

Introduction to Lawyering Skills/Torts

Class Policies and Syllabus

Law 610, Section 339B

Fall 2023

Introduction:

This document has a lot of words. It would be tempting to gloss over the content. Don't do that. Some of the information will not be relevant to you on Day 1 but will be important later in the semester. You are deemed to have constructive notice of everything in this document. That's the fancy legal way of saying you're responsible for this information even if you don't read it. You won't remember everything in this document, but any time you have a question about a course policy, this is the first place to look to find the answer.

Teaching Team:

Professor Amy Sloan

Office: AL1105

asloan@ubalt.edu

410.837.6529

Tiffany Ralph—Administrative Assistant

Office: AL1112

tralph@ubalt.edu

410.837.4561

(Ms. Ralph helps with class administration and distribution of assignments. Contact her with any questions about class attendance or when you need to pick up or drop off work.)

Christa Cutler & Amanda Fruman—Teaching Assistants

Louis Di Filippo—Law Scholar

Office Hours:

Wednesday, noon–1:00 p.m. and by appointment.

Course Meeting Times:

Monday, 12:00 noon–1:15 p.m.

Wednesday and Friday, 9:00 a.m.–11:45 a.m.

Please check MyUB for the classroom assignments.

Course Materials:

Required Texts that you must obtain:

- Dobbs, Hayden, & Bublick, *Torts and Compensation, Concise Edition* (West 8th ed.), ISBN: 9781634608183. **Please note: The 8th edition is not the most current edition, but that is the edition we will use. Further, there are two versions of this text, the full edition and the concise edition. Please be sure to get the **concise 8th edition**.**

- Coughlin, Rocklin, & Patrick, *A Lawyer Writes* (Carolina Academic Press 3d ed.), ISBN 978-1-5310-0876-5.
- *The Bluebook* (21st ed.), ISBN 978-0-578-66615-0

Required Materials that will be provided to you:

- Sloan, *Researching the Law: Finding What You Need When You Need It* (Aspen Publishers 3d ed.). You will access this text through the Casebook Connect link on the course Canvas page (described below).
- Anthon, *The Bluebook Uncovered: A Practical Guide to Mastering Legal Citation*.
- *Core Grammar for Lawyers* (Carolina Academic Press). You must register for *Core Grammar* by Friday, August 25.

Instructions for accessing *The Bluebook Uncovered* and *Core Grammar for Lawyers* are included in ILS Research Module: Getting Started with Research in ILS. If you have questions or need help with the instructions, please contact Savannah Long at slong@ubalt.edu or CJ Pipins at cpipins@ubalt.edu on or after Friday August 18.

Recommended Texts:

- Glannon, *Examples & Explanations: Torts* (Aspen Publishers 6th ed.).
- Schechter, *A Short and Happy Guide to Torts* (West 2d ed.).
- Wydick & Sloan, *Plain English for Lawyers* (Carolina Academic Press 6th ed.)

Don't buy these before school starts. These are resources to use when you need more information about a topic covered in class. I like these, which is why I recommend them. You may be able to get them from the library, and you may find others you like better. Try out any study guide to make sure it is helpful to you before making the investment to buy it.

Course Description:

Introduction to Lawyering Skills/Torts integrates rigorous instruction in legal analysis, research, and writing with the substantive law of torts to give beginning law students an opportunity to combine skills and doctrine the way lawyers must in the practice of law. The course is taught by full-time, tenured and tenure-track legal writing professionals in sections of approximately 30 students with one-on-one conferences. Students will learn the law of imposed liability for personal, property, and economic harm, through case analysis and rule synthesis, print and online legal research, and legal writing projects. Doctrinal topics will include negligence (including professional malpractice); strict liability (including products liability) and intentional torts; causation and elements of damages; and affirmative defenses and limitations of duties including: assumption of the risk, contributory negligence, comparative negligence, immunity, and limited liability of property owners. Legal analysis, research, and writing skills will be developed through coursework that includes critical case reading, analysis and briefing; common law principles and processes; factual analogy and distinction; rule synthesis and

application; objective/predictive writing (office memo); case law and statutory research, print and electronic; citation form; and professional norms and ethics.

Learning Outcomes:

Students who successfully complete the course will be competent in:

1. articulating tort doctrine and policy;
2. conducting effective legal research in commonly used secondary sources, as well as statutes and cases;
3. applying tort law to new factual scenarios; and
4. producing written legal analysis of a client's problem.

Course Expectations:

Workload— American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work per week for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours. [See ABA Standard 310.](#)

Attendance—Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. For detailed information on Ubalta Law's attendance policies, please see the student handbook.

In accordance with the law school's attendance policy, students who have more than **four** absences total will not be eligible to complete the course and will receive a grade of FA (failure due to excessive absences). Note that absences from ILS and from Torts are not calculated separately. You cannot miss more than four class sessions in total.

Most instruction this semester will occur face-to-face in class. Some will be provided through asynchronous prerecorded material provided through Panopto. Some may be provided through live Zoom sessions. Attendance is taken at all class sessions, including TA classes.

You will be counted absent if you:

- arrive late to, leave early from, or are significantly distracted during face-to-face or Zoom class
- fail to complete assigned asynchronous instruction
- are unprepared for class (as explained more fully below).

Modality: For a student to be considered present, their attendance must be consistent with the modality of the specific class meeting. For example, if a class meeting is in-person, a student must attend in-person to be considered present. If a class meeting is virtual, a student must attend virtually to be considered present.

A student whose accrued absences exceed the limits above will be withdrawn from the course with a grade of FA (failure due to excessive absence) unless the Associate Dean for Academic Affairs extends the limit, up to the following maximums: (1) in the fall and spring semesters, up to 4 additional absences for a course scheduled to meet 2 or more times per week; (2) in the fall and spring semesters, up to 2 additional absences for a course scheduled to meet once per week; (3) in the summer semester, up to 1 additional absence. A student whose accrued absences exceed the extended limit will be withdrawn from the course with a grade of FA.

A student who anticipates accruing excessive absences may be eligible for a Leave of Absence and should contact the Dean of Students to discuss available options.

Bases for Extensions: The Associate Dean for Academic Affairs can extend the number of absences a student may accrue based on a student's religious observance or extraordinary individual circumstances.

Extraordinary individual circumstances include, but are not limited to, the following: bereavement (as defined in the [University of Baltimore Student Bereavement Policy](#)), significant physical or mental health incidents, and attendance at activities required for academic credit, such as clinic court appearances and moot court competitions.

Minor illnesses, doctor's appointments, traffic, practice rounds for student competitions, personal events, and professional events (including those sponsored by the law school) are examples of circumstances that do not qualify as extraordinary individual circumstances.

A student must provide documentation for extraordinary individual circumstances upon request and must provide advance notice to the Faculty Member whenever possible.

Attendance Tracking Procedures

To keep attendance, this class will use attendance software called **Qwickly**. Qwickly is hosted in Canvas, UB's official learning management system. With Qwickly the professor will have a choice to either take attendance manually OR to have you check-in using a pin number generated at the start of class.

To check-in for class using a pin number, you must log into the Canvas site for the course via myUB or at this link: <https://ubalt.instructure.com/courses/3094>. Click "Qwickly Attendance" on the left side of the navigation bar and enter the pin. Qwickly will automatically email you if you are marked absent for the day. If you believe this email was sent in error, please contact the professor and their administrative assistant immediately.

Course Website—The LAW610.339B ILS/Torts Canvas site is the official source of information about the course. It contains the course syllabus, announcements, class assignments, and other materials. Any changes to the syllabus, assignments, course deadlines, and the like will be posted on Canvas and supersede any information previously posted or announced elsewhere. I will use the Canvas site to communicate with the class, and you will use it to submit work. You are responsible for checking it regularly for course information.

Class Recordings, Zoom, and Panopto—Any class recordings, audio or video, are for the sole use of instruction and study in that specific course and may not be used or reproduced by students for any other purpose. Similarly, students may not capture video, audio, images or chat text from a class without permission from the instructor for use specific to instruction and study in that specific course. Such images may not be used or reproduced by students for any other purpose. *Violating these directions is an honor code violation.*

UBalt University Recording Statement—All class recordings are for the sole use of the class and may not be reproduced by students for any other purpose. Faculty cannot reproduce students' voices or images from the class for any other purpose without additional student consent. All such recordings are protected by a Ubalt login process based on where they are posted. Students may mute their microphone or turn off their camera if they do not consent to be recorded, but this may mean they need to find additional ways to participate in the class discussion. Students may be required to turn on their cameras and participate in graded class activities. In addition, students who turn off their camera and do not remain present for the class session may be subject to the Honor Code for misrepresenting attendance.

Computers—You are permitted to use laptops or notebooks for notetaking and for the exam. You will perform better in this class if you take curated notes during class and transfer them to an outline later on. Many students perform better if they take handwritten notes. You cannot succeed in this class simply by memorizing rules. Typing a transcript of the discussion will divert your attention from the analysis of the material that is the focus of this class.

Participation—Students are expected to come to class prepared to participate in the discussion or activities taking place.

If you are unprepared, please send me an email to that effect at least 15 minutes before class or give me a note before the start of class. *If you do not notify me in advance and you are unprepared when I call on you, you will be counted absent for that class period.* Please be aware that being unprepared for class may negatively affect your final grade (as explained more fully below).

Professionalism—You are expected to come to class on time and stay for the entire class unless you provide advance notice of your need to arrive late or leave early. **You should rarely, if ever, need to leave class in the middle of the lesson to get a drink, use the bathroom, etc. We will take periodic breaks for those purposes.** Additionally, please silence your phone and disable all alerts for text messages, emails, social media posts, etc. before class begins.

Methods of Evaluation:

You will earn two grades in this class, one for Torts and one for ILS.

Your Torts grade will be based on the Canvas Torts quizzes, the midterm examination, and the final examination: Canvas Torts quizzes = 3%; Midterm = 10%; Final = 87%.

Your ILS grade will be based on assignments submitted over the course of the semester:

ILS assignments	
Core Grammar Exercises (Units A, B, C, D, and F)—1 point each	5 points total
Research and Citation Modules Module 1—Civics—2 points Module 2—Cases—4 points Module 3—Statutes—4 points Module 4—Secondary sources—3 points Module 5—Federal legal research—2 points	15 points total
Battery hypothetical	5 points
Memo #1	20 points
Research plan for Memo #2	5 points
Memo #2 & Memo #2 rewrite	50 points
Research and citation exam	15 points
<i>Total points available</i>	<i>115 points</i>

Core Grammar Units, Research and Citation Modules, and Canvas Torts Quizzes are not accepted late. All other work is penalized heavily if submitted late, as detailed in the instructions for individual assignments.

Core Grammar: You must test out of or pass each assigned exercise (Units A, B, C, D, and F) to get credit for the work.

Research and Citation Modules: Points are assigned based on good faith completion. Incomplete work or significantly deficient work that fails to demonstrate good faith effort will be penalized.

Canvas Torts Quizzes: Quizzes are graded on a pass/fail basis.

You disregard Core Grammar Units, Research and Citation Modules, and Canvas Torts Quizzes at your peril. Assignments with low point values may not seem important, but they add up and can make a difference in your final grade.

I reserve the right to raise or lower a student's grade in Torts, ILS, or both by one half step (e.g., raise the grade from B to B+ or lower the grade from B to B-) based on class participation and preparedness. This includes participation in class discussion, in-class activities, and asynchronous activities.

Class Cancellation:

If I must cancel a class, a notice will be sent to students via UBalt email. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow

Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. The School of Law Honor Code and information about the process is available at:

https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm.

For Torts, you are permitted to consult with the Law Scholar and use academic support resources available through Professor Marta Baffy. For ILS assignments, you are permitted to consult with me, the TAs, a librarian, or the Law School Writing Center, within limits detailed in the instructions for individual assignments. You may not otherwise discuss ILS assignments or work with anyone inside or outside the law school on ILS assignments unless I give specific instructions authorizing collaboration. You may not use generative AI (e.g., ChatGPT) for any purpose unless specifically authorized in the instructions for an assignment. Further guidance on the limits of permissible outside assistance appears below in the section on Academic Support.

Course Evaluations:

It is a requirement of this course that students complete a course evaluation. The evaluation will be available later in the semester and is entirely anonymous. Faculty members will not have access to the feedback provided on course evaluations until after all grades are submitted.

Title IX Sexual Harassment and Sexual Misconduct Policy:

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UBalt's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

Resources for Student Support:

Disability Policy—The law school works hard to ensure compliance with the Americans with Disabilities Act (ADA). For detailed information on reasonable accommodations, please see the student handbook.

If you are a student with a documented disability who requires an accommodation for academic programs, exams, or access to the University's facilities, please contact Erin Brady, the Law School's Director of Student Support, at ebrady@ubalt.edu, or the University's Office of Disability and Access Services at das@ubalt.edu. Note that classroom accommodation requests should be submitted 2 weeks before the start of the semester (by August 7, 2023). Exam accommodation requests should be submitted no later than 2 weeks after the start of the semester (by September 4, 2023).

General student issues/Mental Health—For general student issues, students should contact Dean Paul Manrique (pmanrique@ubalt.edu; 410-837-5283). For mental health concerns, students can contact Dean Manrique or Tony DuLaney, the University's Clinical Case Manager (tdulaney@ubalt.edu; 410.837.5159). Dean Manrique's office is located in the AL 7th floor Dean's Suite, and he welcomes students to walk in. Both Dean Manrique and Mr. Dulaney are also able to schedule phone and Zoom appointments.

Academic Support—For questions about academic challenges (including preparing for and participating in your classes, reviewing and outlining for exams, and studying for and taking exams), students can contact Professor Marta Baffy (mbaffy@ubalt.edu; 410-837-6370). Professor Baffy's office is located on the 5th floor in Room AL 513. You may consult with Professor Baffy for general academic support and support for Torts material. **You may not consult with Professor Baffy on ILS assignments without express prior permission.** Further guidance on the limits of permissible outside assistance appears above in the section on Academic Integrity.

Syllabus

The outline on the next page sets out the anticipated assignments for the first two weeks of the semester. The complete syllabus for the semester will be posted on Canvas. Assignments may be adjusted from time to time depending on our progress through the material. Assigned reading that is not in one of the assigned texts will be posted on Canvas. The abbreviation ALW refers to *A Lawyer Writes*.

Work to be Submitted: Work must be submitted on the date that it is **DUE**. The requirements for some assignments (e.g., Torts quizzes) are self-explanatory and will not be discussed in class before the work is due. The requirements for more substantial assignments will be discussed in class on the date the work is **Assigned**. All assigned reading is to be completed before class. The TAs will communicate with the class if they have assignments for you to complete prior to the TA session.

Torts Quizzes: After you submit each quiz, you will be able to see your results. Even if you get all the questions right, it's important to review the feedback. I use the feedback to explain the answers and provide additional information.

Date	Topic	Reading/Videos Assigned	Work to be Submitted
Aug. 21	Course Introduction	Class policies and syllabus Handout on case briefing (posted after this syllabus and on Canvas) Dobbs 1–10 (<i>Van Camp v. McAfoos</i>) ALW Introduction & Chapter 3	DUE at the beginning of class: <ul style="list-style-type: none"> ▪ 2 hard copies of a case brief for <i>Van Camp v. McAfoos</i> ▪ ILS Research Module: Getting Started with Research in ILS (on Canvas)
Aug. 23	Fault	Dobbs 1–10; 15–24 (<i>Van Camp v. McAfoos</i>) ALW Chapters 1 & 2	DUE at the beginning of class: Syllabus Quiz (on Canvas) Assigned: Core Grammar Pretest; ILS Research Module 1 (Civics)
Aug. 25	Battery Organizing a legal analysis	Dobbs 27–33 (<i>Snyder v. Turk; Cohen v. Smith</i>) ALW Chapters 4 & 6	DUE at the beginning of class: Battery Quiz
Aug. 28	Using citations to locate authority	Assigned by TAs	DUE by 8 p.m.: ILS Research Module 1 (Civics)
Aug. 30	Intent Battery hypothetical	Dobbs 33–44 (<i>Garrett v. Dailey; White v. Muniz; Wagner v. State; Baska v. Sherzer</i>) Battery hypothetical materials (posted on Canvas) ALW Chapters 5 & 7, §§ 7.1 & 7.2 only	DUE at the beginning of class: <ul style="list-style-type: none"> ▪ Core Grammar pretest ▪ Intent Quiz ▪ Battery Hypo Entrance Ticket 1 Assigned: Battery hypothetical; Core Grammar units A, B, C, D, & F
Sept. 1	Assault False Imprisonment IIED Battery hypothetical	Dobbs 44–51; 475–481 (<i>Cullison v. Medley; McCann v. Wal-Mart; Chanko v. ABC; GTE Southwest v. Bruce</i>) ALW Chapters 8 & 9	DUE at the beginning of class: <ul style="list-style-type: none"> ▪ Assault, False Imprisonment, and IIED Quizzes ▪ Battery Hypo Entrance Ticket 2

Case Briefing

Adapted from materials by Professors Byron Warnken and Elizabeth Samuels

What is a Case Brief?

A case brief is an analytical summary of a judicial opinion. It is a method of taking notes on cases assigned for class. (A case brief should not be confused with a legal brief submitted by an attorney to a court.) The process of preparing a case brief can help you understand the case, and the completed brief can be a valuable document for preparing for class, analyzing cases in class, reviewing after class, making outlines in preparation for exams, and studying for exams.

The appropriate length of a case brief is a function of the complexity of the case, the sophistication of the briefer, and the purposes for which the brief is made. Briefing style and briefing length evolve rapidly during the first semester of law school. During the first month of law school, in particular, you should review briefs that you prepare for quality and length. If upon subsequent review, you need to "brief the case brief" in order to have a workable study tool, then the case brief is too long. On the other hand, if upon subsequent review, the case brief does not contain enough information to permit sufficient recall of the case, the case brief is too short.

There may be as many briefing techniques as there are briefers. This document discusses one briefing technique. You may hear about other techniques during orientation, from your other professors, or from fellow students. This is fine. There is no single right way to brief a case. You should experiment with different briefing styles until you find a method that helps you understand the assigned cases and follow and participate in class discussion.

For the most part, briefs will be your notes for your use to help you understand the material. Unless specifically instructed to do so, you are not expected to submit case briefs for this class.

The Components of a Case Brief

A comprehensive brief of a case contains the following eleven components:

(1) **Citation:** At a minimum, every case brief should note (1) name of the case, (2) the jurisdiction and name of the court, and (3) the year of decision. Depending on the purpose of the brief, you may also want to include a complete legal citation, which is an abbreviation identifying where the case is published.

(2) **Parties:** The parties to the case are the litigants. Each party can usually be identified by one or more factual categorizations, e.g., employee, agent, landlord, offeree, the State. In addition to identifying the parties' factual status, you need to determine their litigation status. For example, at the trial level, it is usually a plaintiff versus a defendant, or the State (or Commonwealth or People) versus a defendant. At the appellate level, it is appellant versus appellee or petitioner versus respondent.

(3) **Relief sought:** What was the legal objective or result sought by the party seeking relief? This could be money damages or dismissal of the suit or remand for a new trial. If you are reading an appellate case, the party seeking relief may not be the party who initiated the suit in the first instance. In an appellate case, the party seeking relief usually seeks a reversal of the decision of a lower court, either a vacating of the judgment or a modification of the legal result at the trial level.

(4) **Procedure:** Understanding the procedural history and current procedural posture of every case is essential. The case brief should list all procedural steps, from the initial proceeding through the present proceeding. Each step in the procedural history of the case should be identified by (a) the nature or type of proceeding, e.g., a civil tort case, a divorce action, a suit for an injunction, a criminal case, (b) the party initiating that step in the proceeding, and (c) in an appellate case, the tribunal that resolved the matter below.

There may be many steps in the procedural history of the case, or there may be only one. Most judicial opinions you read in law school are written by appellate courts. Thus, there is usually at least one prior level in the procedure, i.e., the trial level below, plus the current procedural posture, i.e., the current appeal. Many of the terms used to describe procedural steps in the litigation may be unfamiliar to you, so don't be surprised if you need to use a legal dictionary to try to understand the procedural steps that led to the opinion you are reading.

(5) **Legal theories:** Any time that a party seeks relief, that litigant must have a legal basis for his or her objective. At the trial level in a civil case, the party seeking relief must have one or more "causes of action." The legal theory of the other party, in either a civil or criminal action, is referred to as a defense, which is usually in the form of a general denial (e.g., "I did not commit the offense," or "I did not breach the contract,") or in the form of an assertion of one or more affirmative defenses (e.g., "If I committed the offense, it was done in self-defense or was done under duress").

At the appellate level, the party seeking relief, who is the appellant or petitioner, usually bases the appeal upon a claim that the trial court has made one or more errors of law. The party seeking to uphold the lower court's decision, the appellee or respondent, usually contends that the trial judge made no legal errors or that if the trial judge did make a legal error, the error does not require reversal.

(6) **Legally significant facts:** Because like cases should be decided in like manner under the principle of stare decisis, it is necessary to understand the facts of the case to which the law has been applied. You must determine which facts were significant to the court in reaching its result. Legally significant facts are also referred to as operative facts, key facts, material facts, and salient facts.

Facts are determined at the trial level. Evidence is produced by the litigants, and the facts are ascertained by the "finder of fact," also referred to as the "trier of fact." If three prosecution witnesses testify that they saw the defendant shoot the victim, and three defense alibi witnesses testify that the defendant was playing pool with them at Joe's Bar and Grill at the time of the murder, it is the finder of fact who will decide where the defendant was and what he

did. The finder of fact will be either a jury, in a jury trial, or a judge, in a non-jury trial. A non-jury trial is also referred to as a court trial or bench trial.

As you read an appellate opinion, you will learn the facts solely from the appellate court, which is not the fact finder. To determine what facts were found below, the appellate court relies on the record of the case, including the evidence submitted by the parties and the written decision of the lower court. Your understanding of the appellate court's understanding of the facts is crucial. Certain signals in the court's opinion will help you understand what the court understands to be the facts found below: (a) The appellate court states that the record directly supports certain facts. (b) The appellate court states that certain facts can be inferred from the record. (c) The appellate court states that certain facts were agreed upon or stipulated to by the parties. (d) The appellate court accepts allegations of one of the parties that certain facts exist.

It is also helpful to consider indications of what facts the appellate court determines the court below found did not exist: (a) The appellate court expressly states or implies that certain facts do not exist. (b) The appellate court rejects allegations made by one or more of the parties that certain facts exist.

A fact is legally significant if altering or eliminating that fact would change the legal conclusion or result of the case. Because facts gain their legal significance only in light of the controlling law, the relevant factual categories depend upon the legal issues. Thus, the same facts may acquire or shed their legal significance depending upon the issue. Assume that a case involves a green 1981 Chevrolet Camaro, with the serial number 6857109. "Green," "1981 Chevrolet Camaro," and "serial number 6857109" may all be irrelevant, and the legally significant fact may be "automobile," if the issue is the automobile exception to the requirement for a search warrant under the Fourth Amendment. "Green" and "serial number 6857109" may both be irrelevant, and the legally significant fact may be "1981 Chevrolet Camaro," if the issue is an automobile recall. "Serial number 6857109" may be irrelevant, and the legally significant fact may be "green 1981 Chevrolet Camaro," if the issue is an eyewitness identification of the getaway vehicle in a robbery. When evaluating facts for legal significance, you must evaluate the facts of the case as a totality to the extent possible.

(7) **Issue(s)**: An issue is a question of law. It is usually a question that asks, "What is the result when you apply this rule of law to these facts?" A case will always present at least one issue and may contain multiple issues. Sometimes, but not always, the court will specifically identify the issue or issues it is addressing in the opinion.

An issue can usually be framed in the form of a question that can be answered "yes" or "no." In order to yield a legal conclusion that can be applied under the principle of stare decisis to future similar situations, the issue must be stated neither too narrowly nor too broadly. An example is included below to illustrate this point.

Issues should have two components -- one legal and one factual. The legal component should identify the relevant rule of law. The factual component includes facts legally significant to the issue. Depending on the nature of the legal question, the issue might read as follows:

"Do [legally significant facts] constitute [particular portion of the rule of law] within the meaning of [the rule of law]?" Two examples follow.

- A. **Well-framed issue:** Is a person who does not register brain waves a human being for purposes of common law murder, which is the felonious killing with malice of a human being?
- B. **Inadequate factual component (no factual category or factual category too narrow):** Is Mr. Jones is a human being for purposes of common law murder, which is the felonious killing with malice of a human being?
- C. **Inadequate factual component (factual category too broad):** Is a person with no chance of recovery is a human being for purposes of common law murder, which is the felonious killing with malice of a human being?
- D. **Inadequate legal component (no rule of law):** Is a person who does not register brain waves alive?

In examples B and C, the rule of law is provided but nothing is known about Mr. Jones. An answer of "yes" or "no" will not be helpful because there will be no way to consider whether the next set of facts is sufficiently similar to dictate the same answer. In the second example, the facts are stated too broadly. Even if the answer is "yes" to the well-framed issue, it could only be "maybe" to this issue because "an individual with no chance of recovery" is broad enough to include a terminally ill person, who also has no chance of recovery but who is a human being for purposes of common law murder and in every other legal context.

In example D, the person may no longer be a human being from the standpoint of common law murder, but he may still be a human being and still be very much alive from the standpoint of contract law or the law of trusts and estates. While he may no longer be a potential murder victim, his life insurance policy beneficiary may not be able to collect and his estate may not be subject to probate.

(8) **Holding(s):** A holding is a conclusion of law. It is generally the affirmatively stated "yes" or "no" answer to the legal issue, to the question that asks, "What is the result when you apply this rule of law to these facts?"

(9) **Court's rationale:** The court's rationale consists of both its reasons and its policy considerations. While the holding provides the "what," the rationale provides both the "how" and the "why." If every case that arose thereafter were exactly the same as the case being briefed, then knowing the "what" would probably be enough. However, because later cases will not be exactly "on point," or "on all fours" with the present case, it is necessary to understand the court's rationale in order to consider how the law of the case may be applied to future cases.

(10) **Dictum:** Obiter dictum, usually shortened to dictum, is Latin for "a remark by the way." It is "an observation or remark made by a judge in pronouncing an opinion upon a cause, concerning some rule, principle, or application of law, or the solution of a question suggested

by the case at bar, but not necessarily involved in the case or essential to its determination; any statement of the law enunciated by the court merely by way of illustration, argument, analogy, or suggestion. Statements and comments in an opinion concerning some rule of law or legal proposition neither necessarily involved nor essential to determination of the case in hand are obiter dicta, and lack the force of an adjudication." Black's Law Dictionary 541 (6th ed. 1990) (citation omitted).

Dictum often takes one or more of the following forms. (a) The court may analyze facts different from those before the court, e.g., "Had the bicycle been a motor bike, our conclusion would be different." (b) The court may analyze rules of law not necessary to resolve the issues before the court, e.g., "Had this cause of action arisen today, under the amended statute, the claimant would be entitled to benefits." (c) The court may analyze an issue not before the court, e.g., "Although the question is not raised by this case, it appears that the statute would have precluded coverage had the injury occurred on the first day of employment." (d) The court may analyze an issue not necessary to resolve in light of the resolution of one or more threshold issues, e.g., "While reversing the judgment below and remanding for a new trial because of the erroneous admission of evidence, we note that the award of punitive damages could not have withstood appellate review because this is not a case of pure tort but a case of tort arising out of contract." It is essential to distinguish holding from dictum -- the former is the law, the latter may or may not be the law but is certainly not the law of the case.

(11) **Separate opinions:** Separate opinions are extra opinions that are written by individual judges and are not the opinion of the court. These opinions are either concurring or dissenting ones and do not contain the court's holding. The author of a concurring opinion agrees with the majority's disposition of the case but for different reasons, for additional or more expansive reasons, or for fewer or more limited reasons. The author of a dissenting opinion disagrees with the majority's disposition of the case. If the case you are reading has any separate opinions, they should be summarized and analyzed.

Quotations from Cases

When you are first learning to brief cases, it is tempting to quote extensively from the court's opinion. After all, what could be better than the court's own words? Quoting extensively from the case, however, defeats the purpose of a case brief. A case brief should summarize and analyze the opinion in a way that helps you understand the principles of law. Cutting and pasting from an opinion does not require the same degree of intellectual work that explaining the case in your own words does. You should use quotations sparingly, only when it is absolutely necessary to repeat the court's language, such as when you must note the exact wording of a legal test or standard.

Often, students quote the language of the opinion when they don't really understand what the opinion means and are, therefore, unable to put the ideas in their own words. If you find yourself quoting extensively, ask yourself whether you really understand the case. If you do, try to put the elements of the case into your own words. If you don't, keep reading the case until you do understand it.