes will influence later courts and convince them to decide the same question differently. Law school professors like to assign cases with concurrences and dissents because they often frame the issues better than unanimous decisions.

## *II. What to Look For When You Read a Case*

Okay, so you've just read a case for class. You think you understand it. At the same time, you're not quite sure whether what you learned is what your professor wanted you to learn. If you're like most law students, you will have the experience of walking in to class believing that you understand an assigned opinion one hundred percent, only to walk out of class an hour later shaking your head and wondering how you could have misunderstood the case so completely. You'll quickly learn that reading a case for law school is different from other reading you have done for other classes. You have to read *much* more carefully. Here are the primary goals you should have when you read a legal opinion for class:

**1) A careful understanding of the facts.** Most law students underestimate the importance of the facts when they read a case. Many students think, "I'm in law school, not fact school; I want to know what the law is, not just what happened in this one case." There are two problems with this line of thought. First, when you are called on in class to discuss a case, your professor will ordinarily begin by asking you to state the facts of a particular case. If you don't know the facts, you will be unprepared. Second, the facts of the case are usually legally important: many areas of law are highly fact-sensitive, which is a fancy way of saying that the proper legal outcome depends on the very specific facts of what happened. If you don't know the facts, you can't truly understand the case and can't understand the law. (You will be happy to know that these two problems are really one; law professors often ask about the facts precisely because they are often important to the law.)

If you're unconvinced of the importance of facts, take a look at a few law school exams. It turns out that the most common form of law school examination question presents a long description of a very particular set of facts, and then asks the student to "spot" and then analyze the legal issues presented by those facts. Such questions are known as "issue spotters," as the key skill they evaluate is the student's ability to understand the facts and spot the legal issues the facts raise. Doing well on an issue-spotter (and thus doing well on law school exams) requires developing a careful and nuanced understanding of the importance of the facts. The best way to prepare for that is to start reading the fact sections of the cases you are assigned with great care.

**2) An understanding of the arguments that each party argued to the court.** Lawsuits are disputes, and judges only issue written opinions about the law when two parties to a dispute disagree on a particular legal question. As a result, when judges do write about a legal question, they generally focus on resolving the parties' particular dispute, not on writing a treatise on whatever issues they may see in the case. This means that the lawyers, not the judges, take the lead role in framing the issues raised by a case. In an appeal, for example, the lawyer for the

appellant must articulate specific ways in which the lower court was wrong: the appellate court then looks at the lawyer's arguments and either agrees or disagrees. Similarly, in a criminal trial, it is largely up to the defendant's lawyer to raise problems with the prosecution's case, and to articulate reasons why the prosecution's case is flawed. (If you wondered why people pay big bucks for top lawyers, that should give you a good idea.) Because the lawyers take a lead role in framing the issues in a case, you need to understand when you read a case exactly what arguments the two parties were making. You simply can't understand the court's opinion unless you first understand the dispute that the parties wanted resolved.

**3) An understanding of the result and reasoning of the majority opinion, as well as the reasoning of any concurring and/or dissenting opinions.** Your emphasis here should be on understanding the reasoning offered by the judges for the conclusions they make. Why did the court do what it did? How did the court frame the problem before it, and how did it try to solve it? What sources of law did they rely on for their ruling? The most important point you should remember about understanding a court's legal reasoning is that you *absolutely must think critically* about the court's reasoning. Law is man-made, and Anglo-American law is often judge-made. Learning to "think like a lawyer" often means learning to think like a judge, which means learning how to evaluate what rules and explanations are strong, and what rules and explanations are weak. Courts occasionally say things that are unconvincing, silly, wrongheaded, or confused, and you need to think independently about what a judge says. Think to yourself, what would you have done if *you* were the judge?

**4) The possible effect and scope of the court's decision.** You should also spend a moment thinking about what the effect of the court's opinion is likely to be on future cases. In the next case, the facts will be a bit different: should the outcome be the same? During class, law professors like to change the facts around and ask you whether the change in facts would change the outcome. You can think of this as taking the court's rule "out for a spin," and it's important for a few reasons. First, it's hard to understand the impact of a legal rule unless you think about how it might apply to specific situations. A rule might look good in one situation, but reveal a big problem in another. Second, judges often reason by "analogy," which means a new case may be governed by an older case when the legally relevant facts of the new case are similar to those of the old case. This raises the question, which are the legally relevant facts for this particular rule? The best way to evaluate this is to consider new fact patterns.

Finally, you should accept that some opinions are ambiguous and vague. Sometimes a court won't explain its reasoning very well, and that forces us to try to figure out what the opinion means. You'll look for the "holding" of the case, but you'll get frustrated because you can't find one. It's not your fault; some opinions are just poorly reasoned or written, and others are written in a narrow way so that there is no clear holding. Rather than trying to fill in the ambiguity with false certainty, try embracing the ambiguity instead. One of the skills of top-flight lawyers is that they know what they don't know: they know when the law is unclear. Indeed, this skill of identifying when a problem is easy and when it is hard (in the sense of being unsettled or unresolved by the courts) is one of the keys to doing very well in law school. When we professors write law school exams, we intentionally touch on unsettled or unresolved issues. The best students are the ones who recognize and identify these unsettled issues without pretending that they are easy.

### *Part III. Why Do Law Schools Use the Case Method?*

I'll conclude by taking a somewhat broader look at legal education, and the role of cases in that education. College classes are pretty different from law school classes. In college you had to read a bunch of books, and the professor stood at the podium and droned on for awhile about broad themes and interpretations while you sat back in your chair, safe in your cocoon. You're now starting law school, and it's very different. You're reading about actual cases, real-life disputes, and you're trying to learn about the law by picking up bits and pieces of it from what the cases tell you. Even weirder, your professors are asking you questions about those cases, getting everyone to join in a discussion about them. Why the difference, you may be wondering? Why do law schools use the case method at all? I think there are two primary reasons, one historical and the other practical.

**The Historical Reason:** The legal system that we have inherited from England is largely judge-focused. The judges have made the law what it is through their written opinions. To understand that law, we need to study the actual decisions that the judges have written. Further, we need to learn to look at law the way that judges look at law. In our system of government, judges can only announce the law when deciding real disputes: they can't just have a press conference and announce a set of legal rules (this is sometimes referred to as the "case and controversy" requirement; the courts have no power to decide issues unless the issues are presented by actual cases and controversies before the court). To look at the law the way that judges do, we need to study actual cases and controversies, just like the judges. In short, we study real cases and disputes because real cases and disputes historically have been the primary source of law.

**The Practical Reason:** A second reason we use the case method is that it can be hard to understand a particular legal rule, and its merits as a matter of policy, without applying the rule in the real world. It can be hard to understand the rule because the English language is quite ambiguous: even a legal rule that sounds definite and clear in the abstract may prove murky in application. (For example, imagine you go to a public park and see a sign that says "No vehicles in the park." That plainly forbids an automobile, but what about bicycles, wheelchairs, toy automobiles? What about airplanes? Ambulances? Are these "vehicles" for the purpose of the rule or not?) You need to understand real-life applications of a rule before you can understand what the rule really means. In a very practical sense, the applications are part of and help define the rule.

It is also hard to assess the merits of a rule as a matter of policy without specific examples. Often you will think of a legal rule that sounds good at first. If you try applying your rule to different facts, however, you will find that specific facts can expose weaknesses in the rule that you hadn't thought of before. Law professors like to pose hypotheticals (imaginary fact patterns) to get you to see that a given rule may not be as good as you first think. After a semester of law school, you should be able to do this yourself; you'll be able to think of a rule, and then think of how different fact patterns that tests the rule. The goal is to get you to see the strengths and weaknesses of different rules in a more sophisticated way. By studying cases, we can help train our brains to think of specific factual situations that reveal the strengths and weaknesses of a particular rule. We can then use that skill to devise better rules.

*Good luck!*

