PEPPERDINE UNIVERSITY SCHOOL OF LAW
LAUNCH WEEK 2015

GROUP 1 - PROF. POPOVICH'S CLASSES ON CASE BRIEFING

SECOND CLASS MEETING MATERIAL

I. Introduction – Class Session Two

Hello again. I sincerely hope that you found our first class session to be helpful and, on the broader matter of "Launch Week" events, that you are enjoying your introduction to the Pepperdine School of Law experience. The transition to "law school student," both during this orientation week and in the beginning of your fall semester classes, may, at times, leave you feeling a bit overwhelmed. We also hope that "excitement" is a component of this experience, but rest assured that it is normal if some sense of anxiety creeps in at times. As your well-being is always paramount to me, please do not let our class sessions be the source of added stress. Rest assured that the exceptionally talented individuals who designed and implemented your Launch Week activities (no, I'm not including me – I, like you, am more of a participant) also have your best interests at the forefront of everything they do.

Of course, you are always most welcome to talk with me about anything; our case briefing class sessions, other matters addressed during Launch Week, questions about things once school begins, and any other matters (school or personal) that may be on your mind. Each of you will have a faculty mentor and he or she can be the source of invaluable information. While I may not be assigned as your mentor, it is long standing Pepperdine tradition that you should feel free to approach anyone here at school (and that includes me). Please do not hesitate to stop by my office or contact me via e-mail (robert.popovich@pepperdine.edu), office phone (310-506-4620), or my personal cell/mobile phone (310-266-9656, text or voice).

Again, have fun and don't stress,

Professor Bob Popovich

II. Structure of This Second Class Session

As in our first class session, we will continue our exploration of how cases are utilized in a typical law school course and how your case briefs are an integral part thereof. The format is also similar to our first class session. We shall begin with more discussion about case briefing (referencing the additional pertinent reading material assigned for this class), then move on to a short discussion of the substantive background material, and then on to the case.

We cover only one case in this second class session and, as you'll see, it is a bit more "involved" than those in our first class (and it is a longer case – see below). Deciphering this case will require that we add to our body of background information of applicable law. The

overall theme of the legal subject matter remains in the Community Property arena.

A few bits of information included in the materials for our first class session bear repeating (sorry for the duplicative, extra reading). Because the material covered in our simulated class is derived from an upper-division class, and the cases that we will be discussing are typically covered well into the semester of such class, please do not be alarmed if the subject seems a bit confusing, or that there are a lot of parts necessary to make our discussion of these cases meaningful. This is **not** designed to scare you off, cause you to suffer, or make you wonder why you chose to go to law school. You are **not** expected to understand all of the material that we will cover in our two "case briefing" class sessions. Also repetitive from our first class session materials is that there are no grades for our two class sessions, and participation, or lack thereof, will have absolutely no impact on your first-year experience or what I, or others, may think of you or your abilities. So relax and enjoy the pressure-free learning experience.

III. Now for the Substantive Material for Our Second Class Session

In our first class session, we briefly discussed the purpose of using cases in class as an instructional tool and that cases come in all shapes and sizes. It bears repeating that professors will have varying styles as to how cases are utilized in class as well as varying methods of extracting the necessary legal concepts from cases. We also mentioned that there are variations among professors and classes as to expectations in what your role in class will be vis-à-vis case briefing.

Please remember that becoming proficient in briefing cases may take some time and, because of varying approaches with different professors, your approach to, and method of, case briefing may be different from class to class. While flexibility in your case briefing is important and there is really not "one way" to brief a case, some guidelines or examples may be helpful. We already know the basic concepts – we are synthesizing the case in, roughly, some outline form with the general goal of extracting its critical components (those that will help you see the law, understand the law, be able to apply the law to differing fact patterns such as on exams, etc.). We need to spot issues raised by the case as well as the applicable law (the "rules"). We know that the analysis component (how the court's opinion analyzes the facts with respect to the given law or how facts are being applied to the particular law) is a particularly important component of a case brief.

Again, please recognize that there is no "one way" or absolute script on how to brief a case. Nonetheless, this set of materials contains two items about case briefing that you may find helpful (I'd suggest using them as a guide as opposed to absolute requirements). Included in the Appendix immediately following the assigned case are the following:

1. An Online Article: ***"IRAC," "How to Brief a Case," and other excerpts*** from LawNerds.com.
2. A Chart: ***"Ten (10) Typical Components of a First Year Case Brief"***

A. Substantive Law and Applicable Statutes – Background Information of Legal Concepts Related to Our Case.

The case that follows (Estate of Hafner) is, as are the cases in our first class together, covered in my upper-division community property course. The material for our first class session included the basic components of California's community property system of marital property rights (basically, who gets what in the event of a divorce or death of one of the parties). To properly digest Estate of Hafner, we will build on this base of background material and add a few additional community property concepts as well as some very basic "wills and trusts" concepts.

Sadly, every marriage in California (and elsewhere) ends. It ends either by divorce (a dissolution of the marriage) or by death. It is at either of these two "end" dates that one confronts the issue of "who gets what?" In Estate of Hafner, as it was with our earlier cases, this issue is front and center.

Community Property Course Concepts (some items repeated from 1st class)

As we saw in our first class, from a marital property standpoint, California is among a handful of states that have what is known as a "community property" system. Other states' marital property systems are often referred to as "common law" systems (derived from old English law and not "common law" in the sense that they are case-derived law). Marital property systems determine the ownership of various types of property between a husband and a wife (or spousal equivalents such as same-sex spouses and domestic partners). The classification of property as to "which spouse owns what" becomes particularly important in two instances: when a couple seeks a dissolution of their marriage (a divorce) and when one spouse dies.

The community property system treats a husband and wife (or spousal equivalent) as sort of a financial partnership. The basic tenet of community property systems is that each spouse is contributing to the greater good or betterment of the marriage, but not all such efforts are rewarded with financial remuneration. This core element of the community property system creates what is the most commonly known feature of the community property system: the earnings and accretions to wealth, during marriage, of each spouse are owned equally by both spouses.

This gives rise to a fundamental California community property law – that all property acquired by a husband or a wife during their marriage is "community property." There are exceptions to this general rule, but the law is that any property acquired (anywhere) by either spouse during the marriage is defined as community property. Property labeled as "community property" is owned, during marriage, one-half (1/2), or equally, by each spouse. The pertinent California statute is as follows (this was included in the materials for our first class session):

California Family Code Section 760. "Community property" defined

> Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.

In our first class together, we explored the "presumption" nature of what appears to be merely a definition of community property. We also saw that California law provides for "separate property" which, unlike community property, is owned 100% by the spouse whose property it is. How does property obtain the label as "separate?" There are a few ways, but one common example is where a spouse has property before his or her marriage. When he or she gets married, property brought into the marriage is the separate property of that spouse. Absent some affirmative action on the part of that spouse, such property remains that spouse's separate property throughout the marriage. The pertinent California statute is as follows (this was included in the materials for our first class session):

California Family Code Section 770. Separate property of married person

(a) Separate property of a married person includes all of the following:
(1) All property owned by the person before marriage.
(2) All property acquired by the person after marriage by gift, bequest, devise, or descent.
(3) The rents, issues, and profits of the property described in this section.
. . .

New for our second class session is another way to obtain a separate property classification in a community property state like California. This is a situation where the couple is still married, but the couple has physically separated and no longer has the intent to resume a normal marital relationship. A spouse's earnings and other accretions of wealth during this period after separation is that spouse's "separate property" notwithstanding that he or she is still married (and, technically, it was acquired during the marriage which would give rise to a community property presumption, but this overrides such presumption). The pertinent California statute is as follows:

California Family Code Section 771. Earnings and accumulations during period of separation

(a) The earnings and accumulations of a spouse, . . . while living separate and apart from the other spouse, are the separate property of the spouse. . . .

Up to this point, we have been talking about a valid, legal California marriage (heterosexual or same-sex). While not at issue in our case, the exact same California community property system also applies to validly registered California Domestic Partnerships. For our case, we now must ask the question of whether the California community property system of property ownership rights applies to persons other than legally married couples or valid domestic partners. The answer is **yes**. The California community property system may also apply to individuals who are referred to as "putative" spouses (or putative domestic partners).

A party who has a reasonable, good faith belief that she or he is legally married (or in a valid domestic partnership) but, in fact, is not, is deemed to be a "putative" spouse (or putative domestic partner). Because a putative relationship is not an actual legal marriage (or a valid domestic partnership), we do not have legal spouses (or partners) involved. Therefore, a putative

relationship (or putative marriage as it is sometimes known) cannot give rise to true community property interests. However, California law provides some relief in the form of something called "quasi-marital" property. ***Quasi-marital property*** is property that would have been community property had the putative spouses been actual legally married spouses (or legal domestic partners). For reference purposes, the applicable law is California Family Code §2251 (formerly California Civil Code §4452).

Quasi-marital property is, for all intents and purposes, treated the same way as true community property with respect to its ownership by each putative spouse, its acquisition and, as discussed below, its disposition upon death.

Wills and Trusts Course Concepts

For a meaningful analysis of Estate of Hafner, we also must examine a few core "wills" concepts (these are covered briefly in my Community Property course and, more extensively, in my Wills & Trusts course). A person dies either "testate" (with a valid will or other valid testamentary dispositive instrument) or "intestate" (without a valid will or other valid testamentary dispositive instrument).

If a person dies *testate*, he or she can "devise" (will away, give, etc.) his or her one-half of community property (or quasi-marital property) to anyone. Irrespective of to whom the deceased spouse devises (bequeaths or wills to) his or her one-half of the property, the surviving spouse retains her or his one-half ownership interest in community property (or quasi-marital property in the case of a putative spouse). With respect to a decedent's separate property, he or she can devise 100% of it to anyone. The surviving spouse (or putative spouse) has no proprietary or automatic vested interest in the deceased spouse's separate property.

If a person dies *intestate* (without a valid will or other valid testamentary dispositive instrument), state statutes step into the picture and direct to whom the decedent's property goes. These statutory laws are more commonly known as the laws of "intestate succession." While this can be a very complex area of the law, we need only know the basics for deciphering our case. For intestate succession, the law as to "what goes where" varies depending on whether the decedent's property is community property (including quasi-marital property), or the decedent's separate property. The very basic distribution rules for each, pursuant to California Probate Code sections for intestate succession (those applicable for our case), are as follows:

> ***Community Property (and quasi-marital property):*** the decedent's one-half interest in community (or quasi-marital) property passes to the surviving spouse (or putative spouse). Remember, the surviving spouse (or putative spouse) already owns a one-half interest in community (or quasi-marital) property. The result here is that the surviving spouse (or putative spouse) ends up with both halves, or 100%, of the couple's community (or quasi-marital) property.
>
> ***Separate Property:*** distribution of the decedent's separate property depends on the number of the decedent's children. If the decedent has only one child (and a surviving

spouse or putative spouse), the decedent's separate property is split *one-half* to the surviving spouse (or putative spouse), and *one-half* to the decedent's child. If the decedent dies with two or more children (and a surviving spouse or putative spouse), *one-third* of the decedent's separate property goes to the surviving spouse (or putative spouse), and *two-thirds* of such property goes, in the aggregate, to the decedent's children (divided equally among them).

So there you have it – phew! – the statutory basis or foundation of laws/rules that you will need to make sense of Estate of Hafner. Now, on to the case.

The Case Begins on the Next Page

B. The Case: Estate of Hafner

Prelude: As with our last set of cases, and most of those in your course casebooks, the following case is in an abridged format. The actual entire case is approximately thirty (30) pages so shaving it down to about ten pages means that a fair amount of material (not applicable to our issue) was excised. The length of cases in your class will vary dramatically, from a page or two to well in excess of fifty pages (Constitutional Law casebooks are notorious for having some very long cases). While this abridged version of the case is not abnormally long, it is long enough to provide you with the opportunity to sift through, and separate, that material which is particularly relevant and that which may be surplusage.

ESTATE OF HAFNER
California District Court of Appeals
184 Cal.App.3d, 229 Cal. Rptr. 676

DANIELSON, Associate Justice.

* * *

FACTUAL BACKGROUND AND PROCEEDINGS BELOW

Joan Hafner (Joan) and the decedent Charles J. Hafner (Charles) were married on June 12, 1954, in the State of New York; it was the first marriage for each of them. Following their marriage they took up residence in College Point, New York. Joan has continued to live in or near College Point ever since. The marriage between Joan and Charles produced three daughters, all of whom are now living: Catherine Kotsay, born December 25, 1955; Lillian Mayorga, born November 18, 1956; and Dorothy Hafner, born November 16, 1957.

In February or March of 1956 Joan learned that she was pregnant with her second child and told Charles. In April or May of 1956 Charles left Joan, without prior notice and without letting her know where he would be. At that time their first child, Catherine, was sick and Joan moved back to her parents, who supported her; she received no support from Charles.

Joan and Charles were reunited briefly in early 1957. Charles left Joan for the last time in February 1957. Joan, then pregnant with their third child, encountered Charles on the street in New York in May 1957. He told her, "I hear you are going to have another baby", and asked her whether she would like to go to California. Joan replied, "What guarantees would I have that you won't leave me pregnant again?" Charles replied, "There's no guarantees."

In 1956 and 1958, Joan filed support proceedings against Charles in the New York family court. In 1956, she obtained a $12 per week child support order and in 1958 she obtained a similar order for $20 per week. Charles made four support payments in 1958 but never made any other payments. In 1958, Joan consulted an attorney in New York on the support matters, but, because of the expense required to locate Charles in California, she did not pursue the matter. In 1961, Joan abandoned any further efforts to obtain support warrants in the New York family court because such efforts caused her to lose time on her job.

Joan last saw Charles in the New York family court in 1958 when he was brought before the court on a support warrant. Shortly after that appearance, an acquaintance told Joan that Charles

had gone to California. From 1958 until his death in 1982, Joan and Charles never saw or communicated with each other again. Joan knew that Charles was in California but did not know where in California.

Beginning in 1961, and continuously thereafter, Joan considered her marriage to Charles for all practicable purposes to have ended and that they would never reconcile or even see each other again.

Except for short intervals to have their babies, Joan was employed at all times following her marriage to Charles, and was so employed at the time of the trial below. She reared the three daughters of herself and decedent.

In August, 1953, shortly after graduating from high school, Joan commenced working at a magazine company and continued until August, 1955, when she left because she was pregnant with her first daughter. In April, 1957, she went to work on the assembly line of a rubber company, on a machine putting snaps on baby pants. Except for a three-month lay-off to have her third baby she stayed on that machine for about 12 years, when the company moved away. She started at the minimum wage and later became a piece worker. After two weeks of unemployment she went to work for a glove manufacturing company, starting as an order picker, filling orders, and later as a stock supervisor, making sure that the orders were picked and sent out. She was still so employed at the time of the trial of the within action and had then been working at the glove factory for 14 and a half years.

Joan never sought a divorce from Charles; it is unclear whether she did not seek a divorce because of religious convictions, the lack of financial resources, or a lack of interest. At no time from their marriage in 1954 until his death on December 25, 1982, did Charles ever file proceedings to dissolve his marriage to Joan. Their marriage was still in full force and effect at the time of Charles' death.

Respondent Helen L. Hafner (Helen) met Charles in 1962 when he was a patron at a beer bar where she was working as a barmaid. Helen had separated from her second husband, Eldon Pomeroy, in November, 1961.

Charles told Helen that he had divorced his wife, Joan, in New York on charges of adultery, that he had three children of that marriage with Joan, and that he had given up an interest in a house in lieu of child support. Charles further stated that the divorce records had been destroyed in a fire in New York. Helen, in good faith, relied on these representations and believed them to be true continuously thereafter; she had no actual knowledge or reasonable grounds to believe otherwise.

In July 1962, Helen and Charles went to Tijuana, Mexico, to enable Helen to obtain a divorce from Pomeroy and to participate in a marriage ceremony with Charles. Both of those objectives were accomplished. Helen, in good faith, believed that both the divorce and marriage were valid. Following their return from Tijuana in 1962, Helen and Charles lived as husband and wife.

Helen's second husband, Pomeroy, was killed in an accident on June 21, 1963. In June 1963, Helen consulted an attorney and was advised that her Mexican divorce from Pomeroy was invalid in California. Following Pomeroy's death Helen and Charles went to Las Vegas, Nevada, and participated in a marriage ceremony. After that marriage ceremony, on October 14, 1963, Helen and Charles returned to the Los Angeles area where they lived and held themselves out as husband and wife until Charles' death. They had one child, Kimberly Hafner, born December 10,

1964.

On September 27, 1973, Charles was seriously injured in an automobile accident which left him with permanent physical disabilities and brain damage that rendered him incapable of employment. During the nine months in the hospital and his subsequent recovery period, Helen faithfully attended to his needs as his wife and continued to do so for some nine years until his death.

Charles and Helen accumulated approximately $69,000 in hospital and doctor bills as a result of the accident. Those bills were not paid until Charles' personal injury action was settled for $900,000, in 1975, which netted decedent $600,000 after attorney's fees. Helen and her attorney, Charles Weldon, were appointed as Charles' co-conservators in 1975. The personal injury settlement was placed in conservatorship accounts and administered under court supervision. The conservatorship assets were subsequently transferred to Charles' probate administrator following Charles' death.

Charles Hafner died intestate [without a will] on December 25, 1982, leaving an estate appraised at $416,472.40; his entire probate estate consists of the remainder of the proceeds of his personal injury settlement.

* * *

Helen filed a petition for determination of entitlement to estate, claiming to be the surviving wife of Charles and seeking to have the probate court determine the persons entitled to share in the distribution of Charles' estate.

Appellants (Joan and the three daughters) filed a response to the petition and a statement of interest, asserting their respective claims to a share of Charles' estate, as his surviving spouse and children, pursuant to section 221 [then CA Probate Code section for intestate distribution of separate property].

Kimberly Hafner, a child of Charles, also filed a statement of interest in the estate.

Appellants claimed that they, together with Kimberly, should succeed to Charles' entire estate under section 221 [then CA Probate Code section for intestate distribution of separate property], and that even if Helen were found to be a good faith putative spouse the court should, under equitable principles, divide the estate among them.

* * *

Helen's petition came on for a nonjury trial on January 12, 1984. Following the conclusion of the trial, the court rendered its statement of decision, on February 1, 1984, in which it concluded that Helen had a legal right to succeed to Charles' entire estate as his surviving spouse under Probate Code section 201 [then CA Probate Code section for intestate distribution of community/quasi-marital property]. The court also concluded that Helen was Charles' good faith putative spouse and that it would be inequitable to deny her Charles' entire estate.

On February 27, 1984, the court made and entered its judgment determining entitlement to estate distribution . . . . Appellants and Kimberly Hafner filed timely notices of appeal from that judgment.

CONTENTIONS

Appellants contend that (1) the trial court erred in awarding the entire estate to the putative

spouse, Helen, in the absence of an estoppel against the wife, Joan, and Charles' children; (2) the trial court improperly applied equities so as to disinherit the wife and children of the decedent in favor of his putative spouse . . .

DISCUSSION

* * *

The Status of the Parties

Joan Hafner was, at all times from June 12, 1954, until the death of Charles, the wife (spouse) of the decedent, Charles Hafner. The trial court properly found that Joan and Charles were married, each for the first time, on June 12, 1954, and that neither had ever taken any steps to dissolve their marriage.

* * *

Helen was the putative spouse (citation omitted) of Charles from October 14, 1963, until his death.

Catherine Kotsay, Lillian Mayorga and Dorothy Hafner, the three daughters of Joan and Charles, and Kimberly Hafner, the daughter of Helen and Charles, were all children of decedent Charles Hafner.

The Character of the Property

We must view the character of the property in Charles' intestate estate from the perspectives of the surviving wife and the surviving putative spouse.

(a) From the Perspective of Joan

As to Joan, the entire probate estate was the separate property of Charles, the decedent.

Charles was a married person, married to Joan, and was living separate from her at the time the money was received by him in 1975, pursuant to the settlement of his claim for damages for personal injury.

At the time Charles' personal injury settlement money was received, in 1975, [California law for character of personal injury awards] provided, in pertinent part: "(a) All money ... received by a married person ... for damages for personal injuries ... pursuant to an agreement for the settlement or compromise of a claim for such damages is the separate property of the injured person if such money ... is received ...: [¶] ... (2) While either spouse, if he or she is the injured person, is living separate from the other spouse."

[Above mentioned California law] is consonant with Civil Code section 5118 [now CA Family Code §771] which provides, in pertinent part: "The earnings and accumulations of a spouse ... while living separate and apart from the other spouse, are the separate property of the spouse."

(b) From the Perspective of Helen

As to Helen, the entire probate estate is quasi-marital property.

The trial court found that Helen was the putative spouse of Charles. At the time of the events of this case, former section 4452 of the Civil Code, a part of The Family Law Act enacted in 1969 [now CA Family Code §2251], provided, in pertinent part: "Whenever a determination is

made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall declare such party or parties to have the status of a putative spouse, and, if the division of property is in issue, shall divide, in accordance with Section 4800, that property acquired during the union which would have been community property or quasi-community property if the union had not been void or voidable. Such property shall be termed 'quasi-marital property.' "[1]

Principles Applicable to Intestate Succession to Quasi-Marital Property of a Void Marriage

It is settled that in the case of a void or voidable marriage, as between a putative spouse and the other spouse, or as between the surviving putative spouse and the heirs of his or her decedent other than the decedent's surviving legal spouse, the putative spouse is entitled to share in the property accumulated by the partners during their void or voidable marriage. It is also settled that the share to which the putative spouse is entitled is the same share of the quasi-marital property as the spouse would receive as an actual and legal spouse if there had been a valid marriage, i.e., it shall be divided equally between the parties. (Citations omitted).

The proportionate contribution of each of the parties to the property acquired during the void or voidable union is immaterial in this state because it is divided as community property would be divided upon the dissolution of a valid marriage. (*Vallera v. Vallera* (1943) 21 Cal.2d 681, 683–684, 134 P.2d 761.)

These principles were established by numerous judicial decisions, and were made a part of our positive law by the enactment, in 1969, of Civil Code section 4452 [now CA Family Code §2251], a part of the Family Law Act, effective January 1, 1970. There is no reason to believe that the Legislature, by that enactment, intended to change those principles. (Citations omitted).

The Trial Court Erred in Awarding the Entire Intestate Estate to the Putative Spouse

We have examined the cases cited by the trial court as authorities for its decision and find them wanting. None of the cited cases is authority for a decision on the facts and issues which were before the trial court in the case at bench.

The principle issue before the court in this case is, as between the surviving wife and children of the decedent, on the one hand, and the decedent's good faith putative spouse under his bigamous marriage, on the other, who is entitled to succeed to his intestate estate?

The trial court found and concluded that under the circumstances of this case, Helen had a legal right to succeed to the entire estate under [CA Probate law for intestate distribution of community/quasi-marital property] . . .

* * *

[1] There can be no community property in the absence of a valid marriage. (Citations omitted). The putative marriage cases decided prior to the enactment of the Family Law Act have struggled with the term to be applied to property which cannot be "community property" since there is no valid marriage but which, otherwise, has all of the incidents of community property. In Civil Code section 4452 [now CA Family Code §2251], our Legislature has resolved this problem by directing that such property be termed "quasi-marital property." It is with considerable relief that we use that term here.

As Between The Surviving Spouse And Children Of A Decedent And The Decedent's Putative Spouse, The Surviving Spouse And Children Are Entitled To Succeed To The Separate Property In An Intestate Decedent's Estate

We bear in mind that the issue presented in the case at bench is the proper resolution of the competing interests of the legal wife of a decedent, and his putative wife, for succession to his intestate estate.

In *Estate of Leslie* (1984) 37 Cal.3d 186, 207 Cal.Rptr. 561, 689 P.2d 133, our Supreme Court, in deciding a contest between the surviving putative spouse of an intestate decedent and the children of that decedent by a prior marriage, observed that "[t]here may be cases in which two or more surviving spouses each claim an intestate share of the decedent's separate property. However, that scenario is not before this court and need not be resolved at this time." (*Id.*, at p. 197, fn. 11, 207 Cal.Rptr. 561, 689 P.2d 133.) The case at bench is such a case, and we find substantial public policy and precedent to establish and protect the rights of the legal spouse, and the children of the legal community, in the estate of their spouse and parent.

We first note that marriage and the family are highly favored by the public policy of the State of California, as evidenced by statute and by countless decisions of our courts.

In decisions resolving competing claims of legal spouses of decedents and the decedents' putative spouses, as to the right to succeed to the decedent's estate, our courts have awarded one-half of the quasi-marital property to the putative spouse and the rest of the property to the decedent's legal heirs or as disposed of by decedent's will.

In *Estate of Ricci* (1962) 201 Cal.App.2d 146, 19 Cal.Rptr. 739, the contest was between Viola, the first and legal wife of Henry, and his putative spouse, Antoinetta. At issue was heirship to the property of decedent which had been acquired as the result of the joint efforts of decedent and Antoinetta during the years of their void marriage. Viola and Henry were married in Italy in 1907; that marriage was never terminated and remained in force until Henry's death in 1956. Meanwhile, Henry came to California. Antoinetta, in good faith, participated in a ceremonial marriage with Henry in 1919. Henry and Antoinetta lived together as husband and wife continuously thereafter until Henry died, intestate, in 1956. The trial fourt found, inter alia, that Antoinetta was the surviving putative wife of Henry, that the presumption of the validity of the second marriage had been overcome, and that there was no basis in the evidence for an estoppel against Viola. The trial court decreed that one-half of the property should be awarded to Viola and the other half to Antoinetta. The Court of Appeal concluded that the decision of the trial court was supported by the evidence and the law and affirmed the decree.

In its opinion, the reviewing court quoted extensively from *Burby, Family Law for California Lawyers*, at pages 359–360, setting forth his comments on the problems arising in the distribution of property accumulated in a void or voidable marriage. Professor Burby had written:

> " 'Some difficulty is presented if conflicting claims are asserted by a legally recognized spouse and a putative spouse. Of course the claim of a putative spouse must be limited to property acquired during the continuance of that relationship. It seems obvious that one-half of the property in question belongs to the putative spouse. The other half belongs to the legal community (husband and legally recognized spouse) and should be distributed as any other community property under the same circumstances.

" 'A putative marriage was involved in *Estate of Krone*. The property in question was acquired during the continuance of this relationship and was claimed by the putative wife after the death of the husband. Her claim was resisted by issue of a former marriage. The court held that all of the property in question passed to the putative spouse by force of Probate Code section 201, which provides: "Upon the death of either husband or wife, one-half of the community property belongs to the surviving spouse; the other half is subject to the testamentary disposition of the decedent, and in the absence thereof goes to the surviving spouse...." The conclusion reached by the court seems to be a proper one. The claimants (husband's issue by a former marriage) would be entitled to recover only on the theory that the property in question constituted a part of the husband's separate estate. But the property in question was not of that type.

" 'A much more difficult problem would be raised if a claim were asserted by a legally recognized spouse. That was the situation involved in *Union Bank & Trust Co. v. Gordon* [*supra*] 116 Cal.App.2d 681 [254 P.2d 644]. The deceased husband devised and bequeathed one-half of the property acquired during the putative marriage to his putative wife, Elsie, and one-half to his children. The legally recognized wife claimed a right to share in his estate. This claim was denied. [The trial court held, inter alia, that the legal wife] was estopped to deny the validity of the putative marriage because after her purported divorce (it was void because secured by the husband in Nevada and without having established a sufficient domicile) she purported to enter into another marriage. In the absence of the argument that she was estopped to deny the validity of the husband's putative marriage, there is no sound reason for excluding the legally recognized spouse from her share in acquisitions made by her husband during a putative marriage. It is true that one-half of the property belongs to the putative spouse but the other half belongs to the legally recognized community and there is no basis upon which the legally recognized spouse can be excluded from a proper share therein.' " (*Estate of Ricci, supra*, 201 Cal.App.2d at pp. 148–150, 19 Cal.Rptr. 739.)

The *Ricci* court went on to say:

"The case of *Union Bank & Trust Co. v. Gordon, supra*, in which it was held that the legal wife was not entitled to share in the estate of her deceased husband was correctly decided on the basis of estoppel, but, as we analyze the authorities, the legal wife could not have been excluded without the estoppel. To do so could penalize an innocent wife who had been deserted by her husband, and would be contrary to section 201 of the Probate Code which states that 'Upon the death of either husband or wife, one-half of the community property belongs to the surviving spouse; ...' Here there are no facts in the record justifying the application of the doctrine of estoppel." (*Id.*, at p. 150, 19 Cal.Rptr. 739.)

"In conclusion we agree with the following statement of the learned trial judge in his memorandum opinion: 'Yet under the case law of this state it seems clear that each of the two widows absent of the other is entitled to the whole estate. Thus, in a contest between them it would seem both logical and equitable to divide the property equally, awarding the putative wife the half to which she [presumably] contributed and giving to the legal but deserted wife the half over which the husband normally has testamentary control.' " (*Id.*, at pp. 151–152, 19 Cal.Rptr. 739.)

Sousa v. Freitas (1970) 10 Cal.App.3d 660, 89 Cal.Rptr. 485, was a contest between Maria, the legal wife of Manuel, and Catherine, his putative spouse, as to the property of Manuel's

estate, all of which had been acquired by the joint efforts of Manuel and Catherine during their void marriage. Maria and Manuel Sousa were married in Portugal in 1905; they had one son. Manuel emigrated to California in 1908, changed his name to Freitas in 1915, and participated in a marriage ceremony with Catherine in 1919. Catherine believed in good faith that she was lawfully married to Manuel and lived with him as wife and husband until Manuel died in 1962. Manuel left a will devising and bequeathing all of his property to Catherine. The trial court awarded the estate one-half to Maria and one-half to Catherine. The Court of Appeal modified the judgment holding that Catherine was entitled to one-half, being her share as a good-faith putative spouse, and the other half belonged to the legal community of Manuel and Maria. Manuel had a right to dispose of one-half of that half by his will, but the other half, one-fourth of the gross estate, belonged to Maria. As authority, the Court of Appeal cited *Estate of Ricci* and quoted from Professor Burby's comments as set forth in *Ricci*, above.

Estate of Atherley (1975) 44 Cal.App.3d 758, 119 Cal.Rptr. 41, was a contest between Ruth, the legal wife of Harold, and his putative wife, Annette, for determination of heirship to Harold's intestate estate. Ruth and Harold were married in 1933 and had two children. Harold left Ruth in 1947 and joined Annette. Harold and Annette lived together from 1947 until Harold's death in 1969; they had no children. In 1961 Harold obtained an invalid divorce from Ruth in Mexico, and in 1962 Harold married Annette in Nevada. Ruth, Harold, and Annette were in touch with each other from time to time; they shared in common the knowledge of Harold's marriage with Ruth, his cohabitation with Annette, his invalid divorce from Ruth and his void marriage with Annette. Most of Harold's estate had been accumulated during the period of his cohabitation with Annette, both before and after the void Mexican divorce and Nevada marriage. The trial court held that Ruth was the surviving spouse and implicitly held that Annette was Harold's putative spouse. The estate was comprised of a mixture of real and personal property, including separate property and joint tenancy property. The Court of Appeal, applying the rule of *Sousa v. Freitas*, *supra*, held that Annette, the putative spouse, was entitled to one half of the total estate as well as those assets which were hers by separate ownership or joint tenancy survivorship, and that the rest of the estate was property of the legal marriage and passed by intestate succession; that Ruth had an interest in that property as the surviving spouse but, since Ruth and Harold had two children, the extent of her interest depended on whether it was community or separate property. The judgment was reversed in part with directions.

Estate of Vargas (1974) 36 Cal.App.3d 714, 111 Cal.Rptr. 779, was a contest between Mildred, the first and legal wife of Juan, and Josephine, Juan's putative wife, competing for Juan's intestate estate. Mildred and Juan were married in 1929, raised three children, and lived together continuously for 40 years until Juan's death in 1969. Juan and Josephine were married in 1945, raised four children, and lived together for 24 years until Juan's death in 1969. Neither Mildred nor Josephine knew of the existence of the other, though both "families" lived in the Los Angeles area. The trial court ruled that Josephine was Juan's putative spouse. Most of the assets were acquired after 1945, during the period of the dual-familial relationship. The Court of Appeal affirmed the trial court's division of the estate equally between the legal wife and the putative spouse on equitable principles, stating:

> "Since statutes and judicial decisions provide no sure guidance for the resolution of the controversy, the probate court cut the Gordian knot of competing claims and divided the estate equally between the two wives, presumably on the theory that innocent wives of practicing bigamists are entitled to equal shares of property accumulated during the active phase of the

bigamy. No injury has been visited upon third parties, and the wisdom of Solomon is not required to perceive the justice of the result." (*Id.*, at p. 719, 111 Cal.Rptr. 779.)

In the light of the foregoing it is clear that every court which has considered the issue of succession to a decedent's intestate estate, as between a surviving legal spouse and a surviving putative spouse, has awarded one-half of the quasi-marital property to the putative spouse and the other half to the legal spouse, or spouse and children, under the provisions of [CA Probate law for intestate distribution of separate property].

It appears that Civil Code section 4452 [now CA Family Code §2251] was designed to provide for the division of quasi-marital property in accordance with section 4800, in the event of an annulment by the parties of their void or voidable marriage or their voluntary separation.

However, the enactment of section 4452 [now CA Family Code §2251] did not repeal or supersede [CA Probate law for intestate distribution of separate property] nor sections 5126 [California law for character of personal injury awards] and 5118 of the Civil Code [now CA Family Code §771].

There are no provisions in the Probate Code governing the distribution of quasi-marital property on the death of a party to a void or voidable marriage. However, Civil Code section 4452 [now CA Family Code §2251] officially recognizes the status of "putative spouse", creates the classification of "quasi-marital property", and provides for the division of that property, if necessary, pursuant to Civil Code section 4800, i.e. equal division. By analogy, recognition of the right of a putative spouse to an equal division of the quasi-marital property should be followed and applied in distributing that property on the death of a party to a void or voidable marriage.

If we were to apply the provisions of Civil Code sections 5126 [California law for character of personal injury awards] and 5118 [now CA Family Code §771] strictly, literally, and mechanically, Charles' entire intestate estate would be his separate property and, pursuant to [CA Probate law for intestate distribution of separate property], would be distributed to Joan and the four children, and Helen would receive nothing.

On the other hand, if we were to look only to Civil Code section 4452 [now CA Family Code §2251], and to give it the broadest possible construction, Charles' entire intestate estate would be treated as though it were the community property of Charles and Helen and, pursuant to [CA Probate law for intestate distribution of community/quasi-marital property], the entire estate would go to Helen, and Joan and the four children would receive nothing.

If the entire estate were distributed to Joan and the four children we would be ignoring and denying the purpose of Civil Code section 4452 [now CA Family Code §2251]; and if the entire estate were distributed to Helen we would be ignoring and denying the purpose of Civil Code sections 5126 [California law for character of personal injury awards] and 5118 [now CA Family Code §771] and [CA Probate law for intestate distribution of separate property], as well as the strong public policy which favors and protects marriage and the family. The result in either such case would be grossly unfair and unconscionable.

It is clear that our statutes are not designed to provide for the unique circumstances present in this case. When statutes are in conflict, the requirements of some being in irreconcilable opposition to others, only the chancellor can protect the innocent and render justice.

Since a just distribution of the estate among the parties is not provided by any statute, this case

cries out for the firm but fair hand of equity for its resolution.

"Equity or chancery law has its origin in the necessity for exceptions to the application of rules of law in those cases where the law, by reason of its universality, would create injustice in the affairs of men. [Citations.]" (*Estate of Vargas, supra*, 36 Cal.App.3d 714, 718, 111 Cal.Rptr. 779.)

The first duty of equity is to be equitable. In this case equity demands, and we hold, that one-half of the estate should be distributed to Helen, the putative spouse, and the other half to Joan, the legal spouse, and the four children of Charles, as provided by [CA Probate law for intestate distribution of separate property]. This result is inherently fair.

With this result we will have done equity to all of the parties and will have honored the spirit of all of the statutory provisions which apply.

* * *

As was the case in *Vargas*, a resort to equitable principles would be particularly appropriate in the case at bench.

* * *

CONCLUSION

On the basis of legal precedents, as set forth above, and equitable principles, we must reverse the judgment and remand the cause with instructions.

We find that the property of the estate of decedent Charles Hafner should be awarded one-half to his putative spouse, Helen Hafner, and the other half to be awarded to and divided among his legal and surviving spouse, Joan, and his four children, Catherine, Lillian, Dorothy and Kimberly, in accordance with [CA Probate law for intestate distribution of separate property].

* * *

DECISION

The judgment is reversed. The cause is remanded with instructions that the court make and enter a new and different judgment consistent with this opinion. Costs are awarded to appellants.

ARABIAN, J., concurs.

LUI, Acting Presiding Justice, dissenting.

The majority's decision fails to grant the surviving putative spouse, Helen Hafner, any share of the deceased's separate property. The majority thereby ignores our Supreme Court's decision in *Estate of Leslie* (1984) 37 Cal.3d 186, 207 Cal.Rptr. 561, 689 P.2d 133, and the statutory scheme set forth in [the California Probate Code] governing intestate succession to separate property.

Intestate succession in California is governed exclusively by statute. The basic flaw in the majority's analysis is that it attempts to apply equitable principles in distributing the decedent's estate instead of following the statutory scheme.

The majority relies on decisions which predate the enactment of Civil Code section 4452 [now CA Family Code §2251]. These appellate decisions applied equitable principles to establish the

right of a surviving putative spouse to succeed to a distributive share of property accumulated during a putative union under [CA Probate law for intestate distribution of community/quasi-marital property] as a "surviving spouse."[2] The equitable doctrines developed in the pre-section 4452 [now CA Family Code §2251] line of cases did not alter the formula for intestate succession as set forth in the Probate Code. The majority's resolution of this case, however, does alter the statutory formula for intestate succession.

In enacting section 4452 [now CA Family Code §2251], the Legislature established the legal right of a surviving putative spouse to property acquired during the putative union which would have been community property or quasi-community property if the union had not been void or voidable, and termed this property "quasi-marital property."

Under section 4452 [now CA Family Code §2251], the putative spouse has a vested share of one-half of the quasi-marital property accumulated during the putative union. If the union is dissolved prior to the death of one spouse, each spouse is entitled to one-half of the quasi-marital property. Death of either spouse to a putative union does not terminate the surviving spouse's interest in quasi-marital property.

A surviving putative spouse's one-half interest in quasi-marital property is vested and not subject to intestate succession by any other person. Thus, the proper legal distribution of the decedent's estate gives the putative spouse one-half of the decedent's entire estate pursuant to section 4452 [now CA Family Code §2251].[3]

Purporting to apply general and equitable principles which are inapplicable, the majority then concludes that only the surviving legal spouse and the deceased's four children are entitled to share in the other half of the decedent's entire estate. The majority thus holds that the surviving putative spouse has no interest whatsoever in the decedent's separate property. The majority's holding violates [CA Probate law for intestate distribution of separate property] and the *Estate of Leslie* and errs in attempting a resolution of this thorny problem by distributing decedent's separate property on an "all or nothing" basis.

In *Leslie*, the Supreme Court was confronted with the conflicting claims to a deceased wife's separate property asserted by her putative husband and a son by a prior marriage. The question presented in *Leslie* was whether the putative husband was entitled to succeed to a share of the *deceased wife's separate property* under the Probate Code rather than under equitable principles. The court in Leslie concluded that the trial court had *incorrectly* determined that the husband was not the decedent's "surviving spouse" under [CA Probate law for intestate distribution of separate property].

---

[2] The majority opinion at page 689 states: "[I]t is clear that every court which has considered the issue of succession to a decedent's intestate estate, as between a surviving legal spouse and a surviving putative spouse, has awarded one-half of the quasi-marital property to the putative spouse and the other half to the legal spouse, or spouse and children, under the provisions of [former Probate Code] section 221." The majority cites the *Estate of Ricci* (1962) 201 Cal.App.2d 146, 19 Cal.Rptr. 739; *Sousa v. Freitas* (1970) 10 Cal.App.3d 660, 89 Cal.Rptr. 485; *Estate of Atherley* (1975) 44 Cal.App.3d 758, 119 Cal.Rptr. 41; and the *Estate of Vargas* (1974) 36 Cal.App.3d 714, 111 Cal.Rptr. 779.

[3] The majority concludes that the putative spouse is entitled to one-half of the decedent's estate but under a different analysis.

Leslie cited the decision in *Estate of Krone* (1948) 83 Cal.App.2d 766, 189 P.2d 741, and stated that "*Krone* has been read 'to recognize a putative [spouse] as a legal spouse for the purpose of succession,' " under [CA Probate law for intestate distribution of community/quasi-marital property], citing *Kunakoff v. Woods* (1958) 166 Cal.App.2d 59, 65–66, 332 P.2d 773, and "[t]hat reading is clearly applicable to the determination of the separate property rights of a putative spouse." (*Estate of Leslie, supra,* 37 Cal.3d at p. 194, 207 Cal.Rptr. 561, 689 P.2d 133.)

"To accord a surviving putative spouse rights to the decedent's separate property honors rather than disregards the statutory scheme governing intestate succession. (Laughran & Laughran [*Property and Inheritance Rights of Putative Spouses in California: Selected Problems and Suggested Solu tions (1977)*] 11 a L.A. L.Rev. [45] at p. 67....) *Since the right to succession is not an inherent or natural right, but purely a creature of statute* [citation], *a surviving legal spouse inherits a decedent's separate property 'only because the statutes provide that a person having the status of "surviving spouse" takes a certain share.'* (Laughran & Laughran, *op. cit. supra,* 11 Loyola L.A. L.Rev. at p. 67.) *To accord a surviving putative spouse the status of 'surviving spouse' simply recognizes that a good faith belief in the marriage should put the putative spouse in the same position as a survivor of a legal marriage.* (*Id.*, at p. 68.)" (*Estate of Leslie, supra,* 37 Cal.3d at p. 199, 207 Cal.Rptr. 561, 689 P.2d 133, emphasis added.)

Under the above-quoted reasoning of *Leslie*, a surviving putative spouse is entitled to a legal share of a deceased spouse's separate property. While the court in *Leslie* was not faced with the conflicting claims of two spouses, its reasoning that the rights of surviving putative and legal spouses should be given parity under the law is instructive to a resolution of this appeal. Putting their respective rights to the deceased spouse's separate property on par requires that the surviving putative and legal spouses share that portion of the deceased's separate property to which each is entitled to under [CA Probate law for intestate distribution of separate property].

The proper legal distribution of the decedent's estate in this case should result in the surviving putative spouse taking one-half of the decedent's entire estate pursuant to section 4452 [now CA Family Code §2251] as her quasi-marital property. As to the remainder of the decedent's estate, following the mandate in *Leslie*, the putative and legal spouses should be treated equally. Therefore, under [CA Probate law for intestate distribution of separate property], the proper legal distribution of the remainder of the decedent's estate should be as follows: one-third of that portion of the estate should be divided equally between the surviving putative and legal spouses; the remaining two-thirds should be distributed in equal shares to the decedent's four children by both relationships.[4]

* * *

I would remand the matter to the superior court for a modification of the judgment consistent with the distribution scheme set forth above. . . .

---

[4] It should be noted that the only difference between the distribution suggested here and that formulated by the majority is that the surviving spouse's share of the decedent's separate property would be divided by the surviving legal and putative spouses and not given entirely to the surviving legal spouse

APPENDIX

I. *Online Article: "IRAC," "How to Brief a Case," and other excerpts from LawNerds.com.*

Excerpt from LawNerds.Com

Available at http://www.lawnerds.com/guide/briefing.html

The IRAC Formula

IRAC (*Issue*, *Rule*, *Analysis*, and *Conclusion*) forms the fundamental building blocks of legal analysis. It is the process by which *all* lawyers think about *any* legal problem. The beauty of IRAC is that it allows you to reduce the complexities of the law to a simple equation.

ISSUE -> What *facts* and *circumstances* brought these parties to court?

RULE -> What is the *governing law* for the issue?

ANALYSIS -> Does the rule *apply* to these unique facts?

CONCLUSION -> How does the *court's holding* modify the rule of law?

Issue Spotting - The First Step - *"The facts of a case suggest an Issue."*

The key to issue spotting is being able to identify which facts raise which issues. Because of the complexity of the law, the elimination or addition of one fact (such as time of day or whether someone was drinking) can eliminate or add issues to a case thereby raising an entirely different rule of law.

In law school casebooks, the easiest way to isolate the issue is to merely look at the chapter headings of the cases, such as "Personal Jurisdiction" in Civil Procedure or "Offer and Acceptance" in Contracts. The cases you read will also contain language that signals the important issue. For instance, the judge will simply state:

"The case turns upon the question whether...."
OR "We come then to the basic issue in the case."

However, you need to develop issue-spotting skills on your own in order to do well on the exam and become an effective lawyer. During the exam the professor is not going to state the issue. Ask yourself some of these questions as you read the case:

Questions to ask when reading a case:

- What *facts and circumstances* brought these parties to court?
- Are there *buzzwords* in the facts that suggest an issue?
- Is the court deciding a *question of fact* - i.e. the parties are in dispute over what happened

- or is it a *question of law* - i.e. the court is unsure which rule to apply to these facts?
- What are the *non-issues*?

Rule - What is the Law? - *"The issue is covered by a Rule of law."*

Simply put, the rule is the law. The rule could be common law that was developed by the courts or a law that was passed by the legislature.

For every case you read, extract the rule of law by breaking it down into its component parts. In other words, ask the question: what elements of the rule must be proven in order for the rule to hold true?

Questions to ask when reading a case:

- What are the *elements* that prove the rule?
- What are the *exceptions* to the rule?
- From what *authority* does it come? Common law, statute, new rule?
- What's the underlying *public policy* behind the rule?
- Are there *social considerations*?

The trap for the unwary is to stop at the rule. Although the rule is the law, the art of lawyering is in the *analysis*.

Analysis - The Art of Lawyering - *"Compare the facts to the rule to form the Analysis."*

This important area is really relatively simple. For every relevant fact, you need to ask whether the fact helps to prove or disprove the rule. If a rule requires that a certain circumstance is present in order for the rule to apply, then the absence of that circumstance helps you reach the conclusion that the rule does not apply. For instance, all contracts for the sale of goods over $500 have to be in writing. Consequently, in analyzing a contract for the sale of goods, you apply the presence or absence of two facts - worth of good and whether there's a written contract - in order to see whether the rule holds true.

The biggest mistake people make in exam writing is to spot the issue and just recite the rule without doing the analysis. Most professors know that you can look up the law, but they want to test whether you can apply the law to a given set of circumstances. The analysis is the most important element of IRAC since this is where the real thinking happens.

Questions to ask when reading a case:

- Which facts help prove which elements of the rule?
- Why are certain facts relevant?
- How do these facts satisfy this rule?

- What types of facts are applied to the rule?
- How do these facts further the public policy underlying this rule?
- What's the counter-argument for another solution?

Conclusion - *"From the analysis you come to a Conclusion as to whether the rule applies to the facts."*

The holding simply explains how the court concluded. It is the shortest part of the equation. It can be a simple "yes" or "no" as to whether the rule applies to a set of facts.

Questions to ask when reading a case:

- What's the *holding* of the case?
- Has the holding *modified the existing rule* of law?
- What is the *procedural effect* of the holding? Is the case overturned, upheld or remanded for retrial?
- Does the holding further the *underlying policy* of the rule?
- Do you agree with the *outcome* of the case?

Cases and Casebooks, a Brief History - Briefing a case is simply the act of creating a "brief" summary of the relevant facts, issues, rule and reasoning of a particular case you've read in class. However, to understand briefing, you must first understand the *case method*, which is how most law schools teach students. In 1870 at Harvard University Professor Christopher Columbus Langdell decided that the best way to teach law students was to have them read cases rather than textbooks. Textbooks explicitly state the rule of law and explain why it exists. Cases, however, are the stuff of real life. Cases contain the rule and also illustrate how the rule applies to different sets of facts.

After reading the cases, Langdell engaged his students in a Socratic dialogue where he grilled the students on what the cases meant. The idea behind the case method is that each case illustrates one tiny rule out of an entire body of law. By synthesizing each rule into a larger body of law, the student progressively learns not only the rules but also the process of legal reasoning. Law school hasn't changed much in 130 years.

The Structure of a Casebook - Casebooks are unlike any other text you've encountered. Instead of explaining a legal principle, the casebook starts with an actual case and you have to figure out the legal principle based on a real court proceeding. Your job is to the extract the relevant principle and reasoning out of the case. That's where briefing comes in.

Chapters in a casebook are arranged according to broad topic areas that illustrate the general principles of the body of law. The first case in a chapter, also known as the "principal case," usually illustrates the broad rule for that section of the book. The principal case is then followed by a series of squib or note cases that show a refinement of the law, a different rule or a different interpretation of the rule.

Squib cases do one of the following:

- *Broaden* the application of the rule to cover more circumstances.

- *Narrow* the application of the rule to cover fewer circumstances.
- List *exceptions* to the rule.
- State a *policy* consideration.
- Set up *new factors* to prove elements.
- Set up *new tests* to prove elements.
- Show a *dissenting rule*.
- Illustrate a *different rule* in a different jurisdiction.
- Illustrate a *different interpretation* of the same rule.

Casebooks also pose questions at the end of a case that are meant to make you think about the principles. These questions typically are ambiguous and difficult to address given your present knowledge of the material. This can be extremely frustrating for the beginning law student. The most that an author does to answer the question is to cite a case that you then have to look up for the answer.

In between the cases, there might be commentary from law review articles or an illustration of a rule by citing a statute or the Restatement[1] that covers that body of law. Don't overlook the footnotes. More often than not, a lot of key information is found in the footnotes.[2]

By briefing the case using the principles discussed below, you should be able to at least analyze the question. The upside to questions is that you get a clue about what the professor might ask in class.

Why Brief a Case? - Cases are written by lawyers for lawyers. Consequently, there's a structure and method unlike any other type of writing that you've read. Once you know the structure and method, you'll be able to breeze through cases quickly. When the writing is brilliant - for example, cases written by Holmes, Cardozo and Learned Hand - the cases can be as enjoyable as a good piece of fiction. There's drama, conflict, resolution, humor and pathos. Other times, the writing is very non-linear and leaves out important elements, such as the facts of a case.

Briefing is the first step in learning how to outline (which means organizing your class notes and case briefs in preparation of an exam). The brief should distill a case down to its elements, which allows you to immediately understand the principal legal issues at a glance. When you are under the pressure of the harsh glare of an aggressive professor, you want to be able to take one look at the brief and know the answer.

Case briefs are an important tool, but it's also important to keep briefs in perspective. Many students labor intensively over case briefs by creating forms and making sure that the wording is perfect. A brief is just a tool that helps you accomplish three things - build comprehension, answer questions in class and complete an outline. You'll never be graded on a brief. If you're spending time on stylistic niceties that don't accomplish one of the three goals then you're not spending time wisely.

Three Reasons to Brief a Case

1. Rewriting the material leads to better *comprehension*.
2. Creates a cheat sheet for *questions in class*.
3. Serves as a starting point for *outlining*.

[1] The Restatements are an effort by scholars, judges and leading lawyers to state the principles of a body of common law.
[2] Professors are fond of quoting that "the battle of law school is won in the footnotes."

Briefing is a phase that you eventually grow out of. After the first semester, students tend to brief a lot less. Their briefs may just end up being the rule of law or they will write notes in the margin of the casebook, which highlight the different elements. While some complex cases in your second and third years demand briefing, you will probably pick up the skills you need in your first year to analyze cases on the fly.

How to Brief a Case - Briefs should be a one-page summary of the case. Structure the summary according to the elements listed below. The structure adheres to the types of questions the professor asks in class and to the information you'll need for outlining. Not every case can be summed up in one page, but it's a good discipline to attempt to condense the material.

ELEMENTS OF A CASE

- **Facts**
- **Procedural History**
- **Issue**
- **Rule**
- **Analysis (Reasoning)**
- **Holding (Conclusion)**
- **Policy**
- **Dicta**
- **Concurrence**
- **Dissents**

You might consider creating a standard form using a word processor, then fill in the blanks as you read the case; *however, not every element listed in the chart above is used in every brief you make.* You may want to modify the form as you go along through the semester. Professors will differ as to what they like. At the end of this chapter is a sample brief.

Facts - A well-written case gives the relevant facts that brought the parties to court. In a Torts case, for instance, the judge recites the facts of the accident or injury. In Contracts, the prior business relationship might be discussed. In Criminal law, the crime is described.

Case law is at its worst when the court leaves out the facts. Judges sometimes don't include facts because the question before the appellate court doesn't require all of the details to be resolved. The issue on appeal is so narrow, that the facts as determined by a jury are often no longer relevant to the issue at hand. However, it helps when the judges give you a context by outlining all of the facts.

You'll probably encounter such a case in Civil Procedure. Pennoyer v. Neff is one of those traditional law school cases that is extremely frustrating to understand because it lacks a background history of the facts. In situations like this, you want to revert to secondary sources such as hornbooks,[3] to pick up on the material.

Procedural History - How did this case get to this particular court? Typically, you will be reading case law from the appeals court. That means the case has already been decided at a lower court and the losing party has appealed to a higher court. Typically, the lower courts don't write opinions on their decisions, consequently, you'll almost always be reading appellate decisions.

The judge often starts the case with information on how the court below decided the case and which party is making the appeal. Often the cases will present a detailed history of the arguments presented by both parties in the court below as well. At minimum, you should be able to answer the following two questions that your

[3] Hornbooks are summaries of the law that can be found in your library.

professor is likely to ask in class: (1) *Who is appealing on what issues?* (2) *What happened in the lower court?*

Issue - A well-written opinion starts out by telling you the legal issue up-front. Language that the court uses might include such phrases as: *"The question before us is whether....;" "This case was brought before us to decide whether..."*.

Appellate courts hear a case on appeal when there has been a problem with the case in the court below. The problem could be an error that the court made or the appellate court may want to take the case because the lower courts in its jurisdiction are not consistent in their decisions. By taking this case, it gives the higher court a chance to give guidance and establish precedent for the lower courts to follow. If you're having trouble spotting the issue, then try to key into the word "whether." It often signals what the turning point for a case.

Rule - The court should give a clear statement of the rule that controls the issue. The court often traces the development of the law within its own jurisdiction, starting with the common law rule. Since many of these bodies of law differ slightly between states, the court prefers to look within its own jurisdiction before it cites to a case from another state or country. The judge then either reaffirms a principle of law or fashions a new rule that evolves the law. The rule is the Rule arm of IRAC.

Analysis (Reasoning) - The reasoning is the Analysis arm of IRAC. This is how and why the court fits the particular facts and circumstances of this case into the rule. The courts often fashion tests or rely on precedent, which forms part of the reasoning. You should take special note of the reasoning and try to emulate it in your own writing.

Holding (Conclusion) - The holding is the court's decision on the issue. Who wins? The holding may be narrowly construed to a particular issue or be very broad. Identifying the holding may merely consist of finding the words "We hold that..." The holding should include the disposition of the case. Is the ruling of the lower court affirmed? Overturned? Remanded for retrial?

Policy - Rules don't stand by themselves without any sort of reason behind them. If there isn't a sound policy behind a rule, then the court tries to fashion a rule that serves the principles of equity or justice. Sometimes a statute that does not further the policies of equity or justice binds the judge. In those circumstances, the judge sometimes upholds the statute but writes the opinion in such a way to bring the injustice to the attention of the legislature in order to encourage them to change the law.

Dicta - Dicta refers to anything that isn't relevant to the case's holding. Often judges will use a case to expound upon their theories of the law. The theories may not be relevant to the case at hand, but it gives the judge a chance to give direction to the lower courts by putting the theory in writing. Dicta does not carry weight as a precedent. But it's useful to note how the court might have ruled given a different set of circumstances.

Concurrence - A Concurrence is a separate opinion in which one of the judges agrees with the result but has different reasoning. Like dissents, you will find that concurrences proliferate in Supreme Court cases. Look at the concurrence to see how the reasoning differs. Make a note of it in the brief.

Dissents - Typically, a panel of judges tries appellate cases. Not surprisingly, there is not always unanimous agreement. Consequently, a judge who is not in the majority will write a dissent. Dissents are ubiquitous in Supreme Court cases. Make sure that you pick up the major sticking points in the dissent. What principles

does the dissenting judge disagree with the majority on? Dissents are sometimes indicators of a direction the court may eventually move towards.

Sample Case and Brief - What follows are a sample case and a brief of that case. You'll notice that the elements of the brief scan very closely to the IRAC method with the additional elements of procedural history and the facts.

SAMPLE CASE

The following is a sample case that is commonly used in Contracts Cases to illustrate the idea of a "legal duty." Each element is identified.

STEPHEN GRAY, RESPONDENT, v. THERESA D. MARTINO, APPELLANT Supreme Court of New Jersey 91 N.J.L. 462; 103 A. 24 February 2, 1918, Decided	**Parties:** These are the primary parties. Generally the case will be referred to only by the last names of the parties. E.g. *Gray v. Martino*.
MINTURN, J. The plaintiff occupied the position of a special police officer, in Atlantic City, and incidentally was identified with the work of the prosecutor of the pleas of the county. He possessed knowledge concerning the theft of certain diamonds and jewelry from the possession of the defendant, who had advertised a reward for the recovery of the property. In this situation he claims to have entered into a verbal contract with defendant, whereby she agreed to pay him $500 if he could procure for her the names and addresses of the thieves. As a result of his meditation with the police authorities the diamonds and jewelry were recovered, and plaintiff brought this suit to recover the promised reward.	**Facts of the case:** What happened that brought these parties to court?
The District Court, sitting without a jury, awarded plaintiff a judgment for the amount of the reward, and hence this appeal.	**Procedural History:** Who won in the court below?
Various points are discussed in the briefs, but to us the dominant and conspicuous inquiry in the case is, was the plaintiff, during the period of this transaction, a public officer, charged with the enforcement of the law?	**Legal Issue:** What fact or circumstance is at issue that will be the deciding factor in how the court rules on this case?
The testimony makes it manifest that he was a special police officer to some extent identified with the work of the prosecutor's office, and that position, upon well-settled grounds of public policy, required him to assist, at least, in the prosecution of offenders against the law. The services he rendered, in this instance, must be presumed to have been rendered in pursuance of that public duty, and for its performance he was not entitled to receive a special quid pro quo.	**Reasoning/Analysis:** The court applies the facts to see whether they satisfy the elements of the rule.
The cases on the subject are collected in a footnote to *Somerset Bank v. Edmund, 10 Am. & Eng. Ann. Cas. 726; 76 Ohio St. Rep.* 396, the head-note to which reads: "Public policy and sound	**Rule of Law:** Under what rule of law does this issue fall?

morals alike forbid that a public officer should demand or receive for services performed by him in the discharge of official duty any other or further remuneration or reward than that prescribed or allowed by law."

This rule of public policy has been relaxed only in those instances where the legislature for sufficient public reason has seen fit by statute to extend the stimulus of a reward to the public without distinction, as in the case of *United States v. Matthews, 173 U.S. 381*, where the attorney-general, under an act for "the detection and prosecution of crimes against the United States," made a public offer of reward sufficiently liberal and generic to comprehend the services of a federal deputy marshal. Exceptions of that character upon familiar principles serve to emphasize the correctness of the rule, as one based upon sound public policy.

The judgment below for that reason must be reversed.

Holding: What is the conclusion of the court?

SAMPLE BRIEF

Gray (cop, Plaintiff) v. **Martino** (crime victim, Defendant), Supreme Ct of NJ (1918)

Facts

- Plaintiff makes a verbal contract with defendant. In return for $500, plaintiff will find defendant's stolen jewels.
- Plaintiff had knowledge of whereabouts of jewels at contract formation.
- Plaintiff is a special police officer and has dealings with prosecutor's office.
- Defendant published advertisement for reward.
- Plaintiff finds stolen goods and arranges return.

Procedural History

- District court by bench trial (no jury) awards money to the cop.
- Defendant appeals.

Issue

At the time the contract was formed, was the plaintiff acting as a police officer charged with a legal duty to catch criminals without further reward?

Rule

1. A public officer cannot demand or receive remuneration or a reward for carrying out the duty of his job as a matter of public policy and morality
2. However, it is not against public policy for a police officer to receive a reward in performance of his legal duty if the legislature passes a statute giving the reward to the public at large in furtherance of some public policy - such as preventing treason against the US.

Analysis (Reasoning)

- Court finds sufficient evidence to characterize this fellow as a public official.
- His interaction with the prosecutor's office weighed in as a factor in suggesting he had a legal duty.
- Since he is characterized within the rule as a public official, he cannot, as a matter of law, receive a reward for the performance of his duties.

Holding (Conclusion)

Court reverses decision of lower court in favor of the plaintiff since he was characterized as a public official.

II. Chart: "*Ten (10) Typical Components of a First Year Case Brief*"

TEN (10) TYPICAL COMPONENTS OF A FIRST YEAR CASE BRIEF*

1	**Caption**	Include the name of the parties, the court that issued the opinion, and the year that the opinion was written. Consider a shorthand note indicating the procedural identification of the parties (*e.g.*, plaintiff/defendant, petitioner/respondent, appellant/appellee).
2	**Author(s)**	Generally, the judge(s) who drafted the unanimous or majority opinion of the court is not crucial to a brief, but if the case was written by the United States Supreme Court consider including the author(s).
3	**Procedural History**	Most of the cases that you'll read in law school will be appellate court decisions. In this section, you want to list what happened in the lower court(s) – usually called the "trial court" or the "district court." Do not go into too much detail. One or two sentences are sufficient for this section.
4	**Facts**	Those facts that are *legally significant* to the court's decision (*i.e.*, those that *made a difference* or *weighed in the balance* in determining the court's holding). Consider using bullet points.
5	**Issue**	The *specific* legal question or decided by the court as it relates to the parties in question.
6	**Rule**	The precedential rule stated by the court; generally, should be broadly phrased and in general terms (*i.e.*, the rule that will apply to litigants in similar fact situations in future cases) rather than with respect to the parties involved in the present case. It is very important to fully understand the rule because this will be what is tested.
7	**Analysis (Reasoning)**	The factual reasoning, logic, and/or public policy supporting the court's decision. This is the heart of the case and where professors may spend a lot of time in discussion. Make sure to fully understand why the court came to the conclusion it did.
8	**Holding (Conclusion)**	The holding is the *direct answer* to the issue statement (*i.e.*, the court's decision as applied to the specific facts of the case). Also note the Procedural Disposition of the case – how the court disposed of the case after reaching its decision (*e.g.*, affirmed or reversed the lower court, remanded for further proceedings, etc.).
9	**Concurring, Dissenting Opinions (if any)**	Explain concurring and dissenting judges' differing analysis or objections with respect to the majority opinion.
10	**Notes/Questions**	Observations or questions that come to mind as you read and brief the case; *if questions are not resolved by reading subsequent cases or during class, consult with your professor*

**After a few weeks of classes, consider modifying and focusing your briefs according to how your professor approaches the cases.*