

THE
WRITING OF A CASE NOTE

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Editor-in-Chief

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RULES FOR THE WRITING OF CASES

BY

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Case and Comment Editor

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The Writing of a Case Note

INTRODUCTION

The following remarks are intended to offer an inexperienced editor a concept of what a case note is, and to provide him with one sound program for building one. It goes without saying that neither the content nor the method indicated pretends to be an exclusive road to salvation in the matter. Every man develops his own method of investigation and of treatment, and varies it to fit his material, often unconsciously.

None the less, the main features of method of investigation stressed here are, in one form or another, almost indispensable to sound work: analysis, orientation, accuracy, thoroughness, independence of investigation, and constant check-up of hypothesis against fact. And the same is true of the construction of the note itself: it must be a unit, starting from a known point to reach a known point, and fitting its methods of progress to the limitations of its length.

Beyond that, all that can be said of the following is: that it is one sound, tested, method of reaching the result desired, which will serve to help a man construct an approach of his own.

PREPARATION

Read your case at least twice, analyzing and sizing up the reasoning, and lining up your own reasons for agreeing or disagreeing. This develops a tentative point of attack.

Go to at least two texts or cyclopedia articles first. You want to find out

(1) The general setting of the point under investigation. (On this, save, perhaps, for some striking phrase or analysis, it will hardly be necessary to take notes, if the reading is done carefully.)

(2) How much and what authority there seems to be on the point. (Here taking notes on references should begin. Never take a text-writer at his word, at least on the very point under discussion: chase down his authorities.)

REFERENCE

If the case now seems worth writing up, reanalyse it in view of your reading, and, if possible, get a hypothesis into working order.

The first place to go now, for material, is to the Yale Law Journal; then to L.R.A. and Ann. Cas., *down through the last index*; then to the periodical index; then, to the Am. Dig. References should be noted as found, with the points for which they are cited. But have a distinguishing mark for those you were merely referred to, or found digests of (including the reporter's headnote); and for those you have *yourself* read. *Nobody's quotation*, and *nobody's digest*, is accurate, for your purposes.

In view of the indications so found, reanalyse your problem, and check up on (and if necessary modify freely) your hypothesis.

Now you are ready for real investigation.

The ultimate authorities are and remain the cases and statutes.

Read the cases to which you have references. Let no case that has any bearing on your point go without notes, if you have read it. (Cite in your write-up *no case* you have not re-examined on its *facts* to see *their* bearing on what you are citing it for.) Watch particularly for:

(a) the explanation given by courts of their rulings, and how far the further developments of the rulings conform to the explanations.

(b) Interpretation in one case of other cases you have read; compare these explanations with your own reactions.

(c) References to other, seemingly important cases.

(d) The bearing of the holding and of the reasoning of each case on your hypothesis.

When you have read a goodly number of cases, carefully, reread your principal case. What of your hypothesis now? Treat it as if it were another man's. What authority with and, particularly, what authority against it? Does it really explain? What bearing on the principal case? What bearing of the principal case on it? Not until you have thought this through are you ready to

Read the articles, notes, texts, etc., not for information, but *critically*. What weight have their arguments? When they agree—but particularly when they disagree. If on a material point they advance authority you haven't seen, it's up to you to go see it. Don't forget current periodicals that may have written up your case.

Now you are ready to write your case-note, in the rough, or to talk it. But before it is *turned in*, there is another operation. With the citator, make sure that *every* case you cite or rely on is still law. This often leads to new and useful material that should be utilized.

CONTENT OF A CASE-NOTE

HEADING (to be written last). A series of catch words, generally 3, progressing from the stereotyped and general to the more specific, locating at a glance the general bearing of the point discussed.

Contracts—Consideration—Pre-existing Duty

Libel and Slander — Privilege — Statement in Juvenile Court

Liens—Finder—Expenses of Preservation

If specific facts appear, they will appear only in the last phrase of the heading.

DIGEST. The Digest states all the material facts of the case, as briefly as possible. It contains facts enough to show in exactly what way the case was presented to the court. Where necessary to an understanding of the case, but only then, contentions of the parties are stated. The exact holding is given, with the reason therefor, if the reason is necessary to understand the case or the write-up.

WRITE-UP. The write-up in general covers one and only one point; only a point on which the case presents almost a square decision—(holding; point involved and fully discussed, though perhaps not flatly necessary to the decision; or ratio decidendi.)

The write-up contains three main things, in as brief compass as possible:

(1) *The state of the law*: Every-day, utterly undisputed principles may in general be omitted, (unless necessary to transitions). The statement of the law, to be coherent,

should not be begun until the writer knows where he is headed for. Ordinarily, here, too, the progress is from the more general to the more specific. Where conflicts of authority occur on individual points, they should be merely noted in passing. Where the conflicts are logical developments of two different foundation-views, it is often better to develop each line of holdings separately.

The aim of the statement of the law is two-fold: to prepare the reader to see the effect on the law of this new case; and to prepare him, by following the line of reasoning suggested in the arrangement of material, to agree with the writer's view of the case. A case-note is so brief that its argument *must* be presented more by *arrangement* of the thoughts than by *words* of explanation. In this training lies one of its greatest values to the writer.

Any new point of view, or novel analysis, or helpful interpretation of the authorities, must, to get across, appear (or be prepared) in this portion of the write-up. It will then be driven home by

(2) the statement of the bearing of the principal case upon the state of the law; this fits the principal case into the frame prepared; and finally, by

(3) the writer's opinion of the principal case, which should in most cases merely make articulate the impression the reader already has been made to gather. (2) and (3) are often combined: "But the instant case very soundly follows. . . ." (1), (2) and (3) need not appear in this order. But they are all present, express or implied, in every case-note.

GENERAL. The write-up is not a rehash of the court's opinion in the instant case; it is an *addition*—it brings other and different (and where possible, better) authority. It re-analyzes the point. Its discussion of the background brings the law *down-to-date*; and it takes account (1) of texts, (2) of L.R.A. notes and similar productions, (3) of the periodical literature, past and current. For general propositions, and for "weight of authority" statements a good text or note should be cited in addition to a case.

Finally: a case write-up *presents* the digested thought of its author, gathered from all the material he has read and made notes on; but it *cites* only the *best* of that material.

RULES FOR THE WRITING OF CASES

Hand in legible work—typed if possible.

A case consists of two paragraphs, a head note and an analysis.

Write in a clear, direct and compact form.

HEADNOTE—A headnote consists of the *heading* and the *digest*. The *heading* is always in small capitals (effected by two lines under the words) thus: INTERNATIONAL LAW, CITIZENSHIP, EXPATRIATION. It consists of an index of the discussion in the case note, stated in one or several groups of words separated by dashes. A period is always at the end of the final group, and a dash is put before the first word of the digest.

THE DIGEST—State the *facts* clearly and briefly in one or more complete sentences ending with a period. Use the past tense throughout the headnote. State the *holding* concisely, introducing it thus: *Held* that . . . etc. It must show clearly what was decided by the court. If a dissent show it thus: *Held*, (two Judges *dissenting*) that etc.; or thus: Jones, J. *dissenting*.

ANALYSIS: Trace the development of the particular point of law under discussion, bringing forth all sides of the question. Show the position taken by the principal case and conclude with your idea of the decision and possibly, a prediction as to whether or not it will be followed. Never state this dogmatically, but as a suggestion, thus: It would seem . . . etc. It is submitted . . . etc. Always cite authorities after the end of a sentence, *never in the middle*. Do not make your analysis merely a summary of holdings. Use quotations only when absolutely necessary.

If a case is in point, cite it directly, thus: *Jones v. Smith* (1911) 92 Conn. 34, 3 Atl. 56.

If there is a dictum in the case, refer to it thus (indicating the page upon which the dictum appears): See *Jones v. Smith* (1911) 92 Conn. 34, 37, 3 Atl. 56, 58.

If the case squints toward your point, refer to it thus: Cf. *Jones v. Smith*, etc.

Always place a period after the versus sign (v.) since this is an abbreviation.

Always have the name of the case in italics (effected by one underlining).

Always put the date of the case in parentheses immediately following the name, thus:—*Jones v. Smith* (1911). No punctuation is placed between.

If the name of the reporter cited does not contain the name of the jurisdiction or covers several courts put the initials of the jurisdiction or court in the parentheses, following the date, separated by a comma (unless the highest court of the state) thus:—(1832, Mass.) 1 Cush. 91, (1911, Ct. App.) 192 Ala. 45, (1910, C.C.A. 2d) 202 Fed. 60, (1909, S.D.N.Y.) 200 Fed. 360.

Always place a period at the end of an abbreviation of name of a reporter, thus:—16 Ala. 92, 16 Fed. 88, 7 U.S. 69, 8 Sup. Ct. 90.

Always cite the national reporter in addition to and following the state, federal or supreme court reporter, separating the two by a comma, thus:—90 Mass. 71, 80 N.E. 67.

Where more than one case is cited on the same point, separate by a semi-colon, thus:—*Brown v. Black* (1909) 140 Wis. 388, 122 N. W. 1038; *Green v. Grey* (1915) 166 App. Div. 68, 151 N.Y. Supp. 613.

Cite the Yale Law Journal thus: if a leading article,—Haines, *Efforts to Define Unfair Competition* (1919) 29 YALE LAW JOURNAL, 1; if a comment,—COMMENT (1919) 29 YALE LAW JOURNAL, 97; if a case note or current decision,—(1919) 28 YALE LAW JOURNAL, 709.

Cite text books thus: Wharton, *Conflict of Laws* (3d ed. 1905) 604. If a section, put in "sec." If a paragraph, put in "par."

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SUPERVENING IMPOSSIBILITY OF PERFORMING
CONDITIONS PRECEDENT IN THE LAW
OF NEGOTIABLE PAPER

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