HOW TO BRIEF A CASE

[OR–WHY DIDN’T I CHOOSE TO GO TO MEDICAL SCHOOL]

By Dana L. Blatt, Esq.

You are just about to start law school. You buy all of your required casebooks [they are about two feet thick–only “slightly” intimidating], and you receive your first assignment. You are simply told, “read the first 100 pages in each book and BRIEF all of the cases!”

O.K., you know how to read [hopefully], but what does it mean to “brief” a case? You have heard of “briefcases,” but that is something that you carry around. The last time you sang at a karaoke bar someone may have asked you to be “brief,” but instinctively you know that that is not the kind of brief that is being discussed here. And you may even be wearing “briefs.”

But, what is a brief of a case? For that matter, what is a case?

The purpose of this article is to teach exactly what briefs are, why they are important, and how to draft them. You will learn most of the various ways to brief a case, the basic elements of each brief, and how briefs are used in various contexts. Additionally, you will read sample cases and briefs of those cases in every format. By the time you finish reading this, you will be so sick of briefs, that you will wish this writing were much briefer! So, now let’s get down to business.

What is a case? A “case” starts out as a lawsuit between two or more people. The parties to the lawsuit have a trial and one party wins while the other loses (or possibly there is no trial but one of the parties wins because of a decision based on legal procedure). Next, the party who lost the case gets angry and bitter. So, he or she decides to file an appeal. An appeal is a request that a “higher court” [“™”] examine what was done in the trial court to make sure that no illegal errors were committed. (The “higher
court” is usually referred to as an appellate court. The “highest” appellate court is the Supreme Court. Generally, there are no trials in appellate courts. Rather, an appeal is a review by a panel of judges of what transpired in the trial court. The appeals courts usually make their decisions in writing. The written decision is called an opinion. It is called an opinion because it reflects the opinion of the justices as to what the law is for that particular factual situation. Since the decision is in writing, it is saved. Not only is it saved, but it is cataloged and indexed ad nauseam. Since the opinion has been saved, it can be located in the future whenever it is needed. Opinions have been saved and cataloged for hundreds of years. It is the fundamental theory of our entire legal system that once a case is decided, if there should ever be another case in the future that is the same as the decided case, that future case should be decided exactly the same way as the first case was decided. This is called *stare decisis*. In other words, the opinion effectively establishes a rule that is to be followed in the future for all similar cases. Moreover, since all of the opinions over the past hundreds of years have been saved, they can always be located and used as a basis to resolve a current legal dispute. The Common Law is the result of the collection of hundreds of years of written decisions by appellate courts in England before the United States was formed. The United States adopted the Common Law and it is the basis of our legal system. Thus, [to answer the question] a case, for purposes of this definition, is a written appellate court opinion which reviews the decision of a lower court and is, accordingly, now the “Law of the Land” according to the doctrine of *stare decisis*. In law school, what you will study is the aforementioned collection of appellate court opinions because they are “the law.”

**What is a brief?** A brief is nothing more than a summary of an appellate court opinion. That’s it—nothing more! [Now that you know, there is no reason to read the rest of this article.] A brief is a written synopsis or digest. It is just a concise rendering or explanation of the opinion. Your primary job as a law student (even your job as a lawyer) is to brief (i.e., summarize) cases.

**Why bother summarizing cases?** Suppose that you asked a friend if she had seen that old classic movie, “Green Aliens of Reptar?” Your friend frankly concedes that she doesn’t remember that movie and asks, “What was it about?” You could insist that she go see the movie. Better yet, you could “briefly” explain what the film was about (that would surely refresh her memory), and then the two of you could discuss the importance of the flick to your conversation. In law school, you will be asked to read hundreds of cases. Most of the cases are NOT particularly memorable. In class, when it comes time to discuss a particular case, it is “best” if all students are thinking about and discussing the same case at the same time. The professor will select a student (usually at random) to “brief” the case for the entire class. If you are called upon, then after you catch your breath, you must summarize the case at issue, on the spot, before the entire class. In this manner, the entire class can be reminded of what the case is about before it is discussed. If you are called upon and cannot brief the case, you will be told to stand in the corner. You will be graded by how well you brief a case and by how prepared you are to discuss the ramifications of the case in class. Accordingly, it is essential and fundamental that you read every case and *brief every case*. You absolutely must be prepared, in every class that you attend, to thoroughly discuss every case; that means that you must be able to recite a brief of every case in every class, every time! With so many unmemorable cases to remember, the only way that one can be prepared to brief every case every time, is to write out a summary of every case in advance of class. To put it another way, it is the job of every law student to read all of the cases and to summarize (i.e., brief) every case. It is extremely time-consuming to write briefs. Thus, study time must be budgeted accordingly. Here we will explain the long, hard, tried and true methods of briefing a case. Later we will show you some short cuts.

**Are there other kinds of legal briefs?** Yes. [You can skip this section if you only want the “beef”!] Throughout your career as a lawyer you will be required to prepare various kinds of writings, all of which are referred to as “briefs.” A trial brief or appellate brief is simply a summary of your legal argument or a collection of “briefs of cases” organized in such a manner and interspersed with legal contentions in such a way as to persuade a
trial or appellate court that a particular legal position that is being advocated is correct. The trial or appellate brief is usually “brief” (i.e., only as long as necessary) and rarely, if ever, contains the full text of any case. Rather, such a brief refers the court to the full text of a case by summarizing the important points of the case and providing the citation [a book volume and page number where the case can be found]. If the court needs more information from a case than what is provided by the excerpt, the judge can read the entire opinion by reference to the citation. In one form or another, briefs of cases are used in every kind of legal activity that exists whether it be a trial brief, writing a law review article, drafting an inter-office memo in a law firm, studying for a law school examination, conducting legal research, or making an argument to the United States Supreme Court. In other words, briefing is WHAT YOU DO in law school and a major part of WHAT YOU WILL do as a lawyer. Thus, learning how to brief a case is an essential skill that must be mastered and will be used throughout every person’s legal career. [By now you ought to be really scared!] Briefs can be many pages long or they can be as short as a single sentence. The length of the brief depends on the purpose for which it is going to be used. In this discussion we will focus on briefs for use in the law school classroom. However, we will also provide examples of other types of briefs. Rest assured, however, if one can brief a case for classroom purposes, all other types of briefs will fall naturally into place.

**Are there different kinds of briefs intended for classroom purposes?** Yes; and we will learn about all types in this article. The types are: (1) Standard Classroom Format, (2) Bullet Point Briefs (3) Book Briefs, (4) Professional Briefs, and (6) “Jockey.”

**How To Brief A Case.** [Finally, at last, thought we would never get there!]

There are certain elements which are found in every brief. They are found in every brief because they are the fundamental elements of every case. They are:

CASE NAME

FACTS

ISSUE

DECISION

Briefly, the Facts are the circumstances which occurred between the parties that resulted in a lawsuit. The Issue is the legal question to be answered by the court. And, the Decision is what was decided by the court.

Many commentators advocate the use of a system called “IRAC” for the taking of law school examinations. “IRAC” stands for Issue, Rule, Application, Conclusion. The IRAC elements can also be found in every brief. They represent a basic method of analyzing any legal problem. Basically, “IRAC” is a sub-part of the above basic brief elements. The only reason that the word “facts” does not appear in “IRAC” (i.e., FIRAC) is that the facts are always supplied in a law school examination and “IRAC” is usually thought of as a test-taking tool. We will incorporate “IRAC” into our brief format as follows:

CASE NAME

1 [The author is a wanna-be comic. Fortunately for you, he will be keeping his day job.]
For purposes of understanding a case, we will add one more element, the rational. Thus, our basic approach to a brief is as follows:

(1) **CASE NAME**

(2) **FACTS**

(3) **ISSUE**

(4) **DECISION** (4a) **RULE**

(4b) **APPLICATION**

(4c) **RATIONALE**

Each of the foregoing elements will now be explained in detail [this is referred to as “spoon feeding”].

The very first thing you must do before you brief a case is read it [Duh!]. However, don’t just read it, study it. Read it twice if you have time. Obviously, you cannot do a good job of summarizing something that you do not understand.

Legal opinions are full of words that you have never seen before including legal words, Latin expressions, trade terms and rarely used English vocabulary. Look up every word that you do not thoroughly understand. In the first few months of law school, the foregoing task could interrupt your reading many, many times per case, but it will be worth it for improved general understanding.

So, let’s get on with it:

(1) **CASE NAME.** Every case has a title. For example, Smith v. Jones. This title contains the names of the parties that are suing each other. Always reproduce the title above each brief.

Under the title, include the name of the court rendering the opinion. For example, “United States Supreme Court.”

Under the court, indicate the year that the decision was rendered (e.g., 1998).

The foregoing information is always reproduced at the top of every opinion. If you have difficulty locating the name, we are in trouble!
There is one point that may assist you in understanding the case name. Even if the case is entitled “Smith v. Jones,” this does not necessarily mean that “Smith” is the plaintiff and “Jones” is the defendant. It may be that “Smith” was, in fact, the plaintiff in the trial court. Or, maybe “Smith” was the defendant. However, most appellate courts list the name of the party that filed the appeal first, regardless of their status as plaintiff or defendant in the trial court. Thus, if “Smith” was the defendant in the trial court, but lost the case at trial, “Smith” is listed first in the title of the case because he filed the appeal. Moreover, now “Smith” is called the Appellant or Petitioner and “Jones” is called either the Appellee or Respondent.

(2) **FACTS.** After you have thoroughly read and understood the opinion, you should be ready to write the facts. But, you may be asking yourself, what are the facts and how many of the facts should be included in a brief?

The facts are nothing more than the story of what happened to the parties. Clearly, at a minimum, your facts must include what transpired between the parties that resulted in a lawsuit.

You should attempt to determine the basic operative facts that drive the case. In selecting facts, always keep in mind the ultimate point made by the court. If you understand why the court reached the conclusion that it did reach, you will understand which facts are most important.

Only the essential facts should be include in your brief. Remember, you are charged with writing a summary [i.e., just the facts, ma’am!] A summary necessarily implies that you will leave out some of the details. In order to determine which facts to use in your summary, you must understand which facts are important.

If you are unclear as to exactly which of the various points being made by the court is the most important, simply look at the section of your casebook where the case has been reproduced. Be sure you are clear as to the topic being discussed in the chapter under review. The most important part of the case relates to that topic. Next, look at the reasons why the court reached its decision. The facts which support the reasoning of the court are the most important.

Don’t be afraid of the facts. There is nothing magical, mystical or mysterious about them. Generally, facts are relatively straight-forward and can be understood by a layperson. This is so because the facts merely relay a short story.

You may ask, how long should the facts be? There must be at least enough facts so that one can understand the problem being resolved by the court. The next section of the brief will be the issue. There should be enough facts (enough of the story) that the issue is raised or becomes apparent from a reading of the story.

Sometimes, the facts can be clarified and the issue can be raised merely by summarizing the contentions (or arguments) of the parties. Sometimes it helps to state how the trial court ruled. But, when you have completed writing the facts, there should be no surprise as to what the problem is that is being solved by the court.

Usually, rules of law are not discussed in the facts. However, sometimes a statute is the subject of a controversy, or a line of decisions are at issue. Under such circumstances, it is acceptable to include rules in the facts. Otherwise, you can probably exclude the legalese from any discussion of the facts. You will decide whether to include legal matters in the facts as you become more experienced.

The goal is to write a clear statement of only the essential facts, sufficient to raise the
issue, yet long enough to understand the basis for the court’s decision.

The best way to understand what is being explained in this article is to examine some sample briefs. Later, we will present a sample case and multiple sample briefs of that case. Moreover, this entire booklet contains over a hundred sample briefs from all of the first year law school courses. According, you should be able to learn a great deal by studying examples.

(3) **ISSUE.** The facts must be long enough to tell the story. The issue, on the other hand, is simply one single sentence. As short as the issue is, in the beginning it will be very difficult to draft.

The issue is always in the form of a question. And, the question can usually be answered with a simple “yes” or “no.”

If the parties to the lawsuit could not settle their case in the trial court, that means that they must still be arguing over some point. Maybe they are arguing about whether the sky is blue or grey. If the foregoing is the question, the issue is, “Is the sky blue?” or conversely, “Is the sky grey?” [The answer, of course, may depend on the weather.] But, note that the question is capable of a yes or no answer.

Usually, the question is not confined to the facts of the case as in the above example (i.e., the question of the color of the sky should have been resolved by a factual finding in the trial court). Instead, the issue should be phrased as a legal question. The question describes the legal problem that the court must solve. Stated otherwise, assuming the scenario described in the facts, and considering the various contentions of the parties, what must the court decide (what question must the court answer)?

For example, do you remember the case of *Roe v. Wade*? The question in that case was NOT, “Should abortion be legalized?” (The foregoing is not the issue because it is too confined to the facts and does not state a legal principle.) [Even if you didn’t remember *Roe v. Wade* from the name, you now know the primary principle for which it is most often cited. Moreover, you should also have learned something about how a question can set up a problem to be solved—even if it is the wrong question.] A more correct and legalistic description of the issue in *Roe v. Wade* is as follows [of course, you would have no means of knowing this issue unless you read the case], “Is there an implied right of privacy in the United States Constitution which limits the power of states to regulate abortion in the first trimester of pregnancy?” Note that there are no facts stated in the issue (although you can certainly glean a great deal about the facts from reading the issue alone). Note also that after the question asked by the issue is answered (i.e., yes or no), we are left with a rule of law: “There is an implied right of privacy in the United States Constitution which limits the power of states to regulate abortion in the first trimester of pregnancy.” The foregoing observation should also help you to formulate an issue. That is, once you have determined what the rule of law is, you can convert that rule into a question and you will have the ISSUE!

There is usually only one main issue per case. Your challenge, [should you decide to accept it], is to select the single most important question presented by the opinion. If you feel that there is more than one issue, write out each version of the issue that you feel is appropriate. Then, attempt to combine all of your versions into a single question.

Sometimes the issue is easy because it is specifically articulated by the court in the opinion. But, be careful. Even if the court has expressed an issue, it may not be the most important issue. As suggested earlier, to get help in determining the most important issue, refer to the subject being discussed in the casebook chapter. For example, if the course is Torts, the subject being studied is negligence, and the topic under discussion is the element of “duty,” the issue should be one involving “duty” and not, for example,
“breach of duty.” This is so even if the subject of “breach of duty” is discussed in the case.

There are some statements of the issue, however, which are NEVER correct. The reason they are never correct is that they generally apply to most or many cases, and teach us nothing about the legal problem to be solved. Examples of incorrect issues are as follows:

“Is the defendant liable?”

“Should the trial court judgment be affirmed on appeal?”

“Should the evidence be excluded?”

“When one person drives her vehicle into the rear end of another person’s automobile, is the driver of the car in the rear liable for negligence?” [This issue is incorrect because it is too confined to the facts of the case and does not articulate a legal principle.]

Instinctively you will always know and understand the issue after you have finished reading the facts. You will not need to be told what the issue is. The only difficult part will be to find a way to articulate the issue in a single short sentence. This will come with experience. In the meantime, use the aforementioned guidelines and instructions to draft an issue.

The issue should lead naturally and comfortably to a discussion of the basis for the court’s decision.

(3) DECISION. This is the section of the brief where one must summarize what the court said about the rules of law, how the rules apply to the facts of the case, and what conclusion the court reached. Although we think of the decision section as only one part of the brief, it is actually a conglomeration of various parts. We will be breaking down the decision section into the elements which derive from the “IRAC” method referred to above.

Respond to the issue. The first part is simple. Answer the question asked by the issue. If the issue was properly framed, the answer will be “yes” or “no.” So, write “yes” or “no.”

State the rule. Next, state the rule of law established by the case. The rule should be simple after formulating the issue. It is simple because you already did all of the hard work when you drafted the issue. In other words, now take the question which is your issue, turn it around, make a statement out of it, and state it as a rule.

For example:

Issue: “Is an offer to enter into a contract deemed accepted from the moment a written acceptance letter is placed in the mail?”

Decision: Yes. An offer to enter into a contract is deemed accepted from the moment a written acceptance letter is placed into the mail.

The purpose of this article is to teach a new law student the basics of drafting briefs. The foregoing method of stating the rule of the case is used solely because it is an easy

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approach to drafting the rule for first timers. But, in reality, it is a very ridged and redundant approach. Accordingly, as you read more cases and become more familiar with different legal principles, feel free to state the rule of the case in any manner that you deem appropriate.

The next portion of the decision section of the brief requires that the student summarize the rationale of the court and summarize how the facts of the case were applied to the rule of the case so as to justify the conclusion reached by the court.

(4a) Application/rationale. As you read a court opinion, you will see that the judges do not simply spout out rules. To the contrary, the justices consider what the applicable rule ought to be. In deciding what the law ought to be, the court devotes most of its time to explaining the reasons for its opinion. This is called the rationale. Understanding why the court decided to rule as it did, which factors were important and which factors were unimportant, what the court believed to be fair, and what precedents (previously decided cases) the court felt were applicable, are all part of the rationale. Understanding the reasons for the court’s decision is fundamental to understanding the law. [Surprise, surprise! You thought that law school was memorizing a bunch of rules. Wrong!] The rules are only a small part of what you must learn. Understanding the reasons for the rules is the most important thing that you will learn in law school.

Since we now know that what is most important is the REASON for the rule, it should be clear that in summarizing a case, you must summarize the REASONS the court reached its conclusion. Stated otherwise, one must summarize the rationale of the court.

In part, the rationale includes a critical look at how each of the facts of the case interrelate with each of the other facts (i.e., what is the importance of each fact as compared with the other facts.) Next, it is important to summarize how the court applied the facts of the case to the rules of law.

For any opinion to have any meaning at all, the court must demonstrate how it applied the facts to the rules. Often, this portion of a case demonstrates which facts the court found to be most important. As a lawyer, it will be essential that you understand which facts are important so that you will know how to be persuasive. Accordingly, if it is important for the court to explain how the facts apply to the rules, it is equally important that you summarize that information in your brief. Here is an example of how to apply facts to a rule:

Very Hypothetical Rule: “If the glove does not fit, you must acquit!”

One argument (application of the facts to the rule): It is a given that the glove was worn by the murderer. If the hand of “the man” on trial does not fit into the glove, he must not be the murderer. In this case, the glove does not fit the man on trial. He attempted to put his hand into the glove but the glove was much smaller than his hand. He couldn’t even pull the glove all the way onto his hand. The glove would have to have been much larger in order for it to fit the hand of this defendant. The murderer had a much smaller hand. Since the glove was too small, since it didn’t fit, it follows that it would be impossible for this man to be the murderer.

The other argument (application of the facts to the rule): The fact that the glove did not easily go onto the hand of the defendant is an illusion. First, the defendant was wearing rubber gloves at the time he tried on the gloves at issue. It is always difficult to put one pair of gloves on over another pair. Second, the gloves were soaked with blood at the time of the murder. Over time, as the blood dried, the gloves shrunk. Originally the gloves did fit the defendant, but the gloves changed size by virtue of the blood shrinking them and only did not fit at the time of trial for that reason. Moreover, “the man” was spreading his fingers out so as to make it appear that the gloves did not fit (not
to mention his acting skill).

The foregoing illustrates all of the essential elements of the decision section of the brief. Thus, in writing this portion, be sure to (1) state the holding (that is the “yes” or “no” answer to the issue), (2) state the rule of law, (3) articulate the reasons for the decision, and (4) summarize the connection between the facts and the rule. Eventually each of these elements will merge together. Ultimately, you will observe that there is no conscious effort by the courts to be certain that the foregoing elements appear in each opinion. Rather, each of the sections simply flow together by virtue of the nature of an opinion. Similarly, your brief should combine the aforementioned elements so that they flow naturally.

(4b) **Conclusion.** This is the easiest part of the whole brief. All that this section requires is that you state the ultimate outcome of the case. What was the final resolution of the case? Was the lower court affirmed (higher court agreed with the lower court decision), was the decision reversed (the decision of the lower court was wrong) or something else? This section is only one or two words long. For example, “Reversed.” Moreover, the word you are looking for will likely be the last word in the opinion. Thus, this is an easy section with a one-word answer.

At this point, we have discussed all of the sub-parts of the decision section of the brief. Hopefully, now that the elements have been explained to you, you no longer find the task scary. For the decision section, merely answer the question posed by the issue, state the rule of law, summarize the reasons for the courts decision, apply the facts to the rule, and indicate the ultimate conclusion reached by the court. DO NOT feel compelled to follow the foregoing brief format rigidly. Although virtually every case lends itself to the foregoing format, in truth and reality, the ultimate goal is to draft a clear, yet concise, simple rendition of what occurred in the case so that you will be prepared to summarize the salient points for the class and so that a cogent classroom discussion can follow.

**The Good News.** Fortunately, it is NOT necessary that your briefs be well-written. That’s true! In fact, they need not be written at all (this is called bullet point briefing and book briefing which will be explained later). [Hurray, hallelujah, fantastic!] NOT SO FAST! The primary reason that you will be writing briefs at all is so that you can remember all of the details of a case when you are called upon in class to give a summary. Thus, the real reason for writing out your brief is (1) to make sure you understand the case and (2) for use as a memory refresher. (You will be reading so many cases that your brain will become “mush!” Accordingly, unless you have a “Kodak” memory, it is virtually impossible to remember all of the essential details of each case.) Even if you are called upon in class, it is unlikely that you will actually ever read your brief to the class (although you may do so). Rather, you are more likely to use your brief as a guide and dictate a more detailed summary of the case to the class from your memory banks. Accordingly, it is NOT necessary that you devote extraordinary amounts of time to proofreading and polishing your work. In fact, with so many cases to read and briefs to draft, you will only have five or ten minutes per case to draft a brief. Accordingly, just write it well enough so that you can use it to recite a quality summary in class.

**More brief elements.** Oops. We forgot to tell you that there are actually more elements to a brief than are described above. Sorry about that. [You can’t fire me, I quit!]

**Procedural Basis.** The primary missing element is referred to as the “Procedural Basis,” “Nature of Case,” “Legal Procedure” or some other equally meaningless expression. This section of the brief usually appears at the very beginning of the brief, before the facts. However, we have left this section for the last because it can be complicated and is likely to divert your attention from truly important portions of a brief that are described above.
The procedural basis is intended to be a very short statement (no longer than one sentence) of how and why the case is before the court from a procedural point of view. As someone new to the law, you cannot possibly be expected to understand legal procedure. In fact, Procedure is an entire course of study in law school. Nonetheless, you are expected to include this element in your brief whenever the information is available.

Actually, the Procedural Basis can be broken down into four parts, each of which is one or two words long. Then, all four parts combined result in no more than one single sentence.

The Procedural Basis is very complicated, very legal-oriented, [and generally of very little importance]. Nonetheless, you will need to recite it if called upon in class and you must always know what it is.

The four elements of Procedural Basis are (A) Type of ACTION, (B) Type of RELIEF, (C) Type of PROCEDURE, and (D) Type of APPEAL. They are explained below (and are usually found near the beginning of each opinion):

A. Type of action. Lawsuits are of various kinds. Some people sue because they are injured. Others sue because someone breached a contract. Sometimes people are in court because they have committed a crime. This sub-part of Procedural Basis requires that you state why the parties are in court in the first place. For example, “Action for breach of contract,” or “Prosecution for violation of curfew law,” or “Administrative hearing regarding revocation of parade permit,” etc.

B. Type of relief. When a person files a lawsuit, he or she is always asking the court to do something to the opposing party(ies). This sub-part describes what it is that the court is being asked to do (or maybe, what it actually did). Does the person seek money (i.e., damages), is he asking the court to issue an injunction to prohibit certain kinds of conduct, is he merely asking the court to declare what the rights of the parties are (Declaratory Relief), or is some other kind of relief being sought? When provided in the opinion, the type of relief sought in the trial court should be stated. For example, “Action for damages for breach of contract.” (Note that both the type of ACTION and the type of RELIEF are included in the foregoing sentence.)

C. Type of Procedure. There are many ways in which a case might end up before a panel of appellate justices. There are “moves” that a lawyer can make in the trial court to shorten litigation. There are things that must be done in a particular order for a court to properly move forward. There are challenges to legal action at every level of litigation. These things are generally referred to as “procedure” (as contrasted with rules of law). The brief must describe what procedure was employed in the trial court that resulted in the matter going up on appeal. A couple of examples will illustrate this point.

Example 1. The plaintiff files a complaint (lawsuit). The defendant files a demurrer to the complaint. A demurrer is a legal procedure whereby the defendant effectively argues that assuming, for the sake of argument, that all of the facts in the complaint filed by the defendant were proved to be true, the complaint does not state a claim that is recognized by the law. If the judge in the trial court agrees and sustains the demurrer, the plaintiff loses the case without any further trial or other proceedings. If the foregoing occurred, the procedural basis would state: “Appeal from sustaining of defendant’s demurrer.” To build on the hypo in the previous section, “Appeal from sustaining of demurrer to complaint for damages for breach of contract.”

Example 2. Assume that there is a full trial before a jury. The jury returns a verdict in
favor of the defendant. The Procedural Basis might state, “Appeal from judgment for the defendant after jury trial in action for damages for breach of contract.”

In the beginning, you may not understand what the procedure IS, but you should nonetheless report what it was (as stated by the court).

D. Type of Appeal. There are many different ways in which to appeal a case. Sometimes a litigant has an absolute right to have his/her case heard in an appellate court. This would be called an appeal. Other times, an “appeal” is only possible if the court grants permission for the case to be heard. Other times a lawsuit is being filed against the trial judge in an appellate court to force the trial judge to do something. The later is usually referred to as a “Writ” rather than an appeal. There are also different kinds of writs (e.g., certiori, mandamus, etc.). [Clearly, we cannot conduct a class in procedure in this article.] In any event, one must state in the brief which of the various methods of “appeal” were employed to get the matter before the court hearing the case. For example: “Writ of Certiori to the United States Supreme Court after judgment for defendant in action for damages for breach of contract.”

As hard as this section of the brief is to understand and draft, if the Procedural Basis is of any significant importance, it is usually stated in the opinion and can be copied. Later in law school you will understand the meaning of the words used in the Procedure section. When you do, it will shed new light on the true meaning of a case.

There should not be any facts stated in the procedural basis section. However, it is O.K. to include some of the procedural aspects of a case in the “Facts” section of the brief.

Still More Elements. Believe it or not, there are three more sections that might be part of your brief.

Concurrences and Dissents. [That’s two.] Sometimes an opinion in your casebook contains one or more concurrences or dissents. Remember, an appellate court is made up of a panel of judges. Sometimes, all of the judges do not agree on how to decide a case. But, the rule is that whatever the majority of judges decide, will become the law of the case. So, what happens with that insolent disgruntled judge who had the audacity to disagree with the majority of the justices? Well, he or she gets to state, in writing, how misguided the majority is. A “dissent” is a written opinion by a justice wherein he or she expresses his or her disagreement with the majority and the reasons for the disagreement. A “concurrence” is a written opinion by one of the justices who agrees with the outcome as decided by the majority but disagrees with the rationale of the majority’s opinion. In both cases, the alternate points of view are expressed.

Only the majority point of view becomes the law which can be used as precedent pursuant to stare decisis. However, in law school, the concurrences and dissents are almost as important as the majority opinion. This is so because, as stated earlier, learning the law is not just the memorization of a bunch of rules; rather, it is understanding the reasons and rationalizations for why the law is what it is. In order to fully appreciate the meaning, significance, and correctness (or incorrectness) of the majority opinion, it is usually necessary that one understand and appreciate other points of view.

Thus, if the case in the casebook contains a concurrence or dissent, you must always summarize that point of view as well. Fortunately, summarization of a concurrence or dissent is relatively easy. All other parts of the case will have been briefed utilizing the basic format set forth above. The only thing to summarize in a concurrence or dissent is the RATIONALE of the justice. (As set forth above, sometimes the rationale includes an application of the facts to the rule.) So, write a short summary of the reasons the concurring or dissenting judge disagreed with the majority and you will have done all that is necessary.
Analysis. The very last element of a brief is analyzing the case. Actually, this is not an element at all, it is just EVERYTHING.

Throughout the briefing process it is helpful to consider the importance of the case to the course. Always consider the reason why the casebook author included the case in the casebook. The reason is RARELY for the rule of law established by the case. A rule can usually be stated in a single sentence. So, why would one read 20 pages just to learn a single sentence? One wouldn’t! Consider the background and history of the area of law when considering the opinion. Consider the accuracy and/or correctness of the judges’ opinions. Think critically about the case. Utilize the notes which follow the case in the casebook to determine what is most important about the case. Consider the implications of the rule on society. Synthesize all of the various rules that you have read and try to make sense out of them. The foregoing are only a few of the literally unlimited number of things to think about. Each case has many ramifications.

The classroom discussion will start with a brief of the case. Thereafter, the professor will raise problem after problem posed by the case. You must be prepared to respond to the professor’s inquiries. Anticipate what questions the professor might ask. Then, make some notes about your observations. Those notes will come in handy during class discussion. This is referred to as case analysis.

Believe it or not, you have now read everything that you are ever going to read about how to brief a case. You now know more than you need to know. However, you probably do not understand anything. The best way to learn briefing is by example. Accordingly, what follows is a sample case and many different types of briefs of that case. As alluded to earlier, you may utilize the other briefs in this booklet to see if the first few cases in each of your casebooks were properly briefed by you.

**SAMPLE BRIEFS**

As stated, the best way to learn how to brief a case is by example. Once a number of cases have been briefed, the process will be very clear. The details of the foregoing discussion will soon become part of your subconscious [or forgotten entirely]. In fact, the sooner you forget the details the better. All of this reading has been designed to do just one thing: teach you what a brief is. Now, forget the details and just remember it is nothing but a summary of the case intended to refresh your memory in class.

As referenced earlier, there are many types of briefs. The discussion so far has related to a Standard Classroom Format for a brief. What follows is a sample case entitled *Henningsen v. Bloomfield Motors.* After the case we will present a sample brief of *Henningsen* in a Standard Classroom Format. Then, we will show you a “Bullet Point Brief.” This will be followed by a “mini brief” of the same case. Following the mini brief will be a “one line brief.” Lastly, we will reproduce the opinion for a second time, in full. However, the opinion will be marked up with all kinds of lines and comments to demonstrate how to “book brief” a case.

For your convenience, at the end of the sample briefs we have presented a professionally written brief of the same case prepared by High Court™ Case Summaries. This brief is presented on a double spread page with references to the various features that can be found in our format. Don’t be confused, there are many features in a High Court™ Brief that you are not expected to include in your own brief.

Oddly enough, although a brief is intended to be a memory aid, a High Court™ brief contains numerous memory aids. Thus, we have memory aids to help us remember the memory aids. [That’s because, after three years of law school, most students end up with dementia.]
Students use High Court™ briefs for many reasons [even when their mommy tells them not to]: Because (A) It is a good product (as your fellow students will tell you), (B) there isn’t always enough time to brief every case, (C) there isn’t always enough time to read every case-- our briefs are so thorough that you can learn the essential parts of a case without even reading the opinion, (D) our briefs are a good way to check to see if you understand the most important parts of a case, and (E) there is no place where you can obtain as much quality detailed analysis of a case as you can from a High Court™ brief. [There are lots of other reasons too; but, we don’t want to “toot our horn” too much.] [End of commercial.]

**LEGAL SHORTHAND**

As should be apparent, law students are required to do a great deal of writing. They write briefs, they take notes, they write exams, they write law review articles, [my fingers are cramped just thinking about it.] Therefore, we thought it would be helpful to teach you a common shortcut. One helpful measure is to memorize some basic abbreviations for legal words [its not much, but it is better than nothing].

The following is a list of common legal abbreviations and symbols:

<table>
<thead>
<tr>
<th>WORD</th>
<th>SYMBOL/ABBREVIATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal</td>
<td>Ap</td>
</tr>
<tr>
<td>Appellant</td>
<td>Apl</td>
</tr>
<tr>
<td>Attorney</td>
<td>atty</td>
</tr>
<tr>
<td>Cause of action</td>
<td>c/a</td>
</tr>
<tr>
<td>Complaint</td>
<td>C</td>
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<td>Contract</td>
<td>K</td>
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<tr>
<td>Cross</td>
<td>x</td>
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<tr>
<td>Cross-complaint</td>
<td>x/c</td>
</tr>
<tr>
<td>Defendant</td>
<td>Δ</td>
</tr>
<tr>
<td>For example</td>
<td>e.g.</td>
</tr>
<tr>
<td>Husband</td>
<td>H</td>
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<tr>
<td>Judgment</td>
<td>Jdg</td>
</tr>
<tr>
<td>Plaintiff</td>
<td>Π</td>
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<td>Prejudice</td>
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<tr>
<td>Respondent</td>
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<td>Section</td>
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<tr>
<td>without prejudice</td>
<td>w/o/p</td>
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</tbody>
</table>

O.K., we are now going to set you free to read the attached examples. High Court™ Case Summaries wishes you great success in law school and in your legal career.
HENNINGSEN v. BLOOMFIELD MOTORS
Supreme Court of New Jersey, 1960
32 N.J. 358, 161 A2d. 69, 75 A.L.R.2d 1.

Plaintiff Clause H. Henningsen purchased a Plymouth automobile, manufactured by defendant Chrysler Corporation, from defendant Bloomfield Motors, Inc. His wife, plaintiff Helen Henningsen, was injured while driving it and instituted suit against both defendants to recover damages on account of her injuries. Her husband joined in the action seeking compensation for his consequential losses. The complaint was predicated upon breach of express and implied warranties and upon negligence. At the trial the negligence counts were dismissed by the court and the cause was submitted to the jury for determination solely on the issues of implied warranty of merchantability. Verdicts were returned against both defendants and in favor of the plaintiffs. Defendants appealed and plaintiffs cross-appealed from the dismissal of their negligence claim. The matter was certified by this court prior to consideration in the Appellate Division.

The facts are not complicated, but a general outline of them is necessary to an understanding of the case.

On May 7, 1955 Mr. and Mrs. Henningsen visited the place of business of Bloomfield Motors, Inc., an authorized De Soto and Plymouth dealer, to look at a Plymouth. They wanted to buy a car and were considering a Ford or a Chevrolet as well as a Plymouth. They were shown a Plymouth which appealed to them and the purchase followed. The record indicates that Mr. Henningsen intended the car as a Mother’s Day gift to his wife. He said the intention was communicated to the dealer. When the purchase order or contract was prepared and presented, the husband executed it alone. His wife did not join as a party.

The purchase order was a printed form of one page. On the front it contained blanks to be filled in with a description of the automobile to be sold, the various accessories to be included, and the details of the financing. The particular car selected was described as a 1955 Plymouth, Plaza ‘6’, Club Sedan. The type used in the printed parts of the form became smaller in size, different in style, and less readable toward the bottom where the line for the purchaser’s signature was placed. The smallest type on the page appears in the two paragraphs, one of two and one-quarter lines and the second of one and one-half lines, on which great stress is laid by the defense in the case. These two paragraphs are the least legible and the most difficult to read in the instrument, but they are most important in the evaluation of the rights of the contesting parties. They do not attract attention and there is nothing about the format which would draw the reader’s eye to them. De-emphasis seems the motive rather than emphasis. More particularly, most of the printing in the body of the order appears to be 12 point block type, and easy to read. In the short paragraphs under discussion, however, the type appears to be six point script and the print is solid, that is, the lines are very close together.

The two paragraphs are:

“The front and back of this Order comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I hereby certify that no credit has been extended to me for the purchase of this motor vehicle except as appears in writing on the face of the agreement.

‘I have read the matter printed on the back hereof and agree to it as a part of this order the same as if it were printed above my signature. I certify that I am 21 years of age, or older, and hereby acknowledge receipt of a copy of this order.’

On the right side of the form, immediately below these clauses and immediately above the signature line, and in 12 point block type, the following appears:

‘CASH OR CERTIFIED CHECK ONLY ON DELIVERY.’

On the left side, just opposite and in the same style type as the two quoted clauses, but in eight point size, this statement is set out:

‘This agreement shall not become binding upon the Dealer until approved by an officer of the company.’

The two latter statements are in the interest of the dealer and obviously an effort is made to draw attention to them.

The testimony of Claus Henningsen justifies the conclusion that he did not read the two fine print paragraphs referring to the back of the purchase contract. And it is uncontradicted that no one made any reference to them, or called them to his attention. With respect to the matter appearing on the back, it is likewise uncontradicted that he did not read it and that no one called it to his attention.

The reverse side of the contract contains 8½ inches of fine print. It is not as small, however, as the two critical paragraphs described above. The page is headed ‘Conditions’ and contains ten separate paragraphs consisting of 65 lines in all. The paragraphs do not have headnotes or margin notes denoting
their particular subject, as in the case of the ‘Owner Service Certificate’ to be referred to later. In the seventh paragraph, about two-thirds of the way down the page, the warranty, which is the focal point of the case, is set forth. It is as follows:

‘7. It is expressly agreed that there are no warranties, express or implied, made by either the dealer or the manufacturer on the motor vehicle, chassis, of parts furnished hereunder except as follows.

“The manufacturer warrants each new motor vehicle (including original equipment placed thereon by the manufacturer except tires), chassis or parts manufactured by it to be free from defects in material or workmanship under normal use and service. Its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser or before such vehicle has been driven 4,000 miles, which ever event shall first occur, be returned to it with transportation charges prepaid and which its examination shall disclose to its satisfaction to have been thus defective; This warranty being expressly in lieu of any other warranties expressed or implied, and all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles. ** * ” (Emphasis ours.)

After the contract had been executed, plaintiffs were told the car had to be serviced and that it would be ready in two days. According to the dealer’s president, a number of cars were on hand at the time; they had come in from the factory about three or four weeks earlier and at least some of them, including the one selected by the Henningsens, were kept in the back of the shop for display purposes. When sold, plaintiffs’ vehicle was not ‘a serviced car, ready to go.’ The testimony shows that Chrysler Corporation sends from the factory to the dealer a ‘New Car Preparation Service Guide’ with each new automobile. The guide contains detailed instructions as to what has to be done to prepare the car for delivery. The dealer is told to ‘Use this form as a guide to inspect and prepare this new Plymouth for delivery.’ It specifies 66 separate items to be checked, tested, tightened or adjusted in the course of the servicing, but dismantling the vehicle or checking all of its internal parts is not prescribed. The guide also calls for delivery of the Owner Service Certificate with the car.

This certificate, which at least by inference is authorized by Chrysler, was in the car when released to Claus Henningsen on May 9, 1955. It was not made part of the purchase contract, nor was it shown to him prior to the consummation of that agreement. The only reference to it therein is that the dealer ‘agrees to promptly perform and fulfill the terms and conditions of the owner service policy.’ The Certificate contains a warranty entitled ‘Automobile Manufacturers Association Uniform Warranty.’ The provisions thereof are the same as those set forth on the reverse side of the purchase order, except that an additional paragraph is added by which the dealer extends that warranty to the purchaser in the same manner as if the word ‘Dealer’ appeared instead of the word ‘Manufacturer.’

The new Plymouth was turned over to the Henningsens on May 9, 1955. No proof was adduced by the dealer to show precisely what was done in the way of mechanical or road testing beyond testimony that the manufacturer’s instructions were probably followed. Mr. Henningsen drove it from the dealer’s place of business in Bloomfield to their home in Keansburg. On the trip nothing unusual appeared in the way in which it operated. Thereafter, it was used for short trips on paved streets about the town. It had no servicing and no mishaps of any kind before the event of May 19. That day, Mrs. Henningsen drove to Asbury Park. On the way down and in returning the car performed in normal fashion until the accident occurred. She was proceeding north on Route 36 in Highlands, New Jersey, at 20-22 miles per hour. The highway was paved and smooth, and contained two lanes for northbound travel. She was riding in the right-hand lane. Suddenly she heard a loud noise ‘from the bottom, by the hood.’ It ‘felt as if something cracked.’ The steering wheel spun in her hands; the car veered sharply to the right and crashed into a highway sign and a brick wall. No other vehicle was in any way involved. A bus operator driving in the left-hand lane testified that he observed plaintiffs’ car approaching in normal fashion in the opposite direction; ‘all of a sudden (it) veered at 90 degrees *** and right into this wall.’ As a result of the impact, the front of the car was so badly damaged that it was impossible to determine if any of the parts of the steering wheel mechanism or workmanship or assembly were defective or improper prior to the accident. The condition was such that the collision insurance carrier, after inspection, declared the vehicle a total loss. It had 468 miles on the speedometer at the time.

The insurance carrier’s inspector and appraiser of damaged cars, with 11 years of experience, advanced the opinion, based on the history and his examination, that something definitely went ‘wrong from the steering wheel down to the front wheels’ and that the untoward happening must have been due to mechanical defect or failure; ‘something down there had to drop off or break loose to cause the car’ to act in the manner described.

As had been indicated, the trial court felt that the proof was not sufficient to make out a prima facie case as to the negligence of either the manufacturer or the dealer. The case was given to the jury, therefore, solely on the warranty theory, with results favorable to the plaintiffs against both defendants. 

Francis, J. . . . In assessing [the disclaimer’s] significance we must keep in mind the general principle that, in the absence of fraud, one who does not choose to read a contract before signing it, cannot later relieve himself of his burdens. . . . And in applying that principle, the basic tenet of freedom
of competent parties to contract is a factor of importance. But in the framework of modern commercial life and business practices, such rules cannot be applied on a strict, doctrinal basis. . . . The traditional contract is the result of free bargaining of parties who are brought together by the play of the market, and who meet each other on a footing of approximate economic equality. In such a society there is no danger that freedom of contract will be a threat to the social order as a whole. But in present-day commercial life the standardized mass contract has appeared. It is used primarily by enterprises with strong bargaining power and position. The weaker party, in need of the goods or services, is frequently not in a position to shop around for better terms, either because the author of the standard contract has a monopoly (natural or artificial) or because all competitors use the same clauses. His contractual intention is but a subjection more or less voluntary to terms dictated by the stronger party, terms whose consequences are often understood in a vague way, if at all." Kessler, "Contracts of Adhesion—Some Thoughts About Freedom of Contract." 43 Colum. L. Rev. 629, 632 (1943); Ehrenzweig, "Adhesion Contracts in the Conflict of Laws." 53 Colum.L.Rev. 1072, 1075, 1089 (1953). Such standardized contracts have been described as those in which one predominant party will dictate its law to an undetermined multiple rather than to an individual. They are said to resemble a law rather than a meeting of the minds. Siegelman v. Cunard White Star, 221 F.2d 189, 206 (2 Cir.1955). . . .

The warranty before us is a standardized form designated for mass use. It is imposed upon the automobile consumer. He takes it or leaves it, and he must take it to buy an automobile. No bargaining is engaged in with respect to it. In fact, the dealer through whom it comes to the buyer is without authority to alter it; his function is ministerial—simply to deliver it. The form warranty is not only standard with Chrysler but, as mentioned above, it is the uniform warranty of the Automobile Manufacturers Association. Members of the Association are: General Motors, Inc., Ford, Chrysler, Studebaker-Packard, American Motors (Rambler), Willys Motors, Checker Motors Corp., and International Harvester Company. Automobile Facts and Figures (1958 Ed., Automobile Manufacturers Association) 69. Of these companies, the "Big Three" (General Motors, Ford, and Chrysler) represented 93.5% of the passenger-car production for 1958 and the independents 6.5%. Standard & Poor (Industrial Surveys, Autos, Basis Analysis, June 25, 1959) 4109. And for the same year the "Big Three" had 86.72% of the total passenger vehicle registrations. Automotive News, 1959 Almanac (Slocum Publishing Co., Inc.) P. 25.

The gross inequality of bargaining position occupied by the consumer in the automobile industry is thus apparent. There is no competition among the car makers in the area of the warranty. Where can the buyer go to negotiate for better protection? Such control and limitation of his remedies are inimical to the public welfare and, at the very least, call for great care by the courts to avoid injustice through application of strict common-law principles of freedom of contract. Because there is no competition among the motor vehicle manufacturers with respect to the scope of protection guaranteed to the buyer, there is no incentive on their part to stipulate good will in that field of public relations. Thus, there is lacking a factor existing in more competitive fields, one which tends to guarantee the safe construction of the article sold. Since all competitors operate in the same way the urge to be careful is not so pressing. See “Warranties of Kind and Quality,” 57 Yale L.J. 1389, 1400 (1948).

Although the courts, with few exceptions, have been most sensitive to problems presented by contracts resulting from gross disparity in the buyer-seller bargaining positions, they have not articulated a general principle condemning, as opposed to public policy, the imposition on the buyer of a skeleton warranty as a means of limiting the responsibility of the manufacturer. They have endeavored thus far to avoid a drastic departure from age-old tenets of freedom of contract by adopting doctrines of strict construction, and notice and knowledgeable assent by the buyer to the attempted exculpation of the seller. 1 Corbin, supra, 337; 2 Harper & James [Law of Torts], 1590; Prosser, “Warranty of Merchantable Quality,” 27 Minn.L.Rev. 117, 159 (1932). Accordingly to be found in the cases are statements that disclaimers and the consequent limitation of liability will not be given effect if "unfairly procured." . . . International Harvester Co. of America v. Bean, 159 Ky. 842, 169 S.W. 549 (Cl.App.1914); if not brought to the buyer’s attention and he was not made understandingly aware of it . . . or if not clear and explicit. . . .

The rigid scrutiny which the courts give to attempted limitations of warranties and of the liability that would normally flow from a transaction is not limited to the field of sales of goods. Clauses on baggage checks restricting the liability of common carriers for loss or damage in transit are not enforceable unless the limitation is fairly and honestly negotiated and understandingly entered into. If not called, there is no intention on the part of the carrier to show the form of a contract; it must appear also that the agreement was understandingly made. . . . The same holds true in cases of such limitations on parcel check room tickets . . . and on storage warehouse receipts . . .; on automobile parking lot or garage tickets or claim checks . . .; as to exculpatory clauses in leases releasing a landlord of apartments in a multiple dwelling house from all liability for negligence where inequality of bargaining exists, see Annotation, 175 A.L.R. 8 (1948). And the validity of release clauses in orders signed by a depositor directing a bank to stop payment of his check, exonerating the bank from liability for negligent payment, has been seriously questioned on public policy grounds in this State. . . . Elsewhere they have been declared void as opposed to public policy. . . .

It is true that the rule governing the limitation of liability cases last referred to is generally
applied in situations said to involve services of a public or semi-public nature. Typical, of course, are the
public carrier or storage or parking lot cases. Kuzmiak v. Brookchester, 33 N.J. Super 575, 111
the books have not been barren of instances of its application in private contract controversies... . .

Basically, the reason a contracting party offering services of a public or quasi-public nature has
been held to the requirements of fair dealing, and, when it attempts to limit its liability, of securing the
understanding consent of the patron or consumer, is because members of the public generally have no
other means of fulfilling the specific need represented by the contract. Having in mind the situation in
the automobile industry as detailed above, and particularly the fact that the limited warranty extended by
the manufacturers is a uniform one, there would appear to be no just reason why the principles of all of
the cases set forth should not chart the course to be taken here.

It is undisputed that the president of the dealer with whom Henningsen dealt did not specifically
call attention to the warranty on the back of the purchase order. The form and the arrangement on its
face, as described above, certainly would cause the minds of reasonable men to differ as to whether
notice of a yielding of basic rights stemming from the relationship with the manufacturer was adequately
given. The words "warranty" or "limited warranty" did not even appear in the fine print above the place
for signature, and a jury might well find that the type of print itself was such as to promote lack of
attention rather than sharp scrutiny. The inference from the facts is that Chrysler placed the method of
communicating its warranty to the purchaser in the hands of the dealer. If either one or both of them
wished to make certain that Henningsen became aware of that agreement and its purported implications,
neither the form of the document nor the method of expressing the precise nature of the obligation
intended to be assumed would have presented any difficulty.

But there is more than this. Assuming that a jury might find that the fine print referred to
reasonably served the objective of directing a buyer’s attention to the warranty on the reverse side, and,
therefore, that he should be charged with awareness of its language, can it be said that an ordinary
layman would realize what he was relinquishing in return for what he was being granted? Under the law,
breach of warranty against defective parts or workmanship which caused personal injuries would entitle a
buyer to damages even if due care were used in the manufacturing process. Because of the great
potential for harm if the vehicle was defective, that right is the most important and fundamental one
arising from the relationship. Difficulties so frequently encountered in establishing negligence in
manufacure in the ordinary case make this manifest. 2 Harper & James, supra, §§ 28.14, 28.15;
Prosser, supra, 506. Any ordinary layman of reasonable intelligence, looking at the phraseology,
might well conclude that Chrysler was agreeing to replace defective parts and perhaps replace anything
that went wrong because of defective workmanship during the first 90 days or 4,000 miles of operation,
but that he would not be entitled to a new car. It is not unreasonable to believe that the entire scheme
being conveyed was a proposed remedy for physical deficiencies in the car. In the context of this
warranty, only the abandonment of all sense of justice would permit us to hold that, as a matter of law,
the phrase "its obligation under this warranty being limited to making good at its factory any part or parts
thereof" signifies to an ordinary reasonable person that he is relinquishing any personal injury claim that
might flow from the use of a defective automobile. Such claims are nowhere mentioned. The
draftsmanship is reflective of the care and skill of the Automobile Manufacturers Association in
undertaking to avoid warranty obligations without drawing too much attention to its effort in that regard.
No one can doubt that if the will to do so were present, the ability to inform the buying public of the
intention to disclaim liability for injury claims arising from breach of warranty would present no
problem. . . .

The task of the judiciary is to administer the spirit as well as the letter of the law. On issues
such as the present one, part of that burden is to protect the ordinary man against the loss of important
rights through what, in effect, is the unilateral act of the manufacturer. The status of the automobile
industry is unique. Manufacturers are few in number and strong in bargaining position. In the matter of
warranties on the sale of their products, the Automobile Manufacturers Association has enabled them to
present a united front. From the standpoint of the purchaser, there can be no arms length negotiating on
the subject. Because his capacity for bargaining is so grossly unequal, the inexorable conclusion which
follows is that he is not permitted to bargain at all. He must take or leave the automobile on the warranty
terms dictated by the maker. He cannot turn to a competitor for better security.

Public policy is a term not easily defined. Its significance varies as the habits and needs of a
people may vary. It is not static and the field of application is an ever increasing one. A contract, or a
particular provision therein, valid in one era may be wholly opposed to the public policy of another... .
Courts keep in mind the principle that the best interests of society demand that persons should not be
unnecessarily restricted in their freedom to contract. But they do not hesitate to declare void as against
public policy contractual provisions which clearly tend to the injury of the public in some way... .

[Affirmed.]
**Procedural Basis:** Certification to New Jersey Supreme Court after jury verdict awarding damages to plaintiff in action for breach of implied warranty of merchantability.

**Facts:** On May 7, 1955, Plaintiff, Clause Henningsen, purchased a Plymouth automobile from defendant Bloomfield Motors, Inc. The purchase order, which was a printed form, contained 8 ½" of fine print on the back in 6 point type. (The motive of the dealer appears to be de-emphasis of the provisions on the back.) Plaintiff was obligated to sign said document in order to purchase the vehicle. He didn’t read it before he signed it. One of the paragraphs on the back provided, “It is expressly agreed that there are no warranties, express or implied, made by either the dealer or the manufacturer on the motor vehicle, chassis, or parts furnished hereunder except...” for a 90 day/4000 mile warranty that the vehicle is free of defects. The warranty was limited to making good any defective parts. And, it provided, “This warranty being expressly in lieu of all other warranties expressed or implied, and all other obligations or liabilities on its [the dealer’s and manufacturer’s] part...” Virtually every automobile dealer in the country utilized the same contract. Mr. Henningsen gave the vehicle to his wife, Helen Henningsen as a gift (Mrs. Henningsen was also a plaintiff in the law suit but not a party to the purchase transaction). On May 19, 1955, while Helen Henningsen was driving down a smooth paved road at about 20 miles per hour, the steering wheel suddenly spun in her hands and the car veered sharply to the right, crashing into a brick wall. The plaintiffs sued both the vehicle manufacturer and the dealer on a theory of breach of implied warranty. On appeal, the defendants asserted the language in the documents as a defense.

**Issue:** When there is a great disparity in the bargaining power of parties, is it against public policy to enforce provisions in a contract which would limit liability for the breach of implied warranty?

**Decision:** Yes. When there is great disparity in the bargaining power of parties, it is against public policy to enforce provisions in a contract which would limit liability for breach of implied warranty.

The court cannot ignore the general principle that one who does not read a contract cannot later relieve himself of its burdens. But, in the framework of modern commercial life, such rules cannot be applied strictly. The traditional contract is the result of free bargaining between parties of approximate economic equality. The warranty in this case, however, is imposed upon the automobile consumer. He takes it or leaves it. Courts are sensitive to issues where there is a disparity in bargaining power.

Courts also rigidly scrutinize any attempted limitation of warranties. This is especially true when the contracting party is offering services of a public or quasi public nature. In such cases, the stronger contracting party will be held to the requirements of fair dealing and of securing the understanding consent of the consumer.

A jury might well find that the type of print used in this contract was itself such as to promote lack of attention rather than sharp scrutiny. But, even if the plaintiff is charged with the obligation to read the back of the contract, can it be said that an ordinary layman would realize what he was relinquishing in return for what he was being granted? In the context of this warranty, only the abandonment of all sense of justice would permit us to hold that the language at issue signifies to an ordinary reasonable person that he is relinquishing any personal injury claim.

The task of the judiciary is to administer the spirit as well as the letter of the law. Part of
that burden is to protect the ordinary man against the loss of important rights. Courts do not hesitate to declare void as against public policy contractual provisions which clearly lead to injury to the public in some way. Affirmed.
Preview of a Bullet Point Brief

A Bullet Point Brief is an advanced form of briefing. It should only be used when the student has become proficient at drafting briefs in the Standard Classroom Format.

Every single element of the Standard Classroom Format brief can be found in the Bullet Point Brief.¹

In the Standard Classroom Format, each element of the brief is written out in prose. If a student is called upon in class to recite a case, the easiest thing to do is to merely read the brief. This is especially so if you are trembling! But, with time, you may become more comfortable with discussion of a case out loud, while the rest of your classmates look on hoping you will make a mistake.

You may become so confident that you do not even need to write out the brief in full. Instead, you may simply be able to write down the most important points and use your list of points as a guide to present an ad lib summary of the case.²

The foregoing is all there is to know about Bullet Point Briefs. When, and IF, you feel ready, simply recite your brief to the class from your list of important points.

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¹ Most students do not include the Procedural Basis section in a bullet brief. This is so because it can more easily be read out of the book from the original opinion.

² Most students write out the issue in full, in prose, because it is the most difficult element to recite off of the top of your head.
Henningsen v. Bloomfield Motors
Supreme Court of New Jersey
(1960)

Facts:

• Husband purchased car from dealership
• Printed contract had provisions on back in small type
• Effect of provisions was to limit liability for defective parts to replacement
• Every dealer used same contract
• Wife injured when steering wheel spun in her hands and car swerved sharply crashing into wall.
• Suit based on breach of implied warranty

Issue:

• When there is a great disparity in the bargaining power of parties, is it against public policy to enforce provisions in a contract which would limit liability for the breach of implied warranty?
• Yes
• Contracts should be the result of free bargaining
• Here, great difference in bargaining power
• Automobile dealers impose this contract on consumers
• Limitations on warranties are scrutinized
• Stronger party must demonstrate fair dealing and securing of understanding of consumer
• Against public policy to allow limitation of liability
• Affirmed
Preview of Book Briefing

When you get really, really cocky, you can stop writing out briefs altogether. [For that matter, you can stop going to class.]

Book briefing is nothing more than highlighting the important points in an opinion as you read it. You do not write out a separate brief. Almost certainly you will use a highlighter to emphasize important points as you read, regardless of the briefing method employed. Book briefing simply takes highlighting one step further.

After reading and marking all of the important points in an opinion, the book briefer goes back over the case and locates the basic elements normally used in the standard brief. For example, he or she may first look for the facts. Then, one highlights (usually with a different color of highlighter) sufficient facts to refresh one’s memory concerning all of the facts. Finally, students using this method usually mark the margins of the book to indicate which element of the brief appears in that portion of the opinion. For example, an “F” is placed in the margin to indicate that “Facts” appear in the opinion at that point.

The markings used in the margins are usually as follows:

<table>
<thead>
<tr>
<th>Marking</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>“P”</td>
<td>Procedural Basis</td>
</tr>
<tr>
<td>“F”</td>
<td>Facts</td>
</tr>
<tr>
<td>“I”</td>
<td>Issue</td>
</tr>
<tr>
<td>“R”</td>
<td>Rule</td>
</tr>
<tr>
<td>“D”</td>
<td>Decision/Rationale</td>
</tr>
</tbody>
</table>

If one uses the foregoing method of briefing, he or she must be prepared to recite a summary of the case merely by glancing over his or her notes in the casebook. If you are called upon in class to recite the rule of the case, you must quickly flip through the pages to find the “R” and then state the rule. This requires special skills and it is not for everybody. In fact, book briefing is not generally recommended. It is explained here only in the interest of being thorough [and because we know that you will do it even if we say not to].

There are many problems with using a book brief. If you attempt this method of study, you will have to learn those problems for yourself. It would be virtually impossible to articulate all such difficulties. For example, the opinion may not state all of the elements that should be in the brief. In *Henningsen v. Bloomfield Motors* the court does not state the issue. Accordingly, one cannot highlight the issue in the opinion. Thus, the book briefer will either not have an issue available or he will have to write it out in longhand. When you review our sample book-briefed case, you will note that elements of the brief are missing. Similarly, the way the court phrases a statement may be different than the way you would want to state it in class. If you do this kind of briefing, you must be prepared for such handicaps.

Everybody briefs a case differently. Do not be upset if you would have chosen different words or concepts to discuss. Also, do not be concerned if you would have highlighted different portions of the opinion. It’s all within your discretion.

**HENNINGSEN v. BLOOMFIELD MOTORS**

Supreme Court of New Jersey, 1960
Plaintiff Clause H. Henningsen purchased a Plymouth automobile, manufactured by defendant Chrysler Corporation, from defendant Bloomfield Motors, Inc. His wife, plaintiff Helen Henningsen, was injured while driving it and instituted suit against both defendants to recover damages on account of her injuries. Her husband joined in the action seeking compensation for his consequential losses. The complaint was predicated upon breach of express and implied warranties and upon negligence. At the trial the negligence counts were dismissed by the court and the cause was submitted to the jury for determination solely on the issues of implied warranty of merchantability. Verdicts were returned against both defendants and in favor of the plaintiffs. Defendants appealed and plaintiffs cross-appealed from the dismissal of their negligence claim. The matter was certified by this court prior to consideration in the Appellate Division.

The facts are not complicated, but a general outline of them is necessary to an understanding of the case.

On May 7, 1955 Mr. and Mrs. Henningsen visited the place of business of Bloomfield Motors, Inc., an authorized De Soto and Plymouth dealer, to look at a Plymouth. They wanted to buy a car and were considering a Ford or a Chevrolet as well as a Plymouth. They were shown a Plymouth which appealed to them and the purchase followed. The record indicates that Mr. Henningsen intended the car as a Mother’s Day gift to his wife. He said the intention was communicated to the dealer.

When the purchase order or contract was prepared and presented, the husband executed it alone. His wife did not join as a party.

The purchase order was a printed form of one page. On the front it contained blanks to be filled in with a description of the automobile to be sold, the various accessories to be included, and the details of the financing. The particular car selected was described as a 1955 Plymouth, Plaza ‘6’, Club Sedan. The type used in the printed parts of the form became smaller in size, different in style, and less readable toward the bottom where the line for the purchaser’s signature was placed. The smallest type on the page appears in the two paragraphs, one of two and one-quarter lines and the second of one and one-half lines, on which great stress is laid by the defense in the case. These two paragraphs are the least legible and the most difficult to read in the instrument, but they are most important in the evaluation of the rights of the contesting parties. They do not attract attention and there is nothing about the format which would draw the reader’s eye to them. De-emphasis seems the motive rather than emphasis. More particularly, most of the printing in the body of the order appears to be 12 point block type, and easy to read. In the short paragraphs under discussion, however, the type appears to be six point script and the print is solid, that is, the lines are very close together.

The two paragraphs are:

“The front and back of this Order comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I hereby certify that no credit has been extended to me for the purchase of this motor vehicle except as appears in writing on the face of the agreement.

‘I have read the matter printed on the back hereof and agree to it as a part of this order the same as if it were printed above my signature. I certify that I am 21 years of age, or older, and hereby acknowledge receipt of a copy of this order.’

On the right side of the form, immediately below these clauses and immediately above the signature line, and in 12 point block type, the following appears:

‘CASH OR CERTIFIED CHECK ONLY ON DELIVERY.’

On the left side, just opposite and in the same style type as the two quoted clauses, but in eight point size, this statement is set out:

“This agreement shall not become binding upon the Dealer until approved by an officer of the company.”

The two latter statements are in the interest of the dealer and obviously an effort is made to draw attention to them.

The testimony of Claus Henningsen justifies the conclusion that he did not read the two
The reverse side of the contract contains 8½ inches of fine print. It is not as small, however, as the two critical paragraphs described above. The page is headed ‘Conditions’ and contains ten separate paragraphs consisting of 65 lines in all. The paragraphs do not have headnotes or margin notes denoting their particular subject, as in the case of the ‘Owner Service Certificate’ to be referred to later. In the seventh paragraph, about two-thirds of the way down the page, the warranty, which is the focal point of the case, is set forth. It is as follows:

‘7. It is expressly agreed that there are no warranties, express or implied, made by either the dealer or the manufacturer on the motor vehicle, chassis, of parts furnished hereunder except as follows.

“The manufacturer warrants each new motor vehicle (including original equipment placed thereon by the manufacturer except tires), chassis or parts, manufactured by it to be free from defects in material or workmanship under normal use and service. Its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser or before such vehicle has been driven 4,000 miles, which ever event shall first occur, be returned to it with transportation charges prepaid and which its examination shall disclose to its satisfaction to have been thus defective; This warranty being expressly in lieu of all other warranties expressed or implied, and all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles. * * *’” (Emphasis ours.)

After the contract had been executed, plaintiffs were told the car had to be serviced and that it would be ready in two days. According to the dealer’s president, a number of cars were on hand at the time; they had come in from the factory about three or four weeks earlier and at least some of them, including the one selected by the Henningsens, were kept in the back of the shop for display purposes. When sold, plaintiffs’ vehicle was not ‘a serviced car, ready to go.’ The testimony shows that Chrysler Corporation sends from the factory to the dealer a ‘New Car Preparation Service Guide’ with each new automobile. The guide contains detailed instructions as to what has to be done to prepare the car for delivery. The dealer is told to ‘Use this form as a guide to inspect and prepare this new Plymouth for delivery.’ It specifies 66 separate items to be checked, tested, tightened or adjusted in the course of the servicing, but dismantling the vehicle or checking all of its internal parts is not prescribed. The guide also calls for delivery of the Owner Service Certificate with the car.

This certificate, which at least by inference is authorized by Chrysler, was in the car when released to Claus Henningsen on May 9, 1955. It was not made part of the purchase contract, nor was it shown to him prior to the consummation of that agreement. The only reference to it therein is that the dealer ‘agrees to promptly perform and fulfill the terms and conditions of the owner service policy.’ The Certificate contains a warranty entitled ‘Automobile Manufacturers Association Uniform Warranty.’ The provisions thereof are the same as those set forth on the reverse side of the purchase order, except that an additional paragraph is added by which the dealer extends that warranty to the purchaser in the same manner as if the word ‘Dealer’ appeared instead of the word ‘Manufacturer.’

The new Plymouth was turned over to the Henningsens on May 9, 1955. No proof was adduced by the dealer to show precisely what was done in the way of mechanical or road testing beyond testimony that the manufacturer’s instructions were probably followed. Mr. Henningsen drove it from the dealer’s place of business in Bloomfield to their home in Keansburg. On the trip nothing unusual appeared in the way in which it operated. Thereafter, it was used for short trips on paved streets about the town. If had no servicing and no mishaps of any kind before the event of May 19. That day, Mrs. Henningsen drove to Asbury Park. On the way down and in returning the car performed in normal fashion until the accident occurred. She was proceeding north on Route 36 in Highlands, New Jersey, at 20-22 miles per hour. The highway was paved and smooth, and contained two lanes for northbound travel. She was riding in the right-hand lane. Suddenly she heard a loud noise ‘from the bottom, by the hood.’ It ‘felt as if something cracked.’ The steering wheel spun in her hands; the car veered sharply to the right and crashed into a highway sign and a brick wall. No other vehicle was in any way involved. A bus operator driving in the left-hand lane testified that he observed plaintiffs’ car approaching in normal fashion in the opposite direction; ‘all of a sudden (it) veered at 90 degrees * * * and right into
this wall.’ As a result of the impact, the front of the car was so badly damaged that it was impossible to determine if any of the parts of the steering wheel mechanism or workmanship or assembly were defective or improper prior to the accident. The condition was such that the collision insurance carrier, after inspection, declared the vehicle a total loss. It had 468 miles on the speedometer at the time.

The insurance carrier’s inspector and appraiser of damaged cars, with 11 years of experience, advanced the opinion, based on the history and his examination, that something definitely went ‘wrong from the steering wheel down to the front wheels’ and that the untoward happening must have been due to mechanical defect or failure; ‘something down there had to drop off or break loose to cause the car’ to act in the manner described.

As had been indicated, the trial court felt that the proof was not sufficient to make out a prima facie case as to the negligence of either the manufacturer or the dealer. The case was given to the jury, therefore, solely on the warranty theory, with results favorable to the plaintiffs against both defendants.

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Francis, J. . . . In assessing [the disclaimer’s] significance we must keep in mind the general principle that, in the absence of fraud, one who does not choose to read a contract before signing it, cannot later relieve himself of his burdens. . . . And in applying that principle, the basic tenet of freedom of competent parties to contract is a factor of importance. But in the framework of modern commercial life and business practices, such rules cannot be applied on a strict, doctrinal basis. . . . The traditional contract is the result of free bargaining of parties who are brought together by the play of the market, and who meet each other on a footing of approximate economic equality. In such a society there is no danger that freedom of contract will be a threat to the social order as a whole. But in present-day commercial life the standardized mass contract has appeared. It is used primarily by enterprises with strong bargaining power and position. ‘The weaker party, in need of the goods or services, is frequently not in a position to shop around for better terms, either because the author of the standard contract has a monopoly (natural or artificial) or because all competitors use the same clauses. His contractual intention is but a subjection more or less voluntary to terms dictated by the stronger party, terms whose consequences are often understood in a vague way, if at all.”

Kessler, “Contracts of Adhesion–Some Thoughts About Freedom of Contract,” 43 Colum. L. Rev. 629, 632 (1943); Ehrenzweig, “Adhesion Contracts in the Conflict of Laws,” 53 Colum. L. Rev. 1072, 1075, 1089 (1953). Such standardized contracts have been described as those in which one predominant party will dictate its law to an undetermined multiple rather than to an individual. They are said to resemble a law rather than a meeting of the minds.


The warranty before us is a standardized form designated for mass use. It is imposed upon the automobile consumer. He takes it or leaves it, and he must take it to buy an automobile. No bargaining is engaged in with respect to it. In fact, the dealer through whom it comes to the buyer is without authority to alter it; his function is ministerial–simply to deliver it. The form warranty is not only standard with Chrysler but, as mentioned above, it is the uniform warranty of the Automobile Manufacturers Association. Members of the Association are: General Motors, Inc., Ford, Chrysler, Studebaker-Packard, American Motors (Ramblers), Willys Motors, Checker Motors Corp., and International Harvester Company. Automobile Facts and Figures (1958 Ed., Automobile Manufacturers Association) 69. Of these companies, the “Big Three” (General Motors, Ford, and Chrysler) represented 93.5% of the passenger-car production for 1958 and the independents 6.5%. Standard & Poor (Industrial Surveys, Autos, Basis Analysis, June 25, 1959) 4109. And for the same year the “Big Three” had 86.72% of the total passenger vehicle registrations. Automotive News, 1959 Almanac (Slocum Publishing Co., Inc.) P. 25.

The gross inequality of bargaining position occupied by the consumer in the automobile industry is thus apparent. There is no competition among the car makers in the area of the express warranty. Where can the buyer go to negotiate for better protection? Such control and limitation of his remedies are impalpable to the public welfare and, at the very least, call for great care by the courts to avoid injustice through application of strict common-law principles of freedom of contract. Because there is no competition among the motor vehicle manufacturers with respect to the scope of protection guaranteed to the buyer, there is no incentive on their part to stipulate good will in that field of public relations. Thus, there is lacking a factor existing in more competitive fields, one which tends to guarantee the safe construction of the article sold.
Since all competitors operate in the same way the urge to be careful is not so pressing. See “Warranties of Kind and Quality,” 57 Yale L.J. 1389, 1400 (1948).

Although the courts, with few exceptions, have been most sensitive to problems presented by contracts resulting from gross disparity in the buyer-seller bargaining positions, they have not articulated a general principle condemning, as opposed to public policy, the imposition on the buyer of a skeleton warranty as a means of limiting the responsibility of the manufacturer. They have endeavored thus far to avoid a drastic departure from age-old tenets of freedom of contract by adopting doctrines of strict construction, and notice and knowledgeable assent by the buyer to the attempted exculpation of the seller. 1 Corbin, supra, 337; 2 Harper & James [Law of Torts], 1590; Prosser, “Warranty of Merchantable Quality,” 27 Minn.L.Rev. 117, 159 (1932). Accordingly to be found in the cases are statements that disclaimers and the consequent limitation of liability will not be given effect if “unfairly procured.” . . . International Harvester Co. of America v. Bean, 159 Ky. 842, 169 S.W. 549 (Ct.App.1914); if not brought to the buyer’s attention and he was not made understandingly aware of it . . . or if not clear and explicit. . . .

The rigid scrutiny which the courts give to attempted limitations of warranties and of the liability that would normally flow from a transaction is not limited to the field of sales of goods. Clauses on baggage checks restricting the liability of common carriers for loss or damage in transit are not enforceable unless the limitation is fairly and honestly negotiated and understandingly entered into. If not called specifically to the patron’s attention, it is not binding. It is not enough merely to show the form of a contract; it must appear also that the agreement was understandingly made. . . . The same holds true in cases of such limitations on parcel check room tickets . . . and on storage warehouse receipts . . . on automobile parking lot or garage tickets or claim checks . . . as to exculpatory clauses in leases releasing a landlord of apartments in a multiple dwelling house from all liability for negligence where inequality of bargaining exists, see Annotation, 175 A.L.R. 8 (1948). And the validity of release clauses in orders signed by a depositor directing a bank to stop payment of his check, exonerating the bank from liability for negligent payment, has been seriously questioned on public policy grounds in this State. . . . Elsewhere they have been declared void as opposed to public policy. . . .

It is true that the rule governing the limitation of liability cases last referred to is generally applied in situations said to involve services of a public or semi-public nature. Typical, of course, are the public carrier or storage or parking lot cases. Kuzmiak v. Brookchester, 33 N.J. Super 575, 111 A.2d 425 (App.Div.1954); Annotation, supra, 175 A.L.R. at pp. 14-17. But in recent times the books have not been barren of instances of its application in private contract controversies. . . .

Basically, the reason a contracting party offering services of a public or quasi-public nature has been held to the requirements of fair dealing, and, when it attempts to limit its liability, of securing the understanding consent of the patron or consumer, is because members of the public generally have no other means of fulfilling the specific need represented by the contract. Having in mind the situation in the automobile industry as detailed above, and particularly the fact that the limited warranty extended by the manufacturers is a uniform one, there would appear to be no just reason why the principles of all of the cases set forth should not chart the course to be taken here.

It is undisputed that the president of the dealer with whom Henningsen dealt did not specifically call attention to the warranty on the back of the purchase order. The form and the arrangement on its face, as described above, certainly would cause the minds of reasonable men to differ as to whether notice of a yielding of basic rights stemming from the relationship with the manufacturer was adequately given. The words “warranty” or “limited warranty” did not even appear in the fine print above the place for signature, and a jury might well find that the type of print itself was such as to promote lack of attention rather than sharp scrutiny. The inference from the facts is that Chrysler placed the method of communicating its warranty to the purchaser in the hands of the dealer. If either one or both of them wished to make certain that Henningsen became aware of that agreement and its purported implications, neither the form of the document nor the method of expressing the precise nature of the obligation intended to be assumed would have presented any difficulty.

But there is more than this. Assuming that a jury might find that the fine print referred to reasonably served the objective of directing a buyer’s attention to the warranty on the reverse
side, and, therefore, that he should be charged with awareness of its language, can it be said that an ordinary layman would realize what he was relinquishing in return for what he was being granted? Under the law, breach of warranty against defective parts or workmanship which caused personal injuries would entitle a buyer to damages even if due care were used in the manufacturing process. Because of the great potential for harm if the vehicle was defective, that right is the most important and fundamental one arising from the relationship. Difficulties so frequently encountered in establishing negligence in manufacture in the ordinary case make this manifest. 2 Harper & James, supra, §§ 28.14, 28.15; Prosser, supra, 506. Any ordinary layman of reasonable intelligence, looking at the phraseology, might well conclude that Chrysler was agreeing to replace defective parts and perhaps replace anything that went wrong because of defective workmanship during the first 90 days or 4,000 miles of operation, but that he would not be entitled to a new car. It is not unreasonable to believe that the entire scheme being conveyed was a proposed remedy for physical deficiencies in the car. In the context of this warranty, only the abandonment of all sense of justice would permit us to hold that, as a matter of law, the phrase “its obligation under this warranty being limited to making good at its factory any part or parts thereof” signifies to an ordinary reasonable person that he is relinquishing any personal injury claim that might flow from the use of a defective automobile. Such claims are nowhere mentioned. The draftsmanship is reflective of the care and skill of the Automobile Manufacturers Association in undertaking to avoid warranty obligations without drawing too much attention to its effort in that regard. No one can doubt that if the will to do so were present, the ability to inform the buying public of the intention to disclaim liability for injury claims arising from breach of warranty would present no problem.

The task of the judiciary is to administer the spirit as well as the letter of the law. On issues such as the present one, part of that burden is to protect the ordinary man against the loss of important rights through what, in effect, is the unilateral act of the manufacturer. The status of the automobile industry is unique. Manufacturers are few in number and strong in bargaining position. In the matter of warranties on the sale of their products, the Automobile Manufacturers Association has enabled them to present a united front. From the standpoint of the purchaser, there can be no arms length negotiating on the subject. Because his capacity for bargaining is so grossly unequal, the inexorable conclusion which follows is that he is not permitted to bargain at all. He must take or leave the automobile on the warranty terms dictated by the maker. He cannot turn to a competitor for better security.

Public policy is a term not easily defined. Its significance varies as the habits and needs of a people may vary. It is not static and the field of application is an ever increasing one. A contract, or a particular provision therein, valid in one era may be wholly opposed to the public policy of another. . . . Courts keep in mind the principle that the best interests of society demand that persons should not be unnecessarily restricted in their freedom to contract. But they do not hesitate to declare void as against public policy contractual provisions which clearly tend to the injury of the public in some way.

[Affirmed.]
CONCLUSION

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4. The briefs are written with YOU in mind. In our briefs, we try to be entertaining (something like we attempted with this article). They are available to you in computer format. We introduce you to difficult legal topics in the beginning of each chapter with our perspective section. We provide you with an organizational outline which demonstrates the relationship of each of the major cases to the course. Generally, we try to make the study of law as easy and stressless as possible. Try one, you’ll like it!

Now, we set you free to encounter and enjoy the world of our legal system. Few experiences in life will be as challenging as law school. We hope that this article has assisted you with your first challenge, “How To Brief A Case.”