After obtaining an associate’s degree in paralegal studies, Vanessa took time off to be with Josh, the newest addition to her family. Josh was born three days after Vanessa’s last final examination. She was glad he waited until finals were over. Vanessa 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 Vanessa and assigned her to the torts section of the paralegal department. Her first assignment was to locate and brief a case that could be used in a response to a motion to dismiss. The client filed a battery complaint against a bystander who encouraged the perpetrator in a fight to hit the client. Egged on by the bystander, the perpetrator attacked the client. The bystander’s only action in the fight was to strongly encourage the perpetrator. The bystander’s attorney filed a motion to dismiss, claiming that a person who only encourages a battery, but does not otherwise participate, cannot be liable for battery.

Vanessa knew it was important to do a good job on her first assignment. She realized she needed to refresh her memory on how to locate and brief a case. It had been a long time since she had researched and briefed cases. She thought to herself, “How do I find a case that supports our position? How do I brief the case?” (The case Vanessa located is presented in section IV of this chapter; also see Exhibit 4-1. Her method of locating and briefing it is presented in section VIII of this chapter.)
CHAPTER 4 CASE LAW—RESEARCH AND BRIEFING

I. INTRODUCTION

The focus of this chapter is on court opinions—their elements, where they are published, how to find them, and how to read and brief them. The chapter addresses the same questions Vanessa faced when undertaking her assignment: that is, what are the elements of court opinions, where are they published, how to find them, and how to brief them. Throughout this chapter, a court opinion will be referred to as a court case and a brief of a court opinion will be referred to as a case brief. Chapter 12 discusses case law analysis. Case law analysis is the process you engage in to determine if a court opinion governs or applies to a client’s case, that is, if a case is on point.

II. COURT OPINIONS—IN GENERAL

As discussed in Chapter 1, the two major sources of law are enacted law (e.g., constitutions, laws enacted by legislative bodies, including ordinances) 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.

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.

A court opinion is the 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 facts, 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 (common) law, case law constitutes the largest body of law, far larger in volume than constitutional or statutory law. It is essential to acquire a general familiarity with this body of law, as it represents such a
large portion of the law. Also, you must study case law because so many areas of law are
governed by it.

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

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 cre-
   ation of case law, not statutory law. To identify the elements
   necessary to state a battery claim, the case law must be researched.

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 inter-
preted 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 if an individual who burns a state flag in front of the state capital is
protected by the First Amendment’s freedom of speech provisions, Supreme
Court opinions interpreting freedom of speech must be consulted.

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 af-
after trial. Court opinions give insight into the process by explaining what con-
duct 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 if 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 un-
sure 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 pre-
cedent and use the court’s language as a guide after which to model your
introduction.
For these reasons and many others, the study of case law is important. The skill of being able to correctly locate, analyze, and apply case law is essential to legal analysis.

IV. 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 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 (e.g., “The judgment of the trial court is upheld.”)

B. Elements of a Reported Case
West, a Thompson business and the publisher of the regional reporters and most of the federal reporters, follows a uniform format when publishing court opinions. LexisNexis follows a similar format in its publication of Supreme Court Reports—Lawyer’s Edition. Because 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.) When an opinion may be found in more than one set of books, the citations are referred to as parallel citations.

Court decisions are increasingly available through court web sites or other publications, such as public domain citations (also referred to as neutral citations or vendor neutral citations). Therefore, an additional citation number may be present.

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.
The format for neutral citations is discussed in greater detail in Chapter 8.

2. Caption
The caption includes the names of the parties 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 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 the 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.)

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 (the use of a digest is discussed in Chapter 5). 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 the 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.

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 here.

a. 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.
b. 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.

c. 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.

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**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?

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

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

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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, then the rule of law applied by the court may not be understood, and the opinion consequently may be misanalyzed and misapplied.

d. 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.

e. Holding
The holding is the court’s application of the rule of law to the facts of the case. It is the court’s answer to the issue(s) in 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.

f. 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.

g. 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.

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**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.

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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.

**h. 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.

**i. 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. Because 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.

The dissent may summarize what the court stated in the majority opinion. Note, however, that because 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, *Plessy 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).

**V. COURT OPINIONS—RESEARCHING**

Researching case law is the process of finding a court opinion that answers a question being researched. Usually the search is for case law that governs or guides the resolution of an issue in a client’s case. Such a court opinion is often referred to as being on point. Chapter 12 indicates how to determine whether a case is on point. This section focuses on how to find court opinions. The first part of this section discusses case law research sources, that is, where federal and state court opinions are published. The second part presents research strategies or techniques, that is, how to conduct case law research.
1. **Assault and Battery** 18
   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.

2. **Assault and Battery** 18
   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.

3. **Assault and Battery** 35
   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.

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**Exhibit 4-1 Court Opinion—Rael v. Cadena.**

<table>
<thead>
<tr>
<th>CITATION</th>
<th>604 PACIFIC REPORTER, 2d SERIES 822</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAPTION</td>
<td>93 N.M. 684</td>
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<tr>
<td></td>
<td>Eddie RAEL, Plaintiff-Appellee,</td>
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<tr>
<td></td>
<td>v. Emilio CADENA and Manuel Cadena,</td>
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<td></td>
<td>Defendants-Appellants.</td>
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<td></td>
<td>No. 3921.</td>
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<tr>
<td></td>
<td>Court of Appeals of New Mexico.</td>
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</tbody>
</table>

Defendant in action for battery appealed from judgment of the District Court, Valencia County, George H. Perez, J., holding him jointly in 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.

Affirmed.

**KEY NUMBERS**

1. **Assault and Battery** 18
2. **Assault and Battery** 18
3. **Assault and Battery** 35

**HEADNOTES**

1. **Assault and Battery** 18
   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.

2. **Assault and Battery** 18
   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.

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   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.

**ATTORNEYS**

John A. Budagher, Albuquerque, for defendants-appellants.

Leof T. Strand, Albuquerque, for plaintiff-appellee.
CHAPTER 4 CASE LAW—RESEARCH AND BRIEFING

Exhibit 4-1 Continued

JUDGE

LOPEZ, Judge.

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.

[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.

A. Publication of Court Opinions

1. In General

Not all court opinions are published in the national or state reporters as discussed later in this section (A.3). Most federal and state trial court decisions are not published. Due to the large number of cases, many but not all federal and state appellate court decisions are published. Sometimes an appellate court will not choose to publish a decision because the decision does not have value as precedent. The opinion may address a question...
already well settled in the law or it merely reflects the court’s correction of a trial court error. Publication is limited primarily to cases establishing a new rule of law or changing existing law, criticizing existing law, involving matters of public interest, or resolving conflicts of authority.

Just as there are so-called official and unofficial publications of statutory law, there are official and unofficial publications of case law as well. The official publications of case law are those published at the direction of the government. Court opinions that are not published at the direction of the government are considered unofficial publications. Both official and unofficial publications include at a minimum the full text of court opinions.

2. Forms of Publication
Most court opinions are published three times in three formats: slip opinions, advance sheets, and bound volumes called reports or reporters.

a. Slip Opinion
Most court decisions are first published by the court in the form of a slip opinion. Where there is a court website, the opinions may also be published on the site. The slip opinion is usually in the form of a pamphlet that contains the full text of the court’s opinion in a single case. It includes any concurring or dissenting opinion in the case. It is individually paginated and includes the case name, date of the decision, and attorneys’ names.

Slip opinions do not usually include a syllabus (synopsis or summary of the facts, issues, and holding of a case) nor do they include headnotes. They are not organized by legal topic and are distributed to the parties involved in the lawsuit. In some jurisdictions they are also available by subscription.

b. Advance Sheets
The permanent hardbound volumes of court decisions are published when there are a large number of court decisions sufficient to fill an entire volume. Therefore, many opinions may not appear in a bound volume until up to a year after the decision is rendered. Advance sheets are temporary pamphlets (often softcover books) that contain the full text of a number of recent court decisions. They are designed to provide quick access to recent court decisions. The publishers of the permanent volumes publish advance sheets frequently, often weekly. They are placed next to the last hardbound volume and are discarded when a permanent volume is published that contains the opinions printed in the advance sheet cases.

The decisions are presented chronologically and sequentially paginated; that is, the volume and page number in the advance sheet will be the same as the page and volume number of the bound volume when the bound volume is published.

For Example
An opinion that appears in volume 525, page 756 of the advance sheet will appear in volume 525, page 756 of the permanent bound volume.

The advance sheets usually contain a case synopsis and headnotes for each case and an index and tables that appear in the permanent volume. They include a Key Number Digest section that arranges the cases by digest topic and subtopic.

c. Reporter
Court opinions are permanently published in hardbound volumes usually referred to as a reporter or a report. A reporter volume is published when there are a sufficient number of advance sheets to fill a bound volume. The cases are presented chronologically and
paginated with the same page numbers as the advance sheets. Each bound volume usually includes a subject index and an alphabetical list of the opinions reported in the volume. The volumes are numbered consecutively so that the highest numbered volume will contain the most recent cases. Often, when there are a large number of volumes in a series, a second or even third series will be started. The new series will begin at volume 1.

**For Example** West’s *Pacific Reporter* publishes the state court opinions for the western states. When the number of volumes of the *Pacific Reporter* (cited as P.) reached 300, a second series, *Pacific Reporter, Second Series* (cited as P.2d), beginning at volume 1, was started. When the second series reached 999 volumes, the *Pacific Reporter, Third Series* (cited as P.3d.), beginning at volume 1, was started. The series number is indicated in the citation. The P.2d in the citation “662 P.2d 646” indicates that the decision is found in *Pacific Reporter, Second Series*. The volume number is 662, and the page number is 646.

### 3. National Reporter System

Most court decisions, both federal and state, are published by West in multivolume sets called reporters. These sets are available from the publisher in hardbound volumes or on CD-ROM.

**For Example** The decisions of the United States Supreme Court are published in the *Supreme Court Reporter*, the decisions of the United States Courts of Appeals are published in the *Federal Reporters*, and the decisions of the various state appellate courts are published in regional or state-specific reporters.

The following sections discuss the various reporters. The features common to all these reporters are presented here rather than repeated in the discussion of each reporter. Most reporter volumes include:

- A table of cases lists in alphabetical order the opinions presented in the volume. Most sets have an additional table of cases, which arranges the cases by state or by circuit.

  **For Example** Each volume of the *Federal Reporter* has a table of cases listing all the cases alphabetically and a table that arranges the cases alphabetically by circuit. All the cases from the First Circuit, Second Circuit, and so on are arranged alphabetically by circuit. The *South Western Reporter* includes a table of cases that lists the cases alphabetically and a table that arranges the cases alphabetically by state so that all the cases from each state are listed separately.

- A table of statutes lists the various statutes, constitutional provisions, and often rules interpreted or reviewed, and lists the relevant court opinions.

  **For Example** If you are researching cases that have interpreted the First Amendment to the United States Constitution, the table will direct you to all the cases in the volume that have interpreted the First Amendment.

- A table of words and phrases lists alphabetically words and phrases judicially defined and indicates the page number in the volume where they are defined.
A key number digest in the back of each volume provides a summary of each case in the volume arranged by topic and key number.

A case syllabus (a synopsis case summary), headnotes, and key numbers are located at the beginning of each case presented in the volume. This allows a researcher quick access to all related cases through West’s Digest System. (See the first page of Exhibit 4-1.)

4. Publication of Federal Court Decisions
   a. United States Supreme Court

Three different sets publish the decisions of the United States Supreme Court: United States Reports, Supreme Court Reporter, and United States Supreme Court Reports, Lawyers’ Edition.

   (1) United States Reports The United States Reports (cited as U.S.) is the official reporter for the Supreme Court of the United States. It is published by the United States Government Printing Office and contains the full text of all the decisions of the Supreme Court. The decisions are initially published as slip opinions, advance sheets follow, then finally hardbound volumes. The reports are indexed but do not include headnotes or key numbers.

   (2) Supreme Court Reporter The Supreme Court Reporter (cited as S. Ct.) is an unofficial publication of the decisions of the United States Supreme Court published by West and is part of West’s National Reporter System. It includes the decisions of the Supreme Court since 1882. It is published more quickly than the United States Reports. Advance sheets are published at least twice a month.

   The headnotes with links to the key numbers make the Supreme Court Reporter a valuable research tool. The key numbers, through their link to West’s Digest System, allow a researcher to research a point of law discussed in a Supreme Court opinion in all reported decisions—both federal and state (see Exhibit 4-2).

   (3) United States Supreme Court Reports, Lawyers’ Edition The United States Supreme Court Reports, Lawyers’ Edition (cited as L. Ed. or L. Ed. 2d for volumes since 1956) is an unofficial publication of the decisions of the United States Supreme Court published by LexisNexis. It includes all the decisions of the Supreme Court since 1789. Advance sheets are published at least twice a month.

   Like the Supreme Court Reporter, a summary of the case and headnotes precede each opinion. Each headnote is assigned a topic and section number (see Exhibit 4-3). The topics are printed in United States Supreme Court Digest, Lawyers’ Edition. This allows researchers to locate other cases addressing the same topic. In addition, there are summaries of the briefs of counsel and, for some cases, annotations that analyze important points of law covered in the cases are presented.

   Note that the publisher prepares the case summaries, headnotes, and so on presented in both the Supreme Court Reporter and the United States Supreme Court Reports, Lawyers’ Edition; they are not part of the actual court opinion. They are valuable research tools, but they are not the law. Any reference or quote in research should be to the court opinion itself and not to the material prepared by the publisher.

   (4) Loose-Leaf Services and Newspapers There are various sources to obtain quick access to the decisions of the Supreme Court of the United States. The United States Law Week, published by the Bureau of National Affairs, is a loose-leaf service that publishes weekly decisions of the Supreme Court. The service includes additional information, such as summaries of cases pending before the court and reports on oral arguments.
Pro se petitioner sought extraordinary writ in noncriminal matter. On petitioner’s motion to proceed in forma pauperis, the Supreme Court held that, because petition was petitioner’s twelfth frivolous filing with Supreme Court in a noncriminal matter, he would not be allowed to proceed in forma pauperis, and would be barred prospectively from bringing further petitions for certiorari or for extraordinary writs in noncriminal matters without paying fee and complying with rule governing document preparation.

So ordered.

Justice Stevens dissented with statement.

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Because pro se petitioner’s petition for extraordinary writ was his twelfth frivolous filing with Supreme Court in a noncriminal matter, he would not be allowed to proceed in forma pauperis, and would be barred prospectively from bringing further petitions for certiorari or for extraordinary writs in noncriminal matters without paying docketing fee and complying with rule governing document preparation. U.S.Sup.Ct.Rules 33.1, 38, 39, 39.8, 28 U.S.C.A.

PER CURIAM.

Pro se petitioner Kennedy seeks leave to proceed in forma pauperis under Rule 39 of this court. We deny this request pursuant to Rule 39.8. Kennedy is allowed until February 1, 1999, within which to pay the docketing fee required by Rule 38 and to submit his petition in compliance with this Court’s Rule 33.1. We also direct the Clerk of the Court not to accept any further petitions for certio-

rari nor petitions for extraordinary writs from Kennedy in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.1.

Kennedy has abused this Court’s certiorari and extraordinary writ processes. In October 1998, we invoked Rule 39.8 to deny Kennedy in forma pauperis status. See In re Kennedy, 525 U.S. 807, 119 S.Ct. 38, 142 L.Ed.2d 30 (1998). At this time, Kennedy had filed four petitions for extraordinary writs and six petitions for certiorari, all of which were both patently frivolous and had been denied without recorded dissent. The instant petition for an extraordinary writ thus constitutes Kennedy’s 12th frivolous filing with this Court.

We enter the order barring prospective filings for the reasons discussed in Martin v. District of Columbia Court of Appeals, 506 U.S. 1, 113 S.Ct. 397, 121 L.Ed.2d 305 (1992) (per curiam). Kennedy’s abuse of the writ of certiorari and of the extraordinary writ has been in noncriminal cases, and so we limit our sanction accordingly. The order therefore will not prevent Kennedy from petitioning to challenge criminal sanctions which might be imposed on him. The order, however, will allow this Court to devote its limited resources to the claims of petitioners who have not abused our process.

It is so ordered.

Justice STEVENS, dissenting.

For reasons previously stated, see Martin v. District of Columbia Court of Appeals, 506 U.S. 1, 4, 113 S.Ct. 397, 121 L.Ed.2d 305 (1992) (STEVENS, J., dissenting), and cases Cited, I respectfully dissent.
GEISSAL V MOORE MEDICAL CORP
(1998) 524 US 74,141 L Ed 2d 64,118 S Ct 1869
defendants (1) had violated COBRA by renouncing an obligation to provide continuing coverage, and
(2) were estopped to deny him COBRA continuation coverage. The parties agreed to have a magistrate judge
conduct all proceedings. The individual (1) moved for partial summary judgment on the first two counts, and
(2) included an argument that the defendants’ reliance upon § 1162(2)(D)(i) to deny him continuation coverage
was misplaced, as he had first been covered under his wife’s plan before he had elected continuation coverage.
While the motion was pending, the individual died and his wife, who was also the personal representative of his estate, replaced him as plaintiff. The magistrate judge granted partial summary judgment
in favor of the defendants on the two counts, as the magistrate judge expressed the view that under
§ 1162(2)(D)(I), an employee with coverage under another group health plan as of the date on which the
employee elected COBRA continuation coverage was ineligible for such coverage (927 F Supp 352, 1996
US Dist LEXIS 7145). On appeal, the United States Court of Appeals for the Eight Circuit, in affirming,
expressed the view that (1) under § 1162(2)(D)(i), it was within the defendants’ rights to cancel the individual’s COBRA benefits unless there was a “significant gap” between the coverage afforded under the
corporation’s plan and that afforded under his wife’s plan; and (2) the wife had failed to carry her burden of
showing that such a significant gap existed (114 F3d 1458, 1997 US App LEXIS 13589).

On certiorari, the United States Supreme Court vacated the Court of Appeals’ judgment and remanded
the case for further proceedings. In an opinion by SOUTER, J., expressing the unanimous view of the court,
it was held that § 1162(2)(D)(i) did not allow an employer to deny COBRA continuation coverage to a
qualified beneficiary who was covered under another group health plan at the time that the beneficiary made
a COBRA election, as (1) under the plain meaning of § 1162(2)(D)(i) as it read at the time pertinent to the
case at hand, the medical corporation could not cut off the individual’s COBRA continuation coverage,
where the individual (a) was covered under his wife’s plan before he made his COBRA election, and (b) so
did not first become covered under his wife’s plan after the date of election; and (2) there was no justification
for disparaging the clarity of § 1162(2)(D)(i).

HEADNOTE
Classified to United States Supreme Court Digest, Lawyers’ Edition

Pensions and Retirement Funds § 1—Employee Retirement Income Security Act—group health plan—continuation coverage
For purposes of some provisions (29 USCS §§ 1161 et seq.) of the Employee Retirement Income Security Act of 1974 as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)-which provisions authorize a qualified beneficiary of an employer’s group health plan to obtain continued coverage under the plan when the beneficiary might otherwise lose that benefit for certain reasons, such as the termination of employment-29 USCS § 1162(2)(D)(i) (later amended) does not allow an employer to deny COBRA continuation coverage to qualified beneficiary who is covered

Often, law firms and law libraries subscribe to legal newspapers that print the decisions of the United States Supreme Court and other federal courts.

(5) Computer and Internet Resources Note that access to most federal court opinions is available through Westlaw and LexisNexis. In addition, court opinions are often available through the official court web site and other internet resources (see Internet Resources at the end of this chapter). Many federal reporters are also available from the publisher on CD-ROM. Chapter 7 covers in detail computer-aided research.

b. United States Courts of Appeals
West publishes the decisions of the United States Circuit Courts of Appeals in the Federal Reporter (cited as F), the Federal Reporter, Second Series (cited as F.2d), and the
Federal Reporter, Third Series (cited as F.3d). Like the Supreme Court Reporter, it is part of West’s National Reporter System. The cases are initially published in advance sheets, which are later compiled in hardbound volumes. The Federal Reporter is an unofficial reporter, but it is the only reporter that publishes the decisions of the United States Circuit Courts of Appeals. Therefore, there are no parallel citations for these decisions.

Over the years, the Federal Reporter has included decisions of courts other than the United States Circuit Courts of Appeals, such as decisions of the United States District Courts up to 1932 and the United States Court of Claims from 1960 to 1982. As mentioned at the beginning of this section, due to the large number of cases, not all the decisions are published.

c. United States District Courts
West publishes selected decisions of the United States District Court since 1932 in the Federal Supplement (cited as F. Supp.). This reporter set includes the decisions of the United States International Trade since 1956 and the Judicial Panel on Multidistrict Litigation since 1932. Like the Federal Reporter, it is an unofficial reporter, but it is the only reporter that publishes the decisions of the United States District Courts. Therefore, there are no parallel citations for these decisions. It is part of the National Reporter System. Like the other reporters, the cases are initially published in advance sheets, which are later compiled in hardbound volumes.

d. West’s Other Federal Reporters
West publishes the following specialized federal reporter sets.

(1) Federal Rules Decisions (cited as F.R.D.) This set includes selected opinions of the United States District Courts concerning the Federal Rules of Civil and Criminal Procedure. Some cases involving court rules will appear in the Federal Supplement. If a decision, however, is published in one set, such as the Federal Rules Decisions, it generally will not be published in the other set.

(2) West’s Bankruptcy Reporter This reporter publishes selected decisions of the United States Bankruptcy Courts and District Courts involving bankruptcy. It includes bankruptcy opinions from the United States Supreme Court and the Courts of Appeals.

(3) United States Claims Court Reporter This set publishes selected trial court decisions of the Claims Court and relevant opinions from the Supreme Court and the Courts of Appeals.

(4) West’s Military Justice Reporter This set includes the decisions from the United States Court of Military Appeals and Courts of Military Review.

(5) West’s Veterans Appeals Reporter This reporter publishes decisions of the United States Court of Veterans Appeals.

5. Publication of State Court Decisions
a. Regional Reporters
In addition to the reporters that publish the federal court decisions (discussed in the previous subsection), West’s National Reporter System includes sets of reports and reporters that publish selected decisions of the state appellate courts. Each reporter volume includes the features discussed in section V.A.3, such as a table of cases reported and words and phrases defined. The National Reporter System publishes state court decisions by geographic region in reporters called regional reporters. The reporters are the following: Pacific Reporter,
North Western Reporter, South Western Reporter, North Eastern Reporter, Atlantic Reporter, South Eastern Reporter, and Southern Reporter. West created the geographic grouping of regions, and there is no particular significance to the organization of the regions. The map in Exhibit 4-4 shows the reporter regions and the states in each region.

Due to the large number of cases from California, New York, and Illinois, West created separate reporters for these states. The California Reporter publishes the decisions of the California Supreme Court and appellate courts. The Supreme Court decisions are published in both the Pacific Reporter and the California Reporter; the appellate court decisions are published in the California Reporter only. The New York Supplement publishes the decisions of the New York Court of Appeals and the intermediate appellate decisions. The New York Court of Appeals decisions are also printed in the North Eastern Reporter; the intermediate appellate decisions are not printed in the North Eastern Reporter. The Illinois Decisions publishes decisions of the Illinois Supreme Court and appellate courts.

West also publishes individual reporters for many states that are limited to the supreme and appellate court decisions of the state. These reporters are designed for attorneys who are mostly interested in the decisions of the state in which they practice. These decisions are also published in the regional reporter.

**For Example** A practitioner in New Mexico may need ready access to New Mexico case law for 90 percent of her work and only occasionally need access to case law from other states. It may be worthwhile to purchase a set of the New Mexico Reports, which consists of less than 175 volumes, whereas it may be cost prohibitive to purchase the Pacific Reporter that consists of several hundred volumes.
Advance sheets are published for each regional reporter and the advance sheets include the features discussed previously in section V.A.2.

Many states have discontinued the official publication of state appellate court decisions. In those states, the court decisions are only published in the regional reporter, and the only citation is to the regional reporter.

**For Example** Colorado discontinued its official publication of cases in 1980. The only citation to Colorado decisions is to the *Pacific Reporter* cite, for example, *People v. J.D.*, 989 P.2d 762 (Col. 1999).

Some states have an official publication as well as a public domain citation (also referred to as medium neutral citations or vendor neutral citations). When this is the case three citation numbers will be required.

**For Example** *State v. Foster*, 1998-NMCA-163, 126 N.M. 177, 976 P.2d 852. The public domain citation is 1998-NMCA-163. The official publication citation is 126 N.M. 177 (volume 126 of the *New Mexico Reports*). The unofficial *Pacific Reporter* citation is 976 P.2d 852. In this instance, there are three parallel citations, and the opinion may be found in three publications.

### b. Computer and Internet Resources

Note that access to most state court opinions is available through Westlaw and LexisNexis. In addition, court opinions are often available through the official court web site and other internet sites (see Internet Resources at the end of this chapter). Many state and regional reporters are also available from the publisher on CD-ROM.

### 6. Attorney General Opinions

The chief attorney for the federal or state government is usually referred to as the **attorney general**. Upon the request of legislators or other government officials, an attorney general may issue a written opinion interpreting how the law applies. This usually occurs when there is no court opinion interpreting how a specific law applies or there are conflicting court opinions. These opinions are **secondary authority**; they are not enacted law or the opinion of a court. They are not primary authority and do not have to be followed by a court. Since they are written by the attorney general, they are often relied on in the absence of a law or court opinion addressing a specific question.

Attorney general opinions are available through Westlaw and LexisNexis. In addition, they are often available through federal or state government web sites and other internet resources. The opinions are also individually available through the attorney general’s office in slip form. Bound volumes of all the opinions are usually available at law libraries.

### B. Researching Court Opinions—Locating Case Law

After you know where the various court opinions are published, the next step is to become familiar with the many research sources and techniques for locating cases (see Exhibit 4-5). Whenever conducting case law research, **remember to check the advance sheets, pocket parts, or whatever is used to update the source you are researching to ensure that you locate the most recent court decision that answers your question.** Where and how you conduct research depends on the amount and type of information you have at the outset. The main ways to locate case law are discussed here.
Exhibit 4-5 Research Sources and Techniques for Locating Cases.

<table>
<thead>
<tr>
<th>Research Source</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Statutory Annotations</strong></td>
<td>If your research involves a situation that requires the interpretation of a statute, read the statute and look to the case annotations following the statute.</td>
</tr>
<tr>
<td><strong>Digest</strong></td>
<td>If the question being researched does not involve a statute or the annotations do not direct you to a relevant case, look to a digest.</td>
</tr>
<tr>
<td><strong>Other Case Law Research Sources</strong></td>
<td>If you need to locate additional court opinions, then use other research sources such as legal encyclopedias, treatises, ALRs, and law review articles.</td>
</tr>
<tr>
<td><strong>Shepard's Citations and Updating Research</strong></td>
<td>If you know the citation of a case and you are looking for other cases that have referred to the case or if you want to know if the case has been reversed or modified, refer to the appropriate Shepard's citator.</td>
</tr>
<tr>
<td><strong>Computer-Aided Research</strong></td>
<td>Research sources and court opinions may be located through Westlaw and LexisNexis.</td>
</tr>
</tbody>
</table>

1. **Statutory Annotations**

If your research involves a situation that requires the interpretation of a statute, the first step is to read the statute and look to the case annotations following the statute. Often the annotations to the key court decisions following the statute will include a case that is on point. This saves time spent using another research source such as a digest.

**For Example**
The client robbed a bank with a toy handgun that looked exactly like a real handgun. The client is charged with bank robbery with a dangerous weapon under 18 U.S.C. § 2113(a) & (d). The question is whether a toy handgun is a dangerous weapon under the statute. Referring to the annotations to the statute in the United States Code Annotated or the United States Code Service, you will find cases that address the question of whether a toy gun is considered a dangerous weapon. Other than checking to determine if the case has been reversed or modified or there are no recent cases also on point, no further search may be necessary. A digest does not need to be consulted.

If the case located is not exactly the case you are looking for, that is, it is not quite on point, the opinion may reference other cases that are on point or provide you with a key number that will lead you to the proper case. Always read the statute first because the answer may be in the statute itself or in the annotations.

2. **Digest**

If the question being researched does not involve a statute or the annotations do not direct you to a relevant case, the next step is to look to a digest. West publishes sets of volumes called digests for the various reporters. There is a digest for each regional and state reporter, such as the Pacific Digest for the Pacific Reporter, and a Federal Practice Digest. As discussed previously in section IV.B.5, West has divided the areas of law into various topics and subtopics. Each area is identified by a topic name, such as “Assault and Battery,” and each topic is divided into subtopics and assigned a key number. The digests contain summaries of all the court opinions under each key number subtopic.
If you know a case name you can quickly locate it in a digest’s table of cases. If you don’t have a particular case in mind but are looking for a case that addresses the question you are researching, scan the topic area, locate the relevant key, and scan the case summaries to locate the case on point. If there is no case under a particular key number, the digest will refer you to other research sources, such as to a legal encyclopedia cite.

3. Computer-Aided Research
Court opinions may be located through Westlaw and LexisNexis. Also, court opinions may often be found through other internet sources.

4. Other Case Law Research Sources
You may also locate court opinions through other research sources, such as legal encyclopedias, treatises, ALRs, and law review articles. These and other secondary authority research sources for locating case law are discussed in Chapters 5 and 6. Usually, however, there are quicker ways of locating cases than through these sources.

For Example
The question you are researching is similar to the question raised in Rael v. Cadena (presented in Exhibit 4-1): When may a person present at a battery be liable for a battery when the person does not physically participate in the battery? You can look under “assault and battery” in an encyclopedia and eventually find a section that addresses this question and be directed to specific cases. You may, however, spend a lot of time reading before you locate the specific topic you are looking for and spend even more time checking the numerous cases listed before you find the case on point. Through the use of a digest or Westlaw or LexisNexis, your search is more focused and you will usually find cases quicker.

If there is an ALR annotation on the question you are researching, it will provide an in-depth analysis of a specific question and reference to key cases addressing the question. First, however, follow the steps mentioned earlier in this section in B.1 and B.2, because if you find a case on point you may not need the in-depth analysis, or the case you find may mention a relevant ALR annotation and save you the time locating it.

5. Shepard’s Citations and Updating Research
If you know the citation of a case and you are looking for other cases that have referred to the case or if you want to know if the case has been reversed or modified, refer to the appropriate Shepard’s citator. The use of Shepard’s is discussed in Chapter 5.

You must always check to determine if the case you have located is good law, that is, whether the court opinion or part of the opinion you are relying on has been reversed or modified by a subsequent court decision. This may be accomplished through the use of the appropriate Shepard’s or electronically through Westlaw or LexisNexis.

VI. COURT OPINION—BRIEFING (CASE BRIEF)
A. Introduction
As a researcher, you may be assigned the task of reading and briefing court opinions. A court opinion is usually called a case, and 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.
B. Importance of Briefing

The process of briefing a case serves the following 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 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 timesaving 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 in order 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 researcher and quickly weed 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 is 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 your skill level, you must read cases carefully to acquire a full understanding.
2. Some opinions are difficult to read and take time because they involve complex, abstract, or unfamiliar subjects with 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, encyclopaedia, 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 that 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.

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. 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 Chapter 9, section VII.

2. Identifying the issue in a court opinion is addressed in Chapter 10, section V.

3. How to determine if a court opinion is on point and may be used as precedent is covered in Chapter 12, section IV.

4. Counteranalysis in case law is discussed in Chapter 13, section VI.C.

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 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 4-6. 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.
Exhibit 4-6 Case Brief Format.

| Citation: | Name of case and where it can be found |
| Parties: | Names and legal status of the parties |
| Facts: | 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) |
| Prior Proceedings: | What happened in the lower court or courts |
| Issue: | 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.) |
| Holding: | The court’s answer to the issue |
| Reasoning: | Why the court ruled as it did; the court’s application of the case or statutory law to the facts of the case. It should include: |
| | a. The rule of law that applies |
| | b. How the court applied the rule of law to the facts |
| Disposition: | What order was entered as a result of the holding (e.g., “The judgment of the trial court is reversed.”) |
| Comments: | Observations concerning the opinion |

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.


- *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.
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.

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.

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

a. 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.

b. 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.

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

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(s)

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 issue.

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, a researcher 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.
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 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.”

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 quotes from the case should be avoided. The reasoning should be summarized.
PART II  LEGAL RESEARCH

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

8. Disposition

The disposition includes the relief granted by the court, which is the order entered by the court. This section 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: 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 (see next section)

E. Case Brief—Updating

Whenever an assignment requires you to brief a case, you should determine if the case is still good law, which means you must check to determine if 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 researcher 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, certain computerized services provide online citators that are usually more up-to-date than the Shepard’s printed citators. These online services include:

- LexCite—includes a list of the recent cases citing a case (available through LexisNexis) (see Chapter 7)
- 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)
- Key Cite—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 (see Chapter 5)

VII. KEY POINTS CHECKLIST: Locating, Reading, and Briefing

Court Opinion

- If the research question involves a statute, look to the statute and the statutory annotations first to locate case law. If the statutory annotations do not provide help, next look to a digest.
- 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 9.
- 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 10 and 11.
- 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 if 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 faith. Read critically. Question! Ask yourself, “Does the reasoning support the conclusion?”

VIII. APPLICATION

This section first discusses Vanessa’s assignment to locate a case that could be used in a response to a motion to dismiss. This is followed by a brief of the case (Rael v. Cadena). The text and brief of Sterling Computer Systems of Texas, Inc. v. Texas Pipe Bending Company follows the brief of Rael v. Cadena. The brief of the Sterling case is included to provide another example of a case brief.
A. Locating Rael v. Cadena

Vanessa begins her search for an appropriate case by looking for a statute that establishes a civil cause of action for battery. Civil battery is tort law, and in most states the majority of tort law is case law (established by court decision) not statutory law. If there is a statute, Vanessa looks to the statutory annotations to see if there is a case on point, that is, a case where the court addressed the question of whether an individual present at the scene of a battery, who did nothing more that strongly encourage the perpetrator, could be liable for civil battery.

If there is no statute or a case on point in the annotations, then Vanessa looks to the regional or state reporter digest under the term battery. Assume that Vanessa resides in New Mexico. She refers to the index of either the New Mexico Reports or the Pacific Digest to locate the volume number for battery. Battery is indexed under “assault and battery” and by scanning the topic key numbers she locates Key 18—Persons Liable. She looks under “persons liable” because that key is closest to the facts identified in the issue: Is a bystander liable when he encouraged the perpetrator to hit the client? Looking at the case summaries under Key 18, Vanessa finds Rael v. Cadena, 93 N.M. 684, 604 P.2d 822 (Ct. App. 1979), a case which is on point (see Exhibit 4-1). She continues her search to locate any other cases that may be on point. She checks to determine if the case has been overruled or otherwise modified by subsequent court decisions.

If there is no case under Key 18, the digest will refer to a legal encyclopedia cite that addresses the topic and provides reference to cases. At this point, Vanessa could also look for an ALR annotation that discusses the question. She could also perform this search electronically using Westlaw or LexisNexis.

B. Brief of Rael v. Cadena

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

Citation: Rael v. Cadena, 93 N.M. 684, 604 P.2d 822 (Ct. App. 1979)

Parties: Eddie Rael, Plaintiff-Appellee
Emilio Cadena and Manuel Cadena, Defendants-Appellants

Facts: 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 nor physically participated in the battery. Rael was hospitalized as a result of the beating.

Prior Proceeding: 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.

Issue: 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?

Holding: Yes. An individual may be liable for battery by encouraging or inciting the perpetrator by words or acts.

Reasoning: 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.

Disposition: The judgment of the trial court was affirmed.

Comments: 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”?

C. 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.

D. 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.
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 the appellee.

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 which 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 which 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 which “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 which 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.
Citation:

Parties:

Facts:
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 [sic] 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.”

Prior Proceedings:
Sterling sued Texas Pipe for breach of contract. Texas Pipe moved for summary judgment, arguing that the contract was unenforceable because it lacked mutuality. The trial court granted the motion. Sterling appealed.

Issue:
Under Texas contract law, does a contract lack consideration and is, therefore, 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?”

Holding:
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.”

Reasoning:
The rule of law presented in Texas Farm Bureau Cotton Association v. Stovall, 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.

Disposition:
The trial court’s granting of the motion for summary judgment was affirmed.

Comments:
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?

E. Comments on the Case Brief—Procedural Versus Substantive Issues
Note that the court identifies the issue as: “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) due 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 due to the lack of consideration. Always look for the substantive issue when the court states the issue in a procedural context.

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 common or 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. Provides insight into the structure of legal analysis and legal argument
4. Provides a guide to proper legal writing

Most court opinions consist 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).

Federal and state court opinions are published in books called reports and reporters and are available through Westlaw and LexisNexis. In addition, court opinions are often available through official court web sites and other internet resources. If the question involves a statute, the search for case law should begin with a review of the annotations following the statute. If the question does not involve a statutory law, the search usually begins with a digest. Computer-assisted research is discussed in Chapter 7.

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 researcher 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
2. Serves as a valuable learning tool
3. Is a reference tool
4. Is a writing tool

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.

Chapter 9 through Chapter 11 provides guidelines that are helpful in identifying many of the 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.

### Quick References

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### Internet Resources

- [http://supct.law.cornell.edu/supct](http://supct.law.cornell.edu/supct)
  - The United States Supreme Court opinions may be located at this site.

- [http://www.oyez.org](http://www.oyez.org)
  - You may hear the oral arguments or read the court briefs of United States Supreme Court cases at this site. The oral arguments are available for cases from 1960 to present.

- [http://www.supremecourtus.gov](http://www.supremecourtus.gov)
  - This official page of the United States Supreme Court features court opinions, orders, rules, calendars and schedules, news releases, and general information.

- [http://www.law.emory.edu](http://www.law.emory.edu)
  - This site provides access to United States Federal Court cases.

- [http://www.uscourts.gov](http://www.uscourts.gov)
  - This site is the home page for all federal courts.

- [http://www.findlaw.com](http://www.findlaw.com)
  - Through this FindLaw site, you can locate court cases in general.

- [http://www.courts.net](http://www.courts.net)
  - This site provides access to web sites maintained by courts nationwide.

- [http://www.usdoj.gov](http://www.usdoj.gov)
  - United States Attorney General opinions are available at this United States Department of Justice web site.

- [http://www.naag.org](http://www.naag.org)
  - Many state attorney general opinions are available at this National Association of Attorneys General web site.
Case Law Citation

The *Bluebook* and *ALWD Citation Manual* rules governing case law citation are discussed in Chapter 8. Some brief notes and examples are presented here. If the document you are working on may be filed in a court, such as a state supreme court, check the court rules for any citation rule that may differ from the *Bluebook*.

A. Federal Courts

1. United States Supreme Court. The *Bluebook* provides that cases from the United States Supreme Court require citation to the official reporter, the *United States Reports*. *Stone v. Powell*, 428 U.S. 465 (1976)

   Citations may be to all three reporters:


3. United States District Court. Cite to the *Federal Supplement* or the *Federal Rules Decisions*


B. State Courts

According to the *Bluebook* in documents submitted to a state court, all citations to opinions decided by that state’s courts must include citation to the official state reporter and any other parallel citation.


If the state has a public domain citation, citation should be to that citation, and citation to the regional reporter may be added.

In all other documents, the citation is to the regional reporter.


Exercises

*Additional assignments are located on the Online Companion and the Student Activity 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**
Consult West’s *General Digest*, Tenth Series.

A. Give the name and citation of a 2001 Minnesota case which lists the elements of battery.

B. Referring to the Minnesota case, does battery require the intent to injure?

C. Cite a Kentucky case that provides that fourth-degree assault can only be proved if the result of the assault is physical injury, not death.

D. You are researching a question concerning the admissibility of evidence in an arson case. To what key number would you refer?

E. You are looking for the case *Adams v. Noble*. What is the *Federal Supplement* citation? What United States District Court rendered the decision? Under what key numbers may the case be found?

**ASSIGNMENT 4**
Refer to the regional digest for your state (refer to Exhibit 4-4) or to your state court digest. Give the name and citation of a decision from your state that discusses the elements of assault or battery. Refer to the case. What are the elements of assault and battery? If there
is no decision from your state, what legal encyclopedia reference is listed?

**ASSIGNMENT 5**

The client has been charged with bank robbery with a dangerous weapon in federal court. Refer to the United States Code Annotated and answer the following questions:

A. Give the ALR cite that addresses the question of how the use of an unloaded gun affects criminal responsibility.

B. Give the name and citation of the 1986 United States Supreme Court case that addresses the question of when an unloaded handgun is a “dangerous weapon.”

C. Give the name and citation of a 1993 Eleventh Circuit case that answers the question of whether a toy gun is a “dangerous weapon.”

**ASSIGNMENT 6**

Look to your state statute concerning aggravated or armed robbery and the annotations that follow the statute.

A. Give the legal encyclopedia reference(s) that refers to aggravated or armed robbery.

B. Give the ALR cite (if any) that addresses the question of how the use of an unloaded gun affects criminal responsibility.

C. Give the name and citation of any case that answers the question of whether a toy or fake gun is a “dangerous weapon.”

**ASSIGNMENT 7**

Describe the importance of briefing a case.

**ASSIGNMENT 8**

Refer to Morgan v. Greenwaldt at the end of Chapter 10. Identify the citation, holding, and disposition.

**ASSIGNMENT 9**

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 10**

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 Life (see Chapter 10)

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. Marenzoni (see Chapter 17)—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