

(2020SP1-FSMA-6095-02) International Finance Law & Regulation

[Home](#) / [My courses](#) / [\(2020SP1-FSMA-6095-02\) International Finance Law &...](#) / [Module 2](#) / [Issues to Consider and How to Brief A Case](#)

Administration

> [Course administration](#)

My courses

[\(2020SP1-FSMA-6095-02\) International Finance Law & Regulation](#)

[\(2020SP1-FSMA-6080-01\) International Accounting](#)

Navigation

> [Home](#)

[Dashboard](#)

> [Site pages](#)

> [My courses](#)

> [\(2020SP1-FSMA-6095-02\) International Finance Law &...](#)

> [Participants](#)

[Grades](#)

> [International Financial Law And Regulation](#)

> [Course Information](#)

> [Module 1](#)

> [Module 2](#)

[Overview](#)

[Issues to Consider and How to Brief A Case](#)

[Readings](#)

[M2A1: Case Brief](#)

[M2A2: Analyses Of Articles](#)

[M2D1: Discussion](#)

> [Module 3](#)

[LEARNscape Media Gallery](#)

> [\(2020SP1-FSMA-6080-01\) International Accounting](#)

[My LEARNscape Media](#)

Issues to Consider and How to Brief A Case

Issues to Consider in this Module pertain to Financial Market Regulations. Among the most salient issues are what elements and factors are considered in developing and enacting these regulations? Which bodies, institutions or individuals play major roles in developing, enacting and implementing these regulations? What are the recourses available to individuals, entities, organizations and corporations subject to these regulations, be it in terms of ability to appeal what is perceived as a wrongful action by a given party toward another, or in any other situation where a dispute arises, or any other related impasse?

How to Brief a Case

A case can be analyzed in many different ways, however in my opinion the best approach is the approach, which is utilized in law school and generally by attorneys. Remember that the key word here is "brief". Therefore a case brief should not typically exceed one page, and this should not be too difficult to do if the focus is clear and needless verbiage that does not permeate the "brief". In turn this will help the reader better understand and navigate the case and the issue(s) emerging therefrom. A case brief should thus consist of the following 4 (or 5) components:

i) Relevant Facts

This component should consist of a a short paragraph or a few sentences that encapsulate the essence of the facts. In other words what is the story behind which led to the litigation/case at issue. Needless factoids should be omitted if they fail to bring clarity or additional "relevant" information to the reader, or more precisely the court (judge and/or jury).

ii) Issue(s)

Typically a given case will have one issue in dispute. However there are situations that may involve more than one issue in contention. The issue should be phrased in the form a of a question(s). For example, "is the motorist liable for striking the pedestrian?....." (given the facts at hand)

iii) Holding (or ruling)

The holding answers the issue(s) and/or question(s) raised in the Issue component. Typically this constitutes a very brief answer. In its minimalist incarnation it can be as succinct as Yes or No.

iv) Reasoning

This is the place where you put it all together by applying the applicable law to the relevant facts and analyze and explain said holding. In other words why did the court rule as it did?

v) Dissenting opinion(s)

Many cases and some that you will encounter in the Legal Environment textbook will have dissenting opinions, particularly if they emanate from the United States Supreme court. These opinions can be very significant in making you better understand the case or at least examine the issue(s) from a slightly different angle or perspective. In many cases these dissenting opinions have been utilized in lower court cases (i.e. U.S. Appellate courts or Circuit courts) where a case may have been similar but not exactly the same as the former case (the assumption under our legal system, at least the theory, is that no two cases are exactly the same). You'll also find that in the cases presented in the aforementioned primary textbook, more often than not there will be a follow up section at the end of each case that challenges the holding(s) of the given case. This is meant to serve as a dissenting opinion where none are available and to make you think more in-depth about the case at a hand.

Please note that I'm not making (v) mandatory for your case briefs. Nonetheless it is a worthwhile exercise if you wish tackle it.

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[◀ Overview](#)

Jump to...

[Readings ▶](#)

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2020SP1-FSMA-6095-02

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