Analysing a Case

Learning to read and analyse case law is one of the fundamental skills of the law student (as well as lawyers and judges). This skill will take time to acquire, though you will find you quickly get both better and faster with regular practice.

This document is designed to help you understand the various constituent elements of a case, and to assist you in reading, understanding and analysing a case. Ultimately, though, the only way to gain these skills is to practice. This means dedicating the time to the (often painful) process of reading cases. If you are writing about a case, you are likely to need to read the case multiple times. This is an active process that requires focus on identifying legal issues, rules and judicial responses. The more difficult aspects relate to understanding why the court reached the conclusion it did, include what policy or principles underlie that position, and what factors may have influenced that decision.

This guide should be read together with the document ‘Anatomy of a Case’, which provides a glossary of key terms and parts of a case.

**KEY ELEMENTS IN A CASE**

A case is a public record of a judicial determination of a dispute between parties. The case is more than simply a record of how the dispute was resolved. In the case, the judge explains how he or she applied the law to the facts to resolve the dispute. In doing so, the judge helps crystallise the law – reframing and at times altering the very law that is applied. When you read a case, you need to be aware of both the dispute-resolution and the law-creation aspects of the case. Every case will include aspects on:

1) **Dispute Resolution:** A case is the written judgment of the Court resolving a dispute between parties. The case will include details about who the parties are, what issues were in dispute, and how it was resolved;

2) **Establishing the Law:** The case will also contain an overview of the law, and will contain a finding as to the law applicable to the dispute (the ratio of the case), as well as other statements of law.

These issues will often be intertwined. Nevertheless, when you read the case, you must be confident in understanding the factual issues (which go to the dispute resolution aspect) and the legal issue (which go to the law-creation aspect).

You should bear in mind that this is a guide only, and while these elements are likely to be present in most cases they may occur in different parts of the case, in different ways and to a different extent and clarity. Each case will be written by a different judge (or judges) responding to particular circumstances, and with a unique style, form and technique. While there are conventions about how a case is written, there is no ‘standard format’. This means that a high degree of flexibility is needed to engage with and understand cases.
(1) Describing the Dispute (and its Resolution)

The first step in analysing a decision is to know who the parties are and what the issue is (the question the parties have brought before the court to be adjudicated upon and answered). This is essentially the description of the case and requires consideration of the following. Be as brief as possible.

- **Who are the parties?**
- **Facts:** What is the factual background of the dispute?
  - Consider the *conduct* of the defendant, the *effect* on the plaintiff and the *remedy* (response) desired.
- **In what court was the matter heard?**
- **What is the procedural history of the case (ie. is it an appeal from an earlier decision)?**
- **Issues:** What are the issue/s before the Court?
  - These are the factual or legal matters on which the parties relevantly disagree, and must ultimately be resolved by the court. Some issues focus on the state of the law itself, and others on the proper application of the law to the facts of the dispute.
- **Outcome:** What is the decision on the issue/s? Who was successful?
  - Be clear about the precise order or remedy awarded by the Court.

Following this step you should be able to explain what the dispute was about and how it was resolved.

(2) Understanding the Legal Reasoning

The second step involves understanding why the dispute was resolved in the way it was. This step is not always straightforward. For example, you need to understand the legal rule before you can isolate the facts that are material to that rule. Often it is difficult, for a variety of reasons, to isolate this key legal finding, including that the principle for which the case is authority (the ratio) may not be clearly spelled out by the judge. You should identify:

- What are the material facts of this case? (These are NOT just the general facts of the case. They are ONLY the key facts which determined the outcome).
- What is the legal rule (ratio) of this case? (ie, the legal rule or principle stated in this case which determined its outcome.)
  - State it as precisely as you can. This is not as simple as it sounds and it is usually only able to be determined after you have developed an understanding of the precedent cases.

When you put your legal rule and material facts together you should be able to explain the outcome of the case. This is because, in a simple model…
The ratio, which is essentially the legal rule or principle of the case which is determinative of the outcome, as applied to the material facts, should explain the decision reached. But the ratio is NOT the decision. Note the arrows in the above diagram. These signify that the identification and determination of both law and fact will often be an iterative process, and neither fact nor law have a truly independent existence.

To understand the legal reasoning, it is useful to attempt to:

- Describe how the previous authorities were treated.
  - Briefly summarise the legal principle or rule that each of the previous authorities represents;
  - Explain how each of these authorities is treated by the Court in the present case (this may require you to briefly identify the key facts of those cases as well).
- Identify the key steps in the reasoning process of the Court, by breaking it up into components.
- Classify the nature of the reasoning – are the key arguments based on precedent, principles, policies, or analogy?
- Explain any arguments made by the minority (dissenting) judges, and how they differ from the argument used by the majority judges

When you write about the reasoning of the court, you should refer to explicit passages in the case and mirror the language used.

(3) Critically Analysing the Case

The final stage is to critically analyse the case. Case law is not like the laws of physics (static for all time, just waiting to be discovered), but is dynamic and discursive. Law changes over time, and decisions can be good or bad, influential or insignificant. While the dispute-resolution impact of the decision is relatively stable, the legal impact is often contested. When you read a case you must actively reflect on factors such as whether it:

- Is morally satisfying;
- Is legally convincing;
- Evidences a good public policy;
- Is persuasive and compellingly written, or dense and impenetrable.
At this stage, you should be willing to critically evaluate the case by considering such questions as:

- Do you think this case was correctly decided at the time (in terms of the existing precedents)? This requires your opinion of the way previous cases were treated (was this a correct application of the relevant precedents) and how the judges synthesised those cases into the governing legal principle in this case.

- Do you find convincing the way in which the judge dealt with matters of morality, policy and principle that appear to underpin the decision?

- Where there legally available alternative decisions open to the judge (ie, whether a binding authority could have been distinguished, whether a particular judgment was simply wrong or should no longer be followed etc);

This analysis is ongoing. It may be that a case is initially decried as a ‘bad’ decision that depart too far from existing law, only for it to become gradually accepted as social policy shifts and experience grows. To understand a case we must consider not only how that case dealt with prior cases, but how subsequent decisions dealt with that case. For example, we also need to check the treatment of the case by judges in later decisions to determine whether it is still regarded as ‘good law’.

Over time you will improve on this difficult process of critically analysing a case. You can, however, aid this process by being a reflective reader. We might set out this process as follows:

1. Noting our initial reaction upon reading a decision, and assessing whether or not we are convinced by what we are reading;
2. Examining why we are, or are not, convinced, and whether or not those reasons are legal or policy related, intellectual or emotional;
3. Reviewing our initial assessment of the judgment.

Judicial decisions are written for a broad number of audiences, including law students. Your reaction matters. By becoming a more active and reflective reader of cases, you will become better at critically analysing, and ultimately using, cases.