



# **Lawyering Fundamentals**

## **Welcome Materials**

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# Lawyering Fundamentals: Learning Outcomes

**Timing:** Read before Day One

**Purpose:** This document contains the expected learning outcomes for Lawyering Fundamentals. Use these stated learning outcomes (i) to better understand the intended goals of the course, (ii) as context for the activities and exercises you will complete, and (iii) to monitor your progress as we move through the course.

*After completing the Lawyering Fundamentals course:*

1. Students will understand how to effectively prepare for and participate in class, including how to meaningfully engage in Socratic classroom dialogue.
2. Students will be able to synthesize class notes, case briefs (and commercial outlines) into a course outline they can use to study for a final exam.
3. When given a legal problem to solve, students will be able to identify the legal doctrines implicated by the facts; create *basic* arguments by applying facts and rules; write a legal answer organized around IRAC through which they will communicate their reasoning to the question posed.
4. Students will have a basic understanding of some of the differences between law school and their undergraduate experience, including the daily workload.
5. Students will have a basic understanding of many of the critical law school success factors and will gain a basic awareness of their own competencies and motivations with respect to many of the critical law school success factors.
6. Students will become aware of the pathway that will help them reach their goals, and will have begun to develop the relationships with their peers that is critical to succeeding.

# Frequently Asked Questions—Legal Reading

**Timing:** Read before Day One

**Purpose:** The purpose of this handout is to provide you with answers to some of the most frequently asked questions about *legal reading*.

In law school, students are required to complete their assigned reading *before* class.

## Why do we read cases?

1. *Reading the cases helps to teach you the law.* Cases will show you what the law means, how it works, and how it has been applied in the past.
2. *Reading cases introduces you to speaking legalese.* Legal opinions are written in English, but they may as well have been written in a different language when you start law school. Completing the assigned reading and creating case briefs for each case you read helps you to learn the language of the law. It's daunting at first, but it gets better with practice.
3. *Reading the cases prepares you for law school exams and practicing law.* You will encounter fact patterns similar to cases you read and briefed in preparation for class on your law school finals. The good news is that if you learn how to wrestle with the cases in order to wrap your head around the pertinent information, you will be able to do it in your exams. Therefore, when you read and brief, you are doing many of the very things you will have to do in your exams. And as a lawyer, you will not always know how to answer a client's legal question. Thus, you will have to do legal research. Legal research includes reading cases and statutes in search of answers. Therefore, reading cases is a necessary part of your legal training. Do it now, do it well, and the dividends will be huge.
4. *Reading the cases prepares you to interact with your professor.* Professors rarely say: "The law is..." or "The rule is..." Instead, they expect you to come to class armed with a basic understanding of the rule that you will have pulled from the cases. They tend to use a series of questions and answers (called Socratic dialog) to build and expand your understanding of the rule, and to train you and your classmates to be lawyers. If you don't read before class, you will likely look like a fool. Furthermore, your fellow students pay a lot of money to attend law school; if you don't come to class well-prepared and ready to



discuss the case, you are wasting everyone's time. That shows professional incompetence, which is a reputation that could follow you for a long time!

## How long should it take to complete my reading?

How long it takes to finish your reading depends on several factors. Consider the following:

1. *Size of the Reading Assignment.* Obviously, 50 pages will take longer to read than 10 pages.
2. *Reading Speed.* How fast do you read normally? How many minutes does it take you to read ten pages? How difficult were those pages? Were you reading ten pages of *Harry Potter* or ten pages of Isaac Newton's *The Principia: Mathematical Principles of Natural Philosophy*? Generally, the slower you read, the longer your assigned reading will take. The good news is that over time, if you put in the effort, you should become faster.
3. *Vocabulary.* How large is your legal vocabulary (e.g., do you know the *legal* difference between *motive* and *intent*?) How familiar are you with legal procedure (e.g., do you know the difference between *summary judgment* and *judgment as a matter of law*?) The smaller your vocabulary and the less familiar you are with how the law works, the longer it will take to complete your assigned reading. The good news is that if you put in the effort, your vocabulary and familiarity with the law will grow over time. (Learning the language of the law is critical to your training. Therefore, don't just gloss over unfamiliar terms of art. Although it slows your reading, look up terms in a legal dictionary or on the internet.)
4. *Level of Focus.* You will complete your assigned reading faster if you are able to focus and minimize distractions. Read in an environment and at a time that helps you learn best.

## Will your professor know if you have not read?

As you will find out, it is pretty easy for everyone, including the professor, to tell if a student has read. Students often skip dissenting opinions or the notes following the case—a very unwise mistake. To test if you read and understood the case, your professor will definitely ask you about the items in the Case Briefing Cheat Sheet. But that's not the only reason the professor will question you. The professor may also ask you about other details that are important to your training. Only a student who read thoroughly and spent time thinking about what he or she read will be able to answer. If you devoted sufficient time to prepare, you will sometimes have the answers to these extra questions and sometimes you won't. Everyone can tell the difference between one who has diligently prepared and a slacker. The key is to be diligent and to always go back and correct your notes and case briefs after class.

## Frequently Asked Questions—Case Briefing

**Timing:** Read before Day One

**Purpose:** The purpose of this handout is to provide you with answers to frequently asked questions on *case briefing*.

### Introduction:

In law school, students take notes on everything they read. When the notes are on a legal opinion, they are called “case briefs.” A case brief is a summary of the essential information found in a court opinion—the “key points” of the story. You might also think of it like your shopping list—things you need to get when you read a case. You should create a case brief for every case you read. Typically, your case brief should include each item on the Case Briefing Cheat Sheet (included in your materials). The cheat sheet lists and describes the information you should include. We have also provided a sample case brief with your materials.

### Why do I need to case brief?

1. *Briefing helps you prepare for class.* Briefing trains you to read cases closely, to thoroughly analyze legal issues, and to distill cases down to their essence, which helps you process and retain the important information more efficiently. A well-written case brief will also serve as your guide when you are called upon to speak in class.
2. *Briefing helps you develop analytical skills you will need for your final exam and beyond.* On a final exam essay, you will use the analytical skills you developed through case briefing to determine the issue, find the legally significant facts, connect the rule to the facts, and present well-reasoned arguments to support the outcome you predict—just as the court supported its holding.
3. *Briefing is the first step in creating an exam outline.* Your case briefs will serve as the foundation for the notes you will take in class that will later be translated into a course outline. You will use your case briefs in class, which in turn you will use to create your course outline. We will discuss outlining as we move through the course. Hint: If you handwrite your class notes, be sure your briefs have sufficient space.

4. *Briefing is an important professional skill.* Briefing cases is not just for law school. When you brief, you pull apart how other lawyers reason and write! As a lawyer, you will have to read and analyze cases with a careful eye to detail. You will also have to summarize cases when writing legal memoranda, briefs, and other documents, as well as when making oral arguments to courts. So although it takes a bit of time to develop competence, don't shortchange your training to be a lawyer; start briefing and keep briefing!

## Should I type or handwrite my case brief?

Use the method that will work best for you. Handwriting takes time, but it may help you process the materials more fully. Of course, it is much easier to clean up and reformat type-written materials.

## Why are the items in case briefing cheat numbered?

Some students have asked us why the items are numbered. Their questions include the following:

1. *Are the items numbered because I am supposed to search for them in that order?* Not really. Not all courts write in the same way. Therefore, while some of the items will be at the beginning of the case, the location of other items will vary. What is important is that you find the information. The numbering system is just a way for you to logically organize the information you pull out of the case. As your reading comprehension skills improve, you will likely vary the order in which you look for and organize the items.
2. *Are they numbered because the professor will ask about them in that order?* No, professors ask questions to test you and teach you, so they may or may not ask the questions in this order and may also ask different questions. The list represents the *basic* information you should *always* pull out of case.
3. *Do I have to write them down in that order?* We find it helpful to organize the items in this order, but if you later develop an order that is more comfortable for you, do it.
4. *Why are the items numbered?* The items are numbered simply for ease of reference in class. If you randomly set down the notes you pulled out of case, it's harder to find



specific items when you need them. The list makes your case brief consistent. But headings without numbering will work just as well.

## **Can't I just Google a summary of the case or buy a commercial case brief?**

This analogy might be helpful: What if lawyers are like lifeguards? Both lifeguards and lawyers help people. Imagine that you went to the pool and the lifeguard was wearing a life jacket because he was a weak and slow swimmer; this would be less than ideal. Now imagine that you went to a lawyer who never developed his reading, researching, case-briefing, and writing skills. If you really hate spending time developing these skills, that is perfectly fine, but you may want to reevaluate your decision to practice law.

# Prepare Yourself for Learning in the Socratic Classroom: *Anticipate the Types of Questions Law Professors Will Ask You in Class*

**Timing:** Carefully read before Day One.

**Purpose:** This handout lists the types of questions law professors tend to ask during class. It explores why professors ask these types of questions, and discusses how they use their questions to not only teach you the rules, but to *train* you to become lawyers. Try to fully wrap your head around each question type and use the insight you gain to focus your preparation so you can better prepare for class and more meaningfully participate. Whether you are called on, volunteer, or are just listening, this handout will help you to follow along and fully absorb your new legal training.

## Overview:

Learning in law school is very different from the typical undergraduate experience. Professors will not spoon-feed you rules through lectures, and they will not *describe* what it takes to become a lawyer. They assume you have wrestled with the cases they assigned for you to read prior to coming to class. Professors use class time to build on the foundation *you* are constructing through your diligent preparation. Therefore, rather than lecture you, professors use questions and answers drawn from the assigned materials to clarify and strengthen *your* understanding of the rules. But they are not only interested in teaching you the rules. They will also train you to become a lawyer. They will develop and hone your lawyering skills through periods of intensive questions and answers.

These question and answer sessions—they question, you answer—are loosely called the Socratic Method, and will be a staple of your daily classroom experience. But, even after hours of preparation, most students can *appear* to flounder in a Socratic classroom. They struggle to grasp the meaning and purpose of the questions, not to mention the added pressure of having to “spar” in front of their peers with a seasoned lawyer, the professor. They also struggle because they tend to obsess over the “right answer” instead of focusing on the question, especially the purpose of the questions. Another challenge most students face is how to stay fully engaged in the exchange between the professor and their peers. It



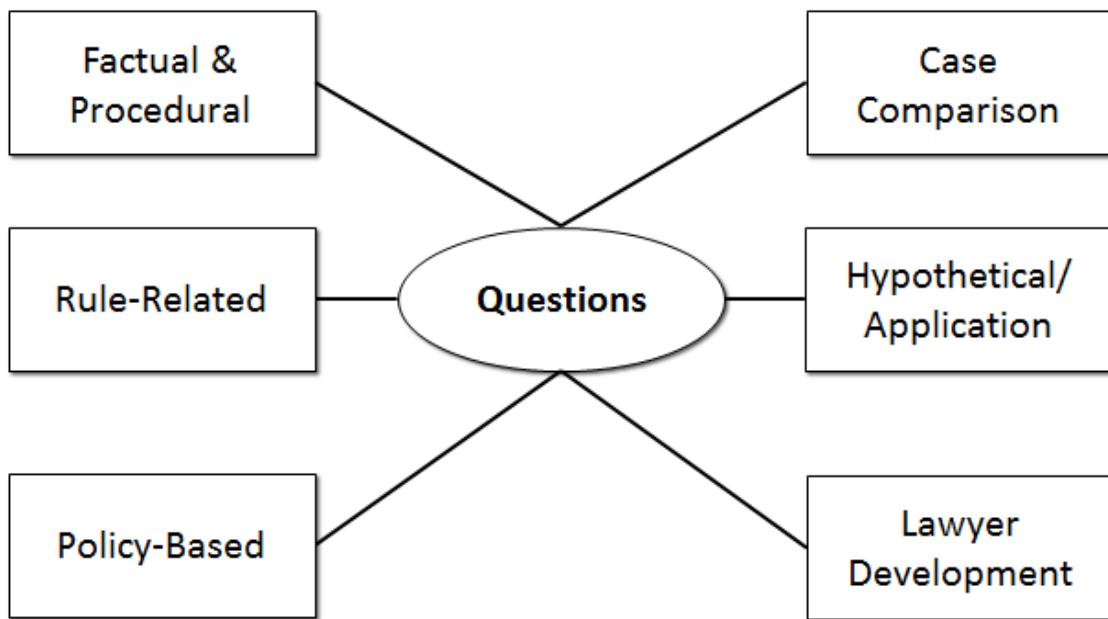
seems daunting not to tune out when you aren't in the hot seat, and it's equally challenging not to get lost in what appears to be a meaningless and interminable back and forth.

Happily, by taking time ahead of class to fully contemplate the types of questions your professors are likely to ask, you will be able to participate in the Socratic dialog in a more relaxed manner. You will be able to follow and engage in the discussion even when you are not being questioned, and will have the courage to volunteer and answer questions, as well as to pose some of your own questions. The right preparation means you can listen, think, answer, take notes, and ask questions to maximize the benefits of your legal training. Although class will still be challenging, your work outside of class will help you learn faster. You will be "in the know" and you won't flounder when you are called upon.

In this handout, we are passing along one of the main takeaways from *Lawyering Fundamentals*: a tool to thrive in the Socratic classroom, not just survive it. We truly hope that one outcome of absorbing its insights is that you will be inspired to always be fully prepared for class. But more than that, we hope your diligent preparation will allow you to flourish, whether you are thinking, speaking, or merely listening attentively and taking notes. But even when you undergo challenging examination during Socratic dialog, we urge you to embrace your training with an insatiable desire to advance by making sense of it. Questions are one of the most important tools in a lawyer's toolbox, so we never want you to passively float along in a fog of perplexed discouragement. Above all, we want you to see and use your classroom experience—especially the question and answer part of your training—as a precursor to the courtroom or any other place your law license takes you.

The list of questions below is small sampling of the types of questions that could be asked; it is by no means the complete list. Because a good part of class time will be taken up asking and answering questions, the more you know, the faster you will learn.

## Types of Questions Law Professors Ask



<b>Factual &amp; Procedural Questions (FBQs)</b>	Fact based questions to flesh out the story of the case (parties, issues, case history, etc.) E.g.: <i>What were the important facts in the Spivey case? What happened in the lower court? What is this case about? How did this case come before the court? Why did the supreme court send the case back? Are we reading a trial or appellate court opinion? What does remand mean? What is the difference between a petitioner and respondent? Are these terms different from plaintiff and defendant?</i>
<b>Rule-Related Questions (RRQs)</b>	Questions about the rule or legal principle you are studying. E.g.: <i>What is the difference between a subjective standard and an objective standard? What standard do we use to judge the defendant's conduct? When, if ever, would we use a subjective standard?</i>
<b>Rule-Related Questions (RRQs) Continued</b>	Rule Statement/Rule Term Questions—Questions to elicit a precise rule statement. E.g.: <i>How did the Washington Supreme Court define intent?</i>

	<p>Rule Explanation Questions—Questions to clarify the entire rule or a single term or phrase of the rule. E.g.: <i>Can you explain the difference between a subjective and objective standard? What is the difference between motive and intent?</i></p> <p>Rule Exceptions Questions—Questions to narrow or expand the rule. E.g.: <i>To constitute an assault and battery, is it necessary that the defendant touch the plaintiff's body or even his clothing? What if the defendant intended to harm plaintiff A and ended up harming plaintiff B, is the defendant still liable?</i></p> <p>Majority/Minority Rule Questions—Questions on jurisdictional splits. E.g.: <i>What narrow exception have several jurisdictions carved out to the general rule that the mentally disabled can be liable for intentional torts?</i></p> <p>Rule Application Questions—Questions to show what the rule means and how it works; they sharpen and deepen your understanding of the rule. E.g.: <i>Did Prince Charming commit an offensive contact when he kissed Sleeping Beauty? What if Sleeping Beauty enjoyed the kiss?</i></p>
<b>Policy Based Questions (PBQs)</b>	<p>Policy-Based Questions (PBQs)—Questions that explore and highlight the purpose of the rule and show you the kinds of problems the rule is intended to tackle E.g.: <i>Should we as a society hold small children or the mentally ill liable for their intentional conduct? Should we carve out any exceptions? Even if they did not intend the bizarre results of their conduct, is it appropriate that courts hold intentional tortfeasors liable? What interest are we protecting by recognizing this tort?</i></p>
<b>Case Comparison Questions (CCQs)</b>	<p>Questions that ask you to compare/contrast the reasoning, holding, etc. from one case to another case or to another source of law (e.g., how a case fits into the context of other cases or how a case connects to a statute or code provision). E.g.: <i>How does the definition of intent in Garratt v. Dailey differ from the definition of intent in Spivey v. Battaglia? Is this difference significant? Why do we have this difference in how we define intent?</i></p>

<b>Hypothetical/Application Questions (HAQs)</b>	<p>Questions that present you with new facts (hypos) and/or that alter the facts from a case you studied earlier, and ask whether you, as the judge, would have decided the case differently. They develop/extend your understanding of what the rule means and they help you see rule exceptions, and nuances of the rule, etc. Many of these questions come from the notes that follow the cases. E.g.: <i>Could Sleeping Beauty have sued Prince Charming for kissing her? What result if the defendant made an honest mistake? Would we get a different result if...?</i></p>
<b>Lawyer Development Questions (LDQs)</b>	<p>Questions that are not necessarily connected to the particular rules you are studying, but they connect you to knowledge, skills, and abilities a lawyer needs to develop. E.g.: <i>Why did the defendant, Mr. Battaglia argue that his hug was an assault and battery as a matter of law? Why are Mr. and Mrs. Spivey the plaintiffs in the Spivey case? What was Mr. Spivey's cause of action and on what basis was he able to sue the defendant? What is the restatement? Do you think the court got it right in this case?</i></p>

## Conclusion

You'll soon learn that you won't find the answers to many of these questions directly in the cases. Instead, some of these questions require you to think, use your imagination, common knowledge and common sense and go beyond the obvious. Also, often there are no right answers to some of these questions—at least not a single right answer. Instead, professors ask questions because they want to use them as a springboard for discussion; they are thought provoking. Therefore, don't be surprised when the professor asks you a follow-up question or series of follow-up questions. He or she is not implying that your "answer" is necessarily "wrong." Try to avoid the right/wrong construct. Instead, consider other options or possibilities that your answer did not contemplate. When you prepare and when you are in class, use questions to fire up your imagination and curiosity and take you beyond what you already know. Try to come up with your own list of questions when you read, questions that can enhance your understanding of the subject matter you are studying. Remember, lawyers for the parties in a dispute ask a lot of questions to explore the matter they're tasked to help the client with—this is a big part of what lawyers do. From day one, your professors will use questions—many, many questions—to train you. We recommend you embrace the work out!



## Case Briefing Cheat Sheet: A Shopping List of What to Search for in a Judicial Opinion

Item	Description
1. Case Name	The case name is located at the top of the case. It gives the last names of the parties. It is generally formatted like the following: <i>Plaintiff v. Defendant, Petitioner v. Respondent, or Appellant v. Appellee.</i> E.g. <i>Roe v. Wade</i>
2. Court & Date	This is the court writing the opinion (Ex: Supreme Court) and the date of the opinion (1985)
3. Procedural History	The procedural history is generally found in several paragraphs and describes (i) how the defendant wronged the plaintiff, (ii) what the parties argued in the lower court, (iii) how the lower court ruled, (iv) how and why the case moved from the lower court to the higher court (i.e., the basis of the appeal or what the person appealing wants from the higher court). It is generally a blend of facts and legal language.
4. Question Presented (i.e., the issue)	The question presented is generally a legal or procedural question that the appellant wants the higher court to answer. It is the reason why the case moved from the lower court to the higher court. Sometimes the appellant asks more than one question.
5. Facts	Not all facts are relevant; some are relevant for one purpose but not for another. Once you find the question presented and the legal holding, you should have a better feel for which facts are truly important. The facts do not include the court's opinion, but rather include the legally significant points of the story from the plaintiff's and defendant's points of view.
6. Rule (i.e., the law)	The rule may look like three things: (i) a succinct statement of the governing legal principle that the higher court uses to decide the case (about a sentence in length); (ii) a sentence or paragraph where the higher court answers the question presented; or (iii) a paragraph that describes under what circumstances a person is liable. The rule may be all three. You will sometimes have to reduce the number of words the court uses—without losing meaning—to shorten the rule.
7. Reasoning	The reasoning is generally several paragraphs following the rule where the court explains <i>how</i> and <i>why</i> it answered the question presented as it did. It is a blend of facts and legal language. Pay close attention to this as you will have to show your reasoning when you answer essay questions. Take time to fully wrap your head around how the court explains itself. You will encounter clear and well-explained reasoning as well as fuzzy and hard-to-follow reasoning.
8. Holding	The holding is the court's answer to the question(s) presented. There are narrow procedural holdings (for example, "case reversed and remanded") and broader substantive holdings that might deal with the interpretation of the Constitution, statutes, or judicial doctrines. If the issues were stated precisely, the holding can be stated as "yes" or "no," or in short statements taken from the language used by the court. Sometimes it's: "We hold that..."
9. Main Take-Away	Every case is in the textbook for a reason. Before you read and while you read, you should ask yourself over and over, "What is the main takeaway of this case? Why have the authors included this case in the book? And why have they placed the case in this particular section?" Find this and you are golden. But remember that sometimes your professors will use a case for different or additional reasons beyond what the casebook author intended. Don't get nervous, just try to understand why the professor is going there...

## Sample Case Brief

**Timing:** Read before Day One

**Purpose:** The purpose of this handout is to provide you with a sample case brief that you can use as a template when you prepare your own case briefs.

**1. Case Name:** *Garratt (P) v. Dailey (D)* (p. 17)

**2. Court & Date:** Supreme Court of Washington, 1955

**3. Procedural History:** (p. 17 & 18) The trial court held that Dailey did not possess "any willful or unlawful purpose" or intent to harm Garratt when he moved the chair. The judge dismissed the action against Dailey. The trial court then determined that Garratt had suffered some \$11,000 in damages, in case the decision was to be overruled on appeal. Garratt appealed to the Supreme Court of Washington, requesting entry of judgment in her favor or a new trial.

**4. Questions Presented:** (P. 18) First, whether the element of intent, for the tort of battery, is satisfied if a defendant knows with "substantial certainty" that his/her act will result in offensive contact? Second, whether a 5-year old can commit an intentional tort? (See holding for answer.)

**5. Facts:** (P. 18) Conflicting testimony but Garratt alleged that Dailey (who is 5 years old) deliberately pulled a lawn chair out from under her as she started to sit down. Dailey claimed he had moved the chair to sit in it, realized Garratt was about to sit down where chair had been, and was moving it back when she fell and broke her hip. Trial court believed Dailey's version.

**6. Rule:** (P. 18) "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 . . . the act must be done for the purpose of causing the contact . . . or with knowledge on the part of the actor that such contact . . . is substantially certain to be produced."

**7. Reasoning:** (P. 18) The trial court determined that the plaintiff failed to prove that Dailey pulled the chair out while she was in the act of sitting down. Thus, it cannot be said the act was done for the purpose of causing the contact; however, it is unclear whether Dailey knew that such contact was substantially certain to occur. Plaintiff would establish a battery if, in addition to her fall, she proved Dailey knew with substantial certainty when he moved the chair that she would attempt to sit down where the chair had been. The mere absence of an intent to injure the plaintiff, play a prank on her, embarrass her, or commit an assault and battery on her would not shield Dailey from liability if, in fact, he had such knowledge.

**8. Holding:** (P. 19) Yes as to both questions presented. The cause is remanded for clarification, with instructions to make definite findings on the issue of whether 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. The court also held that a minor can be liable for an intentional tort.

**9. Main Takeaway:** This case defines “intent.” A defendant has the required intent (i) when it is his *purpose* that a specific result occurs or (ii) when he is *substantially certain* that a given result will occur.

## Glossary of Legal Terms

**Timing:** Read before Day One

**Purpose:** The purpose of this handout is to provide you with a glossary of some of the frequently-used legal terms and will help you to jumpstart your case reading.

- Appellant:** The party who is dissatisfied with the judgment of the trial court and seeks to have that judgment reversed or altered by appealing the judgment to a higher court.
- Appellee:** Sometimes called a respondent, the party opposing the appellant on appeal.
- Bluebook:** *The Bluebook: A Uniform System of Citation* is published by the Harvard Law Review and other leading law reviews and sets forth abbreviations and rules of citation for legal materials. It is the accepted standard in law school writing but isn't necessarily followed by courts or attorneys who may be required to follow local rules.
- Brief:** There are two types of briefs: (1) Briefs of cases and (2) Briefs that are prepared for court. Case briefs are the documents you will create to prepare for class. Your briefs highlight/summarize the most important information in a case. In other words, it's a summary of the high points of the case. Many students find them very useful as a reference when called upon in class. Briefs prepared for court set forth legal arguments and conclusions.
- Casebook:** The textbook that you will use for your class that is comprised of edited versions of published cases. Note: Most cases have been rather heavily edited by the casebook authors.
- Citation:** The reference which helps you identify a particular case, law review article, book, statute or other resource, whether primary or secondary. For example, the citation for *Roe v. Wade* is 410 US 959 (1973). This means the case appears in volume 410 of the official United States Reports beginning at page 959. The opinion was rendered in 1973. 42 USC 1983 is the citation for civil rights legislation which appears in title 42 of the United States Code at section 1983.



- Civil/Criminal:** Civil cases are typically disputes between persons or entities in which the remedy sought is money damages, or sometimes an order that the defendant do, or refrain from doing, certain acts. Civil cases include torts, suits about contracts, family law cases, etc. A criminal case, by contrast, is always brought by a governmental entity (through a federal or local prosecutor) against a defendant for a violation of a criminal statute where the penalty may be a fine, imprisonment, or both. Although the victim of a crime may be a witness, the victim is not really a party to the prosecution of a criminal defendant.
- Court/court:** When the word "court" by itself is capitalized in a sentence, it is generally referring to the United States Supreme Court. Lower case "court" refers to all other courts. When naming a specific court, such as the Court of Appeals for the Ninth Circuit, the word court is capitalized.
- Defendant:** The person against whom a lawsuit or prosecution has been brought. In a civil suit this is the person from whom a plaintiff seeks relief. In a criminal action, it is the accused (who is innocent until proven guilty...).
- Dissent:** A judge's disagreement with the majority of the court. Appellate court cases are heard by a panel of judges that can vary in number depending on the jurisdiction. A judge (or judges) who disagrees with the majority ruling and opinion will often write a dissenting opinion explaining his or her reasons for disagreement.
- Opinion:** The written product of a judge or judges handing down and explaining a decision. Opinions are usually written by appellate courts, but may also be written by trial judges who resolve legal issues at the trial level. A majority opinion is joined by a majority of the judges participating in the decision. A dissenting opinion disagrees with the holding of the majority; a concurring opinion agrees with the majority's holding but for different reasons; a plurality opinion is joined by the largest number of judges when no majority opinion is achieved; and there can also be opinions that dissent in part, concur in part, etc.
- Petitioner:** The petitioner is the party who presents a petition to the court. On appeal, the petitioner is usually the party who lost in the lower court. This can be either the plaintiff or defendant from the court below, as either of the parties can present the case to a higher court for further proceedings.



<b>Plaintiff:</b>	The individual or organization who initiates a lawsuit by filing a complaint. In a criminal action it is the government. (Typically the government in a criminal matter is not called the plaintiff. Instead, it is called the people or the state or the government...)
<b>Precedent:</b>	An existing opinion, usually published, which, because of its similar facts and legal issues, serves to guide a court in the case before it. Our common law system is based upon precedent. Courts will look to principles established in earlier cases. Those decisions that involve similar facts or legal issues serve to guide a court and are regarded as precedent.
<b>Remand:</b>	An order made by an appellate court whose ruling was sought by appealing parties. A remand does not end the case. Instead, the case is sent back (remanded) to the lower court to do whatever is necessary to be consistent with the appeals court's decision. This may mean conducting a new trial, entering judgment for a different party, holding a hearing on a part of the case, etc.
<b>Restatement:</b>	Several volumes produced by the American Law Institute and authored by legal scholars and experts that set forth statements of major areas of law (as contracts, torts, trusts, and property) and are widely referred to in jurisprudence but are not binding. It is not the law but a <i>restatement</i> of the law by non-judges who are deemed experts in that particular field. Courts sometimes cite to the restatement; if they adopt the restatement, then that becomes the law.
<b>Respondent:</b>	The respondent is the party against whom a petition is filed, especially one on appeal—the person who must respond to the filing. The respondent can be either the plaintiff or the defendant from the court below, as either party can appeal the decision, thereby making themselves the petitioner and their adversary the respondent.
<b>Tort:</b>	A generic term encompassing many different causes of action in which a plaintiff alleges some injury caused by the defendant. Torts include such actionable wrongs as assault, invasion of privacy, product liability (injury caused by defective goods) and many others. The most common tort is an action for negligence. A person injured by the negligent conduct of another (such as in an automobile accident) may sue to recover monetary damages for those injuries.

## Daily Reflections: Entry #1



**Timing:** Complete before Day One

**Purpose:** The following questions are intended to help you focus your expectations for the first day of Lawyering Fundamentals so that you can make the most out of the class. Please upload your responses to the Matrix course page.

### Reflection:

Socrates said that the unexamined life is not worth living. Indeed, most successful people attribute their success to periods of regular reflection.

What do we mean by reflection? Self-reflection, in its simplest form, is asking thought-provoking questions. Appropriate self-reflection helps you develop a deeper understanding of why you do what you do, how you do what you do, and whether or not you are succeeding; it's a way to get to know yourself better and to evaluate your actions. You can do it (i) when you are unsure about something; (ii) when you feel like you could have (or should have) done something differently; and (iii) when you want to take stock of your accomplishments. In learning theory, this is referred to as metacognition, or "thinking about thinking." Self-reflection is a critical part of your law school success.

While you will have guides and mentors who will show you different pathways to learning, you will soon learn that no one is going to spoon-feed you the law. Although law school is so expensive, you are ultimately responsible for your own learning. Because a lawyer is a problem solver, a critical part of her training from day one is to learn how to recognize



problems and to craft solutions for those problems, sometimes in consultation with more seasoned lawyers. Therefore, take time to assess how your training is progressing early and often. This will allow you to determine when to stay on track to reach your goals, when to make changes, or when to seek help. Your reflection period can also be a time to evaluate your emotions to better manage anxiety and stress. There will be many people to help you along the way, but it's on you to really make it happen.

Because Lawyering Fundamentals is such a fast-paced course, one way to ensure you assimilate what you are learning is to set aside time to process your thoughts. You will be completing one of these reflection exercises every day. Below are several questions to gather your thoughts in anticipation of the first day of classes. Use these questions to aid your preparation and set your expectations.

### **Questions (upload your responses to Matrix course page):**

1. My *initial* thoughts about attending Lawyering Fundamentals are:

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2. I anticipate law school will be different from undergrad in the following ways:

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3. Based on the assigned reading and homework, I anticipate the first class will cover:

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4. In Lawyering Fundamentals, I hope to learn:

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5. I anticipate the most challenging part of the first day of Lawyering Fundamentals will be:

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6. Currently, I feel... (circle all that apply)

Excited Stressed Tired Anxious Optimistic Prepared Confident Worried

7. If I am feeling stressed or anxious, to reduce or eliminate these feelings I will:

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8. To build my future professional relationships and friendships I plan to:

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9. Other reflections:

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## Lawyering Fundamentals Writing Sample: *The Fruit Problem*

*30 minutes*

Name: \_\_\_\_\_  
School: \_\_\_\_\_ Section: \_\_\_\_\_

**Timing:** Complete before Day One

**Purpose:** This assignment requires you to use the IRAC paradigm to organize your answer and serves as a very basic introduction to analyzing and writing like a lawyer. (In this context a paradigm is simply a framework. See below for more on the IRAC paradigm.) Be sure to call on your logical reasoning abilities to analyze and communicate your answer. Use this exercise as a starting point to track your progress as you learn how to problem-solve and communicate like a lawyer.

### Instructions:

- Read the fact pattern (the question)
- Take a few minutes to get familiar with the IRAC paradigm (structure) in which your answer should fit. (We have included an example at the end of this document. Do not write your answer until you review the example.)
- Note: You will need to formulate a *rule* or multiple *rules* to guide your analysis of the Fruit Problem. Try to fully *explain* your reasoning
- Upload a copy of your answer to the **Matrix course page by 5:00 PM forty-eight hours before the start of the first day of class**
- Bring a copy of your answer to class
- Try to keep your answer brief
- This assignment should take you about 45 minutes to complete.





### Fact Pattern:

Lindsey walked through the grocery store to buy some fruit. She first put two apples in her basket, and then she added three oranges. Later, she realized that she did not have enough apples, so she added four more, along with six bananas. She then dropped one orange on the floor, so she had to add one more orange to her basket. Lindsey finally decided that she had enough fruit.

**How many apples and oranges does Lindsey have in her basket? Explain fully.**

(Use the template below to assist you to construct a fully explained answer.)

**Issue:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Rule(s):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Analysis:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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**Conclusion:** \_\_\_\_\_

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## A Basic Example of Structured Writing

To help you understand the IRAC paradigm/writing structure, here is an example.

**Hypothetical Scenario:** You really like music; everyone knows that. One day a friend asks you: What makes a good song? You are able to outline the criteria you use to judge if a song is a good song without breaking a sweat. So you tell your friend: Rhymes (lyrics, words), rhythm (beat), and resonation (how well you connect with the song, how it makes you feel, it resonates with you). Your friend seems to agree with your criteria for what makes a good song. But then with a wry smile your friend asks you to name a good song. You drop the name of one of Adele's hit songs: *Someone Like You*, but your friend shakes her head and says: Why is that a good song? You answer: Because I feel that it's a good song; everybody knows that; look how many copies it has sold! That might work with your friend, but if you were asked to provide a logically sound, structured written response to the question "what makes a song a good song," you would need to connect your explanation to a defined rule or framework that will help your friend understand not only *what* criteria you are using to form such a conclusion, but also *how* you reached that conclusion. See the below excerpt for a good example of the kind of structured logical response that would be more appropriate to your friend's question.

After carefully reading the below answer, paying close attention to *how* the answer is structured, return to the *Fruit Problem*.

**Question:** *What makes a song a good song? Is Adele's Someone Like You a Good Song?*

**Issue:** The issue is to determine whether or not Adele's "Someone Like You" is a good song"



**Rules:** There are three factors that should be considered when determining whether a song is a good song. First, the song should have a good rhythm or beat. Second, the song should have good rhymes, that is good lyrics, good words. Third, the song's message should resonate with something in the listener's life that makes it enjoyable or meaningful; it should reverberate and be memorable.

**Analysis:** The song, "Someone Like You" by Adele is a good song. First, the song has a soulful rhythm that makes the song fluid and powerful. Many times I catch myself moving to the beat of the song. Second, the song has beautiful and truthful lyrics such as "*Sometimes it lasts in love, sometimes it hurts instead.*" Everyone listening to those words can readily understand the meaning; they know what Adele is talking about; her rhymes make sense. Third, the song resonates with me as a listener and is meaningful because I have lost a relationship and had to find a way to deal with the emotional aftermath in order to move forward with my life. In particular, the line "*I will find someone like you*" is very meaningful because it moves me and captures the healing process of a broken heart. The song is one that I think about a lot and will always remember.

**Conclusion:** Therefore, because of its rhymes, rhythm and the fact that I can so easily relate to it, the song, "Someone Like You" is a good song.



## Pre-Course Law School Survey

Name: \_\_\_\_\_

School: \_\_\_\_\_ Section: \_\_\_\_\_

**Timing:** Before Day One

**Purpose:** This short survey asks you to record your awareness of some of the important issues that are pertinent to succeeding in law school, including your plans after law school.

### Introduction:

We invite you to complete this short pre-course survey before the start of Lawyering Fundamentals. This survey will help us (and you) gain better insight into your knowledge, experience, skills, and goals. It will also serve as a baseline to measure your understanding as your legal training progresses throughout this course.

### Directions:

- **Complete this survey on the Matrix course page.** Answer each question by selecting the answer when appropriate or providing a brief explanation when requested.



## Section I. Experience with the Work of Lawyers

Have you worked in a law firm before?	Yes	No			
Have you ever prepared or help to prepare a legal document such as a brief, complaint, answer, discovery item, contract, or will?	Yes	No			
Have you ever attended or participated in a trial or legal proceeding in any capacity?	Yes	No			
Have you ever used the services of a lawyer?	Yes	No			
If you answered yes, was your experience with the lawyer positive?	Yes	No			
Do you have any family members that are lawyers?	Yes	No			
Do you have any friends that are lawyers?	Yes	No			
Did you do any research on the work of lawyers before or after applying to law school?	Yes	No			
How would you rank your familiarity with the workings of the legal system, especially the work of lawyers and judges? (1 is little or no familiarity and 5 is extremely familiar)	1	2	3	4	5

## Section II. Law School Skills

Could you write out a basic description/definition of a legal opinion?	Yes	No			
Have you read a legal opinion prior to this class?	Yes	No			
Do you know what a case brief is?	Yes	No			
If yes, how comfortable do you feel creating a case brief? (1 is the least comfortable and 5 is extremely comfortable)	1	2	3	4	5
Do you know what the Socratic Method is?	Yes	No			
If yes, how comfortable do you feel participating in Socratic dialog? (1 is the least comfortable and 5 is extremely comfortable)	1	2	3	4	5
How comfortable do you feel about speaking in class? (1 is the least comfortable and 5 is extremely comfortable)	1	2	3	4	5

How comfortable do you feel about completing your reading for class? (1 is the least comfortable and 5 is the most comfortable)	1    2    3    4    5
How comfortable do you feel about taking notes in a law school class? (1 is the least comfortable and 5 is the most comfortable)	1    2    3    4    5
Do you know what a law school exam outline is?	Yes      No
If yes, how comfortable do you feel about creating an outline? (1 is the least comfortable and 5 is the most comfortable)	1    2    3    4    5
Have you ever answered a law school style multiple-choice question?	Yes      No
How comfortable are you with multiple-choice tests in general? (1 is the least comfortable and 5 is the most comfortable)	1    2    3    4    5
Have you ever answered a law school style essay question?	Yes      No
How comfortable are you with answering essay questions in general? (1 is the least comfortable and 5 is the most comfortable)	1    2    3    4    5
Have you done any kind of legal research and writing before?	Yes      No
Are you aware of the distinctions between legal writing and other forms of writing? (1 is unaware and 5 is well versed)	1    2    3    4    5
How comfortable are you with research and writing in general? (1 is the least comfortable and 5 is the most comfortable)	1    2    3    4    5

### Section III. Law School Success and Career Goals

How interested are you in practicing law? (1 is the least interested and 5 is the most interested)	1    2    3    4    5
In what area of law would you like to practice? For example, family law, criminal law, environmental, etc. Write your answer in the box to the right.	
Do you understand how your law school's grading curve (if it has one) works?	Yes      No

Where do you want to graduate: top 10%, top 25%, top 50%, etc? Write the percentage in the box to the right.	%
Do you feel confident that you can reach your class rank percentage goal? (1 is the least confident and 5 is the most confident)	1 2 3 4 5
Do you know what Law Review is?	Yes No
Do you want to participate in the Law Review or other Journal?	Yes No
Do you know what Moot Court is?	Yes No
Do you want to participate in Moot Court?	Yes No
Do you know what Mock trial is?	Yes No
Do you want to participate in Mock Trial?	Yes No
How strong are your time management skills? (1 is the weakest and 5 is the strongest)	1 2 3 4 5
How strong are your stress management skills? (1 is the weakest and 5 is the strongest)	1 2 3 4 5
Do you think it is important to make friends in law school?	Yes No
How supportive is your family about you attending law school? (1 is the least supportive and 5 is the most supportive)	1 2 3 4 5
After completing the above questions, do you feel more aware of some of the issues pertinent to your training to become a lawyer? (1 is no increase in awareness and 5 is major increase)	1 2 3 4 5

Is there anything else you would like to share before you start Lawyering Fundamentals?

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