|  |  |
| --- | --- |
| |  | | --- | | Briefing Cases  Writing a short synopsis of a case as part of the process of learning about it and understanding it is called "briefing a case." In law school, students do this in order to fully understand all aspects of a case. However, they focus on the rules of law derived from each case. In this course, while you will learn some "rules of law," our focus is on larger issues relating to the development of the Constitution and the ways of interpreting it. The form set out below will assist you in analyzing and thinking about aspects of a case which are relevant to this course. Some of the items in this brief are the same ones law students would put in their briefs. Many are not. **Depending on a variety of factors, you may not have the information to be able to fill in all the items on every case. However, attempt to put something down for as many as you can even if it is just a few phrases**  Your first briefs most likely will take a long time and be too long and too detailed. As you progress through the semester, you will greatly expand the quality of your briefs and reduce your preparation time.  Warning **Write out your briefs!** Do not depend on your recall or your marginal notes. An important way to improve and grow in the brief writing process-and in understanding the cases - is to write them out. In addition if you take notes in the margins of your briefs, you will be way ahead on your preparation for the exams. Finally, when you are called upon in class, you will feel more confident and you will enhance your contribution to the class discussion if you have something written in front of you. **Since being prepared when called upon affects your course grade, you must write out your briefs.** **A major part of the success of the class depends on the quality of your briefs!**  Briefing A Case  **I. General Topics To Cover**  **A. Facts**  **B. Procedural History**  **C. Arguments**  **D. Issues**  **E. Holding**  **F. Judgment**  **G. Legal Reasoning for majority, concurrence and dissent**  **H. Relation To Other Cases, Precedent**  **I. Source of Law**  **J. Interpretive style**    Note: You will find that in each case some of these items will be more important than others. Also some items may not be applicable to the case you are currently briefing. Prepare your brief with this in mind, giving the appropriate amount of attention to each part. Some parts may require a few words and others a few sentences. You will also find that you may have more trouble with some parts of the brief than others, particularly those parts that deal with "legalese" or "technical" terms like certiorari, demurrer and so on. Keep a dictionary handy and use it! **Freely ask questions in class about any terms that you do not understand or fully comprehend after consulting a dictionary.** For more detail consult Black's Dictionary, the legal bible. ***Briefing will get easier and faster as times goes on as long as you do full briefs at the beginning.***  II. Topic Descriptions  **A. What are the facts?**  Who are the parties and what are their roles. What did the party being sued do to cause the start of the lawsuit? What is the claim of each side. Do not retell the story in detail. **Use just enough information to describe who allegedly did what to whom?** Sometimes just a word or two of description of the parties adequately describes them. Sometimes, you will have to intuit facts that may not be readily apparent from the opinion or may not be part of the opinion writer's conscious description of what happened. Other times, an important or relevant fact may be purposely left out.  **B. What path has this case taken to get to this court?**  What has happened between the time the lawsuit or the dispute giving rise to the lawsuit started and the time the case gets to the court now deciding it. What is the mechanism used to get it to this court? Generally there will be 6 possible paths: (1) writ of certiorari from a lower court or state court: (2) Appeal from a lower court or state court; (3) Direct appeal from a 3 judge federal court; (4) Certified question; (5) Writ of habeas corpus via 1 or 2; (6) Original jurisdiction. In addition, if there was trial, note the outcome of the trial in this part.  **C. Briefly what are the major constitutional arguments made by each side.**  What parts of the constitution does each side site and what interpretation do they claim for what they cite**.** Write this part of your brief with two columns, one for petitioners and one for respondents. Match the arguments and counter-arguments as best you can. You can use the argument section of Epstein and Walker to develop this section. **This is perhaps the most important part of the brief. If you understand and master this part, you can go to almost any new case and create the arguments on each side. Arguments can be in short or summary form, e.g. I use =prot for equal protection claim, d.p. for due process argument, e/s/r for establishment of religion argument, s/s for search and seizure ,f/e for free exercise claim and so on. e.g. claim that e/s/r infringed by word "G-D' on coinage.**  **D. What are the legally relevant issues of fact and law?**  What is the legal controversy in this case or this court. Often, one party or the other will raise many issues. In Epstein and Walker, the arguments of the parties raising the various issues are set out prior to the full opinion. While the court will focus on one or two or a small number of issues that it views as determinative, you should also have a sense of the issues raised by the parties that the Court does not rule on or think relevant enough to even mention. **State issues so you can give a yes or no answer in the holdings section. e.g., does such a stop at a roadblock by police violate s/s of 4th Am?**  **E. What is the court's holding with regard to these issues?**  How did the court resolve the issue or controversy between the parties. **This is a yes or no answer to the issues question plus a very short reason.** What was the operative rule of law or the legally correct facts to apply to an agreed upon rule of law, e.g. Yes. Need warrant for this type of search.  **F. What is the actual judgment of this court? What does this court tell the parties or other courts to do with this case?**  Appellate courts can make **4** general kinds of judgments. (1) They can say the lower court is correct for either the reasons given by the lower court or other reasons not raised in the lower court and thus**, affirm** the judgment; (2) They can **reverse** the judgment of the lower court for either being wrong about the reasons given for the lower court's decision or for reasons not raised in the lower court. (3) They can issue a combination opinion of (1) and (2) and weigh one side as more important than the other, that is **affirm in part** and **reverse in part**.(4) They can **vacate and remand** which means saying the lower court must now consider new rules of law or other facts now laid out by the Supreme Court that they did not consider in their previous decision, **This may or may not be a reversal depending on context**. In some kinds of cases, the court's ruling will only be determinative of one part of a case, e.g. what the defendant's punishment will be or what evidence can be used at trial or whether plaintiff must produce certain documents prior to trial. Sometimes, these rulings are totally determinative of the outcome. In some cases, further proceedings in accordance with the court's decision will lead to an outcome that goes against the side that prevailed in this part of the proceeding.  **G. What are the reasons or what is the reasoning used to justify the holding and judgment in this case?**  Be clear that judges decide first and write opinions afterward. While sometimes they change their position after the opinion is written, it is relatively rare. Often several reasons are given for an opinion. But we are looking for the "sufficient" reason or reasons, the one or ones that cause the outcome. There are also "necessary" reasons, without which this outcome would not have taken place. What alternative rules did the judge consider? What alternative rules did the judge not consider? As we go through the semester, we will discuss various approaches to understanding judicial reasoning in this area. In giving the legal reasoning include what parts of our Constitution or laws or case precedents support the outcome. Also cover the concurring and dissenting opinions. On the basis of what issues or facts, did a Justice disagree with the majority or feel the need to separate themselves from the majority was saying.  **H. Using the Van Geel chart in the chapter on precedent,does this case uphold or strike down a government policy and how does this case relate to previous cases.**  **Does it expand or contract previous holdings? *If there is one thing to remember about a case, it is whether is upholds or strikes down a government policy. This is your entry to everything else about the case. If you answer this question, you also know if we can label the Justice as an activist or not, since by definition, generally, an activist strikes down laws passed by legislatures,* e.g., strikes down government policy-Houston policy to setup road blocks on New Year's eve without warning and expands policy of banning all auto stops without clear prior probably cause.(this is just a hypthetical for illustrative purpposes.)**  **I. Source of Law**  Note what section, (or sections) of the Constitution is at issue? This is a slight and very brief restatement of what is in the arguments and issue section.  **J. Interpretative Style** (word can also be interpretive)  **Basically, in this section answer the question did the writer of the opinions use an originalist(refer to history, framers intent, ratification debates among other things to find meaning of the constitutional provision or provisions at issue) or non-originalist view of the constitution. We will define these terms in detail in the first few classes. . Later on in the semester, we will look at some variations** **interpretative style.** | |

|  |  |  |
| --- | --- | --- |
| |  |  | | --- | --- | | [www.utexas.edu](http://www.utexas.edu) |  | |