CHAPTER III

Reading and Briefing Cases Efficiently

In order to be an active participant in your law school classes, you must learn how to read and understand case law. In addition, case briefing is an essential step in learning the individual legal principles necessary for success on your final examinations. As we discussed in Chapter I, most of your classes will emphasize the casebook method of learning.1 You will review literally hundreds of cases during your first year of law school, so you must have a plan in place so that you can assimilate, understand, and categorize everything you are learning. I have developed a multi-step process that will help you master this information. My active method of studying is no magic formula, and will require a great deal of work on your part. Mastery of your law school subjects is a process that will happen over time. My active studying methodology takes this into account, and allows you to address every topic slowly and from multiple perspectives. The individual steps in the active study method are:

- Read Your Cases Twice
- Write a Case Brief and Then Correct It
- Take Complete Notes, But Listen to the Lecturer
- Review and Type Your Notes Within 24 Hours of Class
- Incorporate Your Notes Into Your Course Outline

More broadly, these steps can be summed up as pre-class preparation, in-class work, and post class review. While each of these steps is crucial to your overall understanding of the law, my method requires you to study in a way that may be unfamiliar to you. You will still spend time preparing for class, but a great deal of your weekly work will revolve around reviewing ideas after class is over. This notion of backloading your studies will be further discussed where applicable.

1. Some classes are more case driven than others. For example, you will review certain cases in your civil procedure class, but you will spend much of your time learning the Federal Rules of Civil Procedure.
One of the more time consuming aspects of law school life is the reading of cases. At the start of the semester, much of the terminology within the cases will be new and you will spend a great deal of time turning to your legal dictionary for help. While you will understand more of the terminology as the semester progresses, your professors will take this into account and begin assigning additional and more complex materials for you to read. There is no substitute for reading the cases, but there are ways to maximize the return on your time.

The first step is to place the case in context and understand why your professor is having you read a particular case at a particular time. Cases are full of information that, while relevant to the litigants in that case, may not be relevant to your professor’s purpose in assigning it. Thankfully, you already have the material necessary to place your cases into a broader context.

Your syllabus and casebook contain information that can help provide some of the context you need. For example, most casebooks are organized into chapters that cover individual concepts. Before reading the case, take a quick look at the casebook’s table of contents. If the case is listed under the chapter on negligence, then any material on the intentional tort of battery is, at best, marginally relevant. Similarly, the course syllabus likely contains information about the topic being covered on a particular day. Once you have finished perusing your syllabus and the casebook’s table of contents, you are ready to read the case with a more focused approach.

A thorough understanding of the cases you read is so important to your success as a law student that I encourage all students to read each case twice. Once you receive your course syllabus and realize the number of cases you are assigned for each class, you will realize that I am making no small request of you. I know this method works from my experience with hundreds of students, so let me take you through why it works.

First, law school is difficult because of the volume of material we expect you to master in a detailed and nuanced fashion. To master all this material, you must review it multiple times, and in multiple ways. By reading the case twice, with a different focus during each read, you will have a better understanding of the case’s meaning before you step into class for the day’s lecture.

Second, you must get into the habit of teaching yourself the law. While you will learn a great deal from each professor’s lectures, you will have an even deeper understanding of the topic if you come to class better prepared. Ultimately, your professors are teaching you how to extract the critical information from caselaw as much as they are teaching you about the law contained...
within a single case, so do not expect to be spoon fed what is important. You must become your own best teacher.

Your first reading of the case is the easy one. To prepare yourself, put down your pen, pencil, or highlighter. Do not worry, as you will take notes during the next read when you are trying to extract specific information from the case. During the first read, your only task is to get a general sense of what the case is about. With this as your only task, the first read should go fairly quickly.

All law students take notes about the cases they read. We call these notes case briefs, and I will be covering the topic shortly. A problem associated with briefing cases is that most briefs are much too long. The reason? The student is trying to write down all of the important information, but it is difficult to be sure of what is and isn’t important until you reach the end of the case to discover the court’s conclusion. If you treat the first read as if you are reading a short story, by the end you will be able to look back and realize what was truly important. Next, you proceed on to your second, but much more focused read of the case. Skim the marginally important material, and take time writing notes on the critical aspects of the case.

Not only does the “two reads per case” method help lead to a deeper understanding of the material, it does not take nearly as long as you might think. Many of my students who try the method assume that it will take twice as long to read the case, but they are pleasantly surprised that it does not. Because you are emphasizing different things each time, neither read of the case takes as long as a single read where you are trying to accomplish everything. Obviously, reading the case twice does take more time initially, but by giving yourself a more thorough understanding of the material before you even listen to your professor’s lecture, you are actually saving time in the long run.

In general, do not read your cases any more than twice prior to class. This advice may seem counterintuitive. If reading a case twice is better than reading it once, then wouldn’t reading the case a third time be better still? On the surface, there is a simple and attractive logic to this assertion, however, my experience of working with several hundred law students has taught me that there are flaws in this reasoning.

Even if you are able to extract additional information from the case after a third read, consider the notion of diminishing returns. You will extract a great deal of information from the cases by reading them twice, which necessarily means that there will be less left to find if you read them a third time. By reading your cases twice, you will have extracted the information necessary to be an active participant in class.

Even after a second read, however, you may feel that there are still subtleties within the case that are eluding you. You are probably correct, but reading the
case a third time is not the answer. For one thing, there is no guarantee that you will understand the case any better after reading it a third time. You might find something new after reading each case 100 times, but your time is too precious a commodity to waste in this fashion. The study of law is extremely time consuming, so it is important to maximize the returns on your studying at every step in the process.

Finally, remember that your pre-class preparation is only one aspect of your law school studies. Next, you will go to class where your professors will further discuss the cases you’ve been working on. This in class discussion will clear up most of your questions. Then, you will have time to further explore these ideas during the post-class review of your class notes and case briefs.

Case Briefing

Case briefing is a formalized way of taking notes on your reading in preparation for class. When lawyers read cases, we are looking for specific useful information. Case briefs are broken down into several parts that correspond to the important information we are looking for. As a law student, you will be briefing cases for two specific reasons. First, you will need the brief in order to have the essential information at your fingertips should your professor call on you during class or to simply follow along with the class discussion. Second, your case briefs are an important study tool that you will use later when you prepare for your mid-term and final examinations.

As we start our process, keep in mind that there is no such thing as a perfect case brief. Case briefs will vary from student to student. In fact, your own case briefs will evolve over time, likely getting shorter as your understanding of the law increases during the semester. In addition to varying from student to student, case briefs should vary depending on your professors’ teaching styles. Be sure to mold your case briefs to the requirements laid out by each of your professors. For example, some professors review each case in excruciating detail. Case briefs for these professors need to be correspondingly longer or they will not fulfill their role of providing you with easy to find information should the professor call on you during class.

**Herb’s Hints**

You must create your own case briefs! The ability to pull out the salient points from a given case is an essential skill that every lawyer must develop. You will struggle to keep up at times, but the struggle will prepare you for final exams and, ultimately, to be a lawyer.
In most law schools, students are taught to brief cases during the first few days of orientation. While the format can differ somewhat from school to school, most case briefs contain the following sections.

- Case Name, Judge, and Citation
- Facts
- Procedural History
- Issue
- Holding
- Rule
- Reasoning
- Disposition
- Notes

The easiest way to describe the various sections of a brief is to do so in conjunction with a case. The case I have chosen is Garratt v. Dailey. It is a case that most students will cover during the first few weeks of their torts class. After you finish reading the case, we will create a case brief one step at a time. Before you start, however, let me try to address a few typical questions that students have about reading cases.

How long should it take me to read this case? This is likely the first case you have read, so do not be surprised if it takes you a long time to get through it. You will develop the skill of separating the important from the unimportant when reading a case, but it is a skill that takes time to develop.

How long are most cases? Garratt v. Dailey is average in length. Some cases, particularly those in your constitutional law class, will be significantly longer.

Will the case use language I can understand or will it be filled with legalese? The law, like many professions, has its own peculiar language that you must learn. Buy a good legal dictionary, the unabridged Black's Law Dictionary is the standard, and look up any word that you are unsure of. We do not expect you to know the meaning of every legal term when you start law school, but we do expect you to learn the meanings while you are here.

How long should the brief be? Try to keep them under one page long. Any longer, and the brief will not be as helpful to you in class or as a study aid. Also, longer case briefs are an indication that you need to do a better job of noting only the critical information.
Garratt v. Dailey
46 Wash. 2d 197, 279 P.2d 1091 (1955)

HILL, Justice. The liability of an infant for an alleged battery is presented to this court for the first time. Brian Dailey (age five years, nine months) was visiting with Naomi Garratt, an adult and a sister of the plaintiff, Ruth Garratt, likewise an adult, in the back yard of the plaintiff's home, on July 16, 1951. It is plaintiff's contention that she came out into the back yard to talk with Naomi and that, as she started to sit down in a wood and canvas lawn chair, Brian deliberately pulled it out from under her. The only one of the three persons present so testifying was Naomi Garratt. (Ruth Garratt, the plaintiff, did not testify as to how or why she fell.) The trial court, unwilling to accept this testimony, adopted instead Brian Dailey's version of what happened, and made the following findings:

'III. * * * that while Naomi Garratt and Brian Dailey were in the back yard the plaintiff, Ruth Garratt, came out of her house into the back yard. Some time subsequent thereto defendant, Brian Dailey, picked up a lightly built wood and canvas lawn chair which was then and there located in the back yard of the above described premises, moved it sideways a few feet and seated himself therein, at which time he discovered the plaintiff, Ruth Garratt, about to sit down at the place where the lawn chair had formerly been, at which time he hurriedly got up from the chair and attempted to move it toward Ruth Garratt to aid her in sitting down in the chair; that due to the defendant's small size and lack of dexterity he was unable to get the lawn chair under the plaintiff in time to prevent her from falling to the ground. That plaintiff fell to the ground and sustained a fracture of her hip, and other injuries and damages as hereinafter set forth.

'IV. That the preponderance of the evidence in this case establishes that when the defendant, Brian Dailey, moved the chair in question he did not have any willful or unlawful purpose in doing so; that he did not have any intent to injure the plaintiff, or any intent to bring about any unauthorized or offensive contact with her person or any objects appurtenant thereto; that the circumstances which immediately preceded the fall of the plain-

2. I have removed portions of this case not germane to the central issue. This is a common practice in case books.
tiff established that the defendant, Brian Dailey, did not have purpose, intent or design to perform a prank or to effect an assault and battery upon the person of the plaintiff. (Italics added, for a purpose hereinafter indicated.)

It is conceded that Ruth Garratt's fall resulted in a fractured hip and other painful and serious injuries. To obviate the necessity of a retrial in the event this court determines that she was entitled to a judgment against Brian Dailey, the amount of her damage was found to be $11,000. Plaintiff appeals from a judgment dismissing the action and asks for the entry of a judgment in that amount or a new trial.

The authorities generally, but with certain notable exceptions, see Bohlen, 'Liability in Tort of Infants and Insane Persons,' 23 Mich.L.Rev. 9, state that when a minor has committed a tort with force he is liable to be proceeded against as any other person would be. Paul v. Hummel, 1869, 43 Mo. 119, 97 Am.Dec. 381; Huchting v. Engel, 1863, 17 Wis. 230, 84 Am.Dec. 741; Bries v. Maechtle, 1911, 146 Wis. 89, 130 N.W. 893, 35 L.R.A.N.S., 574; 1 Cooley on Torts (4th Ed.) 194, §66; Prosser on Torts 1085, §108; 2 Kent's Commentaries 241; 27 Am.Jur. 812, Infants, §90.

In our analysis of the applicable law, we start with the basic premise that Brian, whether five or fifty-five, must have committed some wrongful act before he could be liable for appellant's injuries.

The trial court's finding that Brian was a visitor in the Garratt back yard is supported by the evidence and negatives appellant's assertion that Brian was a trespasser and had no right to touch, move, or sit in any chair in that yard, and that contention will not receive further consideration.

It is urged that Brian's action in moving the chair constituted a battery. A definition (not all-inclusive but sufficient for our purpose) of a battery is the intentional infliction of a harmful bodily contact upon another. The rule that determines liability for battery is given in 1 Restatement, Torts, 29, §13, as:

'An act which, directly or indirectly, is the legal cause of a harmful contact with another's person makes the actor liable to the other, if

'(a) the act is done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to the other or a third person, and

'(b) the contact is not consented to by the other or the other's consent thereto is procured by fraud or duress, and

'(c) the contact is not otherwise privileged.'
We have in this case no question of consent or privilege. We therefore proceed to an immediate consideration of intent and its place in the law of battery. In the comment on clause (a), the Restatement says:

‘Character of actor’s intention.’ In order that an act may be done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to a particular person, either the other or a third person, the act must be done for the purpose of causing the contact or apprehension or with knowledge on the part of the actor that such contact or apprehension is substantially certain to be produced.’ See, also, Prosser on Torts 41, §8.

We have here the conceded volitional act of Brian, i.e., the moving of a chair. Had the plaintiff proved to the satisfaction of the trial court that Brian moved the chair while she was in the act of sitting down, Brian’s action would patently have been for the purpose or with the intent of causing the plaintiff’s bodily contact with the ground, and she would be entitled to a judgment against him for the resulting damages. Vosburg v. Putney, 1891, 80 Wis. 523, 50 N.W. 403, 14 L.R.A. 226; Briese v. Maechtele, supra.

The plaintiff based her case on that theory, and the trial court held that she failed in her proof and accepted Brian’s version of the facts rather than that given by the eyewitness who testified for the plaintiff. After the trial court determined that the plaintiff had not established her theory of a battery (i.e., that Brian had pulled the chair out from under the plaintiff while she was in the act of sitting down), it then became concerned with whether a battery was established under the facts as it found them to be.

In this connection, we quote another portion of the comment on the ‘Character of actor’s intention,’ relating to clause (a) of the rule from the Restatement heretofore set forth:

‘It is not enough that the act itself is intentionally done and this, even though the actor realizes or should realize that it contains a very grave risk of bringing about the contact or apprehension. Such realization may make the actor’s conduct negligent or even reckless but unless he realizes that to a substantial certainty, the contact or apprehension will result, the actor has not that intention which is necessary to make him liable under the rule stated in this section.’

A battery would be established if, in addition to plaintiff’s fall, it was proved that, when Brian moved the chair, he knew with substantial certainty that the plaintiff would attempt to sit down where the chair had been. If Brian had any of the intents which the trial court found, in the italicized portions of the find-
ings of fact quoted above, that he did not have, he would of course have had
the knowledge to which we have referred. The mere absence of any intent to
injure the plaintiff or to play a prank on her or to embarrass her, or to com-
it an assault and battery on her would not absolve him from liability if in fact
he had such knowledge. Mercer v. Corbin, 1889, 117 Ind. 450, 20 N.E. 132, 3
L.R.A. 221. Without such knowledge, there would be nothing wrongful about
Brian's act in moving the chair and, there being no wrongful act, there would
be no liability.

While a finding that Brian had no such knowledge can be inferred from the
findings made, we believe that before the plaintiff's action in such a case should
be dismissed there should be no question but that the trial court had passed
upon that issue; hence, the case should be remanded for clarification of the find-
ings to specifically cover the question of Brian's knowledge, because intent
could be inferred therefrom. If the court finds that he had such knowledge the
necessary intent will be established and the plaintiff will be entitled to recover,
even though there was no purpose to injure or embarrass the plaintiff. Vosburg
v. Putney, supra. If Brian did not have such knowledge, there was no wrongful
act by him and the basic premise of liability on the theory of a battery was not
established.

It will be noted that the law of battery as we have discussed it is the law ap-
licable to adults, and no significance has been attached to the fact that Brian
was a child less than six years of age when the alleged battery occurred. The
only circumstance where Brian's age is of any consequence is in determining
what he knew, and there his experience, capacity, and understanding are of
course material.

From what has been said, it is clear that we find no merit in plaintiff's con-
tention that we can direct the entry of a judgment for $11,000 in her favor on
the record now before us.

Nor do we find any error in the record that warrants a new trial.

* * *

The cause is remanded for clarification, with instructions to make definite
findings on the issue of whether Brian Dailey knew with substantial certainty
that the plaintiff would attempt to sit down where the chair which he moved
had been, and to change the judgment if the findings warrant it.

Costs on this appeal will abide the ultimate decision of the superior court. If
a judgment is entered for the plaintiff, Ruth Garratt, appellant here, she shall be
entitled to her costs on this appeal. If, however, the judgment of dismissal remains
unchanged, the respondent will be entitled to recover his costs on this appeal.

Remanded for clarification.
Congratulations! You have just finished reading one of your first law school cases. At this moment, there is a great deal of information coursing through your brain about Garratt v. Dailey. Now that you have finished reading, we can use our case briefing categories to organize all that information.

**Case Name, Author, and Citation**—This may be the easiest section of a case brief to complete. In this example, the name of the case is Garratt v. Dailey. A tougher question associated with the case name can be: “Who is the plaintiff and who is the defendant?” Oftentimes the plaintiff, the party who initiated the civil lawsuit, is the first name listed. In this instance Ruth Garratt is the plaintiff and the minor, Brian Dailey, is the defendant. The plaintiff will not always be the first party listed, however, so you may have to rely on a careful read of the case to determine who is suing whom. As for the remaining information in this section, Justice Hill wrote the opinion, and the citation for the case is 46 Wash. 2d 197, 279 P.2d 1091 (1955).

Case citations are extremely important in that they inform the reader where they can go in order to find the source material. In this example, the citation tells us that Garratt v. Dailey can be found in two different sources. The first is in volume 46 of the Washington Reports, Second Series on page 197. The case may also be found in volume 279 of the Pacific Reporter, Second Series on page 1091. The “Wash. 2d” portion of the citations also tells the reader that the Washington state supreme court wrote the opinion. You will learn a great deal more about the intricacies of citation and the case reporter system in your first-year writing and research class.

**Facts**—This is the section of the case brief where students tend to include too much information. When writing the facts section, focus on the essential or critical facts as opposed to merely retelling the entire story contained within the case. Remember, a lawyer defines critical facts as those that are relevant to the court’s final conclusion. In Garratt v. Dailey for example, the defendant’s action of pulling away the chair is certainly relevant, but how about his relationship to the plaintiff? Does it make a difference that the chair was made of wood and canvas or that the incident occurred on July 16, 1951? To answer these questions, ask yourself whether these facts made a difference. The easiest way to do this is to change the fact and determine whether the court would have decided the case differently.