

# How to Brief a Case

## FIRAC: An ELEMENTary Approach to Legal Reasoning

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## 2.2 How to brief a case (Part 1)

“Case” in this context means a judicial opinion. To “brief” a case means to write a condensed (brief) version of that opinion. The object is to strip away the flesh of the opinion and expose the bones, which are then arranged to display a complete, properly organized, skeleton.

Distinguish (1) a “brief” of a judicial opinion from (2) a “brief” filed with a court to advocate a particular position. The former is a synopsis of a document a court wrote to explain its decision. The latter is a document written by or in support of a party to a lawsuit and submitted to a court for the purpose of persuading the judge(s) to decide in the party’s favor.

Obviously, it is only possible to brief a case after the judicial opinion has been read and understood. Acquiring the necessary understanding may take more than one reading. It also requires a certain level of knowledge and skill. The better you comprehend what you are looking for (facts, rule, etc.) and the more adept you are at spotting those things, the easier it will be to recognize them in an opinion no matter where they appear or how they are expressed.

The primary purpose of this section is to introduce you to the format and content of a case brief. If you want or are required to prepare one, you will have a better idea of how to do so.

But the benefits go far beyond that. The information you need to find and understand in

order to prepare a brief is the same information you need to find and understand to comprehend any judicial opinion. It is also the same information needed to perform a FIRAC analysis. Thus, as your ability to brief cases improves, your ability to comprehend judicial opinions and do FIRAC analyses will also improve. And vice versa. All these tasks are interrelated. They share a common knowledge-base and skill-set. As a result, increasing mastery of one also increases mastery of the others.

Initially, you may find briefing a case to be difficult, time consuming, and frustrating. As you acquire more knowledge and skill, it will get easier, faster, and perhaps even become enjoyable. (Okay, enjoyable may be too much. How about satisfying? Will you settle for tolerable?) The previous sections of these materials have introduced most of what you need to know to brief a case. This section adds a bit more information. Future sections will provide additional depth. There are also many other helpful resources available on the Internet and elsewhere. Still, for most people, there is no escaping the reality that learning how to write a good brief takes time, effort, and plenty of deliberate practice.

### **A generic briefing format.**

Every case is, at its core, a FIRAC analysis and will therefore contain facts, issue(s), rule(s), application(s), and conclusion(s). However, every judicial opinion also includes procedural information that helps, and is sometimes necessary, to understand the case. Concurring or dissenting opinions or both may follow the majority opinion. And some brief writers like to finish with a critique of the opinion.

Here is a 10-step briefing format that allows for the inclusion of all this information, as needed or desired.

- (1) Heading
- (2) Procedural information
- (3) Facts
- (4) Issue (law issue)
- (5) Rule
- (6) Application
  - (a) Element issue
  - (b) Reasoning
  - (c) Conclusion to the element issueRepeat (a) - (c) for each element the court addressed.
- (7) Conclusion (to law issue)  
Repeat (4) - (7) for each law issue the court resolved.
- (8) Concurring opinion(s)
- (9) Dissenting opinion(s)
- (10) Critique

Variations of this format abound. If directed to use a particular format (by a teacher or employer, for example), you should, of course, do so. Normally, this is no big deal. All variations of briefing formats are substantially similar in purpose, organization, and content.

### **The steps of a "bare bones" brief**

At a minimum, a brief should include Steps 1, 3, 4, 5, 6, and 7 of the generic format

provided above. Below, each of those steps is described and illustrated with an example. The example is taken from the *People v Kay* case (which appeared in the previous section of these materials). The descriptions and examples will probably make more sense if you have a hard copy of *People v Kay* to refer to. For a clean printable copy of the opinion, [click here](#).

## **Heading**

Names of the parties (*Example*: People v Kay)

Name of the court that wrote the opinion (*Example*: Court of Appeals of Michigan)

The date (generally just the year) the case was decided (*Example*: 1982)

The citation (*Example*: 121 Mich. App. 438; 328 N.W.2d 424)

## **Facts**

The facts describe who did what to whom under what circumstances, etc. Usually, facts recount something that happened BEFORE any court got involved. Anything that occurred after the lawsuit was filed in the trial court is, with rare exception, NOT a fact.

Tell the story of what led up to the lawsuit in a way that includes all the determinative facts and keeps extraneous ones to a minimum. (Some extraneous facts are necessary to provide background and a lucid narrative.) Determinative facts are those that make a difference; facts which, if changed, could affect the court's decision. Recognizing whether a fact is determinative requires an understanding of the issue(s) and the court's reasoning.

Quote, do not paraphrase, determinative facts. When paraphrasing, there is a danger of changing the meaning of the original words without realizing you have done so. The effect is to change critical facts.

*Example*: After Kay left a grocery store, two store employees (Berhow and Denessen) followed him to his van in the parking lot and accused him of taking steaks without paying for them. Kay opened the van door. His German shepherd dog was inside. Kay either called his dog by name or said "get 'em." The dog lunged at Berhow's face, striking his glasses.

## **Issue** (law issue)

Identify the accused and the name or citation of the law he/she/it allegedly violated. State that information as a question which can be answered "yes" or "no", such as "Did \_\_\_\_\_ violate \_\_\_\_\_?"

*Example*: Did Kay/dog owner violate MCL 750.82; MSA 28.277?

## **Rule**

Quote the relevant words of the law identified in the previous step. In all likelihood, the court will be focusing on a single word or phrase in the law. Pinpoint that word or phrase. Then copy it (I highlight it so it stands out) plus any additional words of the law that are necessary to provide an accurate context.

The cautious approach is to quote all the words of the law that appear in the opinion. However, it is usually safe to omit words that do not relate to any of the element issues or reasoning in the case. But be sure to use ellipses (three spaced periods . . .) to indicate where words have been omitted.

*Example:* Any person who shall assault another with a gun, revolver, pistol, knife, iron bar, club, brass knuckles or other dangerous weapon . . . shall be guilty of a felony.

[*Note: The court focused solely on the “dangerous weapon” element. Since it never mentioned either of the intent elements, it is safe to omit them from the quote.*]

## **Application**

*(a) State the element issue.* Almost always, the dispute in an appellate court is about the meaning of a word or phrase (i.e., an element) of a law. Identify that element and the facts that gave rise to the controversy about its meaning. Incorporate them into a question that can be answered “yes” or “no.” Standard practice is to use quotation marks to highlight the element.

*Example:* Is a German shepherd dog that lunged at a person’s face after its owner said “get ‘em” a “dangerous weapon?”

*(c) State the conclusion to the element issue.* This is the “yes” or “no” answer to the question asked in (a) above.

I know this sub-step is out of order. When doing a FIRAC analysis, I wait to reach a conclusion to the element issue until after I have completed my reasoning. However, when briefing a court’s analysis, I find that stating the conclusion here helps me follow its reasoning.

*(b) Summarize the court’s reasoning.* Courts use legal reasoning methods to clarify the meaning of an element and determine whether that meaning encompasses the facts of the case. Here are four commonly used reasoning methods:

(1) **Precedents** – previously decided cases that addressed the same or a substantially similar element issue and involved substantially similar facts. The court may compare the facts of the current case to the determinative facts of a precedent to ascertain whether they are enough alike that the conclusions in both cases should be the same. Or the court may extract a generalized “rule of the case” from a group of precedents and apply it to the facts of the current case.

(2) **A test, standard, or list of factors** – set forth specific criteria against which the facts are evaluated. Whether the criteria are or are not met establishes whether the element is satisfied. For example, the “Miller test” is a three prong test used to determine whether expression alleged to be obscene is “speech” protected by the First Amendment of the U.S. Constitution. The “reasonable prudent person standard” is used to determine whether a person accused of negligence “breached a duty of care.” “Whether a hired party is engaged in a distinct occupation or business” is one of a list of factors used to determine whether a person is an “employee” or an “independent contractor.”

(3) **Canons of statutory construction** (also known as rules of statutory interpretation) – guidelines and presumptions used to infer the meaning of words and phrases in *written laws* (as distinguished from *common law*). The inferred meaning is then applied to the facts of the case. There are many such canons and they can be contradictory. One canon is “Words in a statute should be construed according to the rules of grammar.” Another canon (known as the “bad grammar rule”) is “Bad grammar does not vitiate a statute if the legislative intent is clear.”

(4) **Policy** – the broad societal goal(s) the law is trying to accomplish. The court predicts the future consequences that will flow from alternative interpretations of the element and evaluates those consequences against the goal of the law. The interpretation that produces consequences most consistent with the law’s goal is the better one.

A court may use one or more of these reasoning methods to resolve a single element issue. For example, when analyzing an element of a statute, a court might use a canon of construction, a precedent, and policy to justify its conclusion.

For each legal reasoning method used, summarize the court’s logic. Typically, the logical progression when using a precedent begins with the court naming the precedent. Next, it states the “rule of the case” established by the precedent (which is a declarative sentence that incorporates the determinative facts, the element in question, and the conclusion to the element issue). Then the court compares the facts of the two cases, explaining why it thinks they are substantially similar or significantly different. This comparison may take the precedent court’s reasoning into account. Your summation should mention and convey the essence of each of these links in the court’s chain of logic.

*Example:* The court followed New Jersey and New York precedents. In *State in the Interest of J.R.*, the New Jersey court held that a German shepherd that growled at and stalked the victim after being commanded to “sic ‘er” was an “offensive weapon.” In *People v Torrez*, the New York court found that the a German shepherd dog trained to attack could be a “dangerous instrument.”

As in those cases, Kay urged a German shepherd dog to attack another person. The New Jersey and New York statutes, like the Michigan statute, refer only to inanimate objects and broadly define “dangerous weapon” (“offensive weapon”/“dangerous instrument”) to include any object which, when used, may be considered dangerous.

Both the NJ and NY courts held the German shepherds were “dangerous weapons” even though their state statutes only referred to inanimate objects. The fact that a dog is an animate object did not matter. It is the manner in which an object is used and the nature of the act that determines whether an object is a “dangerous weapon.” If a dog could be an “offensive weapon”/“dangerous instrument” under the NJ and NY statutes, it could also be a “dangerous weapon” under the Michigan statute.

*(d) If the court had to resolve more than one element issue to determine whether the rule (in Step 2) had been violated, repeat sub-steps (a) - (c) for each element it addressed.*

**Conclusion** (to the law issue.)

This is the answer to the question asked in Step (2).

*[Note: This court affirmed the trial court’s decision that Kay was guilty of violating MCL 750.82; MSA 28.277.]*

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## **A bare bones brief of *People v Kay***

Here is what a complete brief made up of the examples provided above would look like.

## **PEOPLE v KAY**

Court of Appeals of Michigan (1982)

121 Mich. App. 438; 328 N.W.2d 424

### FACTS

After Kay left a grocery store, two store employees (Berhow and Denessen) followed him to his van in the parking lot and accused him of taking steaks without paying for them. Kay opened the van door. His German shepherd dog was inside. Kay either called his dog by name or said “get ‘em.” The dog lunged at Berhow’s face, striking his glasses.

### ISSUE

Did Kay/dog owner violate MCL 750.82; MSA 28.277?

### RULE

Any person who shall assault another with a gun, revolver, pistol, knife, iron bar, club, brass knuckles or other dangerous weapon . . . shall be guilty of a felony.

### APPLICATION

Is a German shepherd dog that lunged at a person’s face after its owner said “get ‘em” a “dangerous weapon?” Yes

The court followed New Jersey and New York precedents. In *State in the Interest of J.R.*, the New Jersey court held that a German shepherd that growled at and stalked the victim after being commanded to “sic ‘er” was an “offensive weapon.” In *People v Torrez*, the New York court found that the a German shepherd dog trained to attack could be a “dangerous instrument.”

As in those cases, Kay urged a German shepherd dog to attack another person. The New Jersey and New York statutes, like the Michigan statute, refer only to inanimate objects and broadly define “dangerous weapon” (“offensive weapon”/“dangerous instrument”) to include any object which, when used, may be considered dangerous.

Both the NJ and NY courts held the German shepherds were “dangerous weapons” even though their state statutes only referred to inanimate objects. The fact that a dog is an animate object did not matter. It is the manner in which an object is used and the nature of the act that determines whether an object is a “dangerous weapon.” If a dog could be an “offensive weapon”/“dangerous instrument” under the NJ and NY statutes, it could also be a “dangerous weapon” under the Michigan statute.

### CONCLUSION

Yes

[Continue to Section 2.3](#) -- Briefing a case Part 2

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