

How to Write a Case Comment

A case comment is not an exhaustive treatment of a given area of law. Instead, it provides a focused analysis of a particular case and the manner in which that case resolved, failed to resolve, or created controversy within a given area of law. A case comment should present the author's view about the case and the legal issue involved--it is not an objective brief.

Preliminary Steps

1) Study the opinion thoroughly

Become familiar with the relevant facts and issues of the case, the exact holding, and the lines of analysis used in all opinions (majority, concurrence, dissent) rendered in the case

2) Understand the court's rationale

Examine the opinion to see what factors were influential to the outcome of the case. Was the court's approach correct? If not, in your analysis you will want to interpret the case in the manner you think the court should have interpreted the case. Often, the significance of a case lies in what the court refused to do or in the arguments that it rejected. Occasionally, its importance will lie in what the court refused or neglected to say. Dissenting and concurring opinions, if any, will often provide clues as to other possible ways of construing the issue presented in the case.

Format of a Case Comment

Certain essential sections must be included in a case comment. These include:

- (1) **Introduction.** The Introduction is designed to inform the reader of the issue involved in the subject case. This requires briefly discussing the movement of the law up to the time of the case and the holding of the case. The Introduction then outlines what the author intends to cover and the position the author intends to adopt.
- (2) **Background.** Cases rarely arise in a legal vacuum. You must fully inform the reader about the area of law involved in the case so that he or she may make a reasoned judgment concerning the court's decision. The historical background section, supplemented by sufficient footnotes, should provide the reader with a clear understanding of the law as it existed prior to the case. This includes any relevant cases that preceded the case and the legislative history of any statutes that are involved. If the article analyzes a Circuit court decision, for example, the presentation of the positions taken by other circuits and related Supreme Court precedent is often very useful in informing the reader of what has happened to the law in light of the majority's holding.

The Background should address all of the issues which the author intends to analyze in the body of the article, but only those issues. Footnotes should supplement the text with related authority or issues. Often, a court's opinion covers many areas of the law, but the author wants to concentrate on the opinion's discussion of only one or two of those areas. The Background should present the historical development of only those areas of law that the author intends to address.

- (3) **Presentation of the Court's Opinion.** The author must give a complete presentation of the majority's opinion. This presentation must include: all relevant facts of the case; the holding and reasoning of all lower court opinions; and the reasoning of the principal court. You must present all of the reasons given by the majority to support its holding(s). Any concurring and dissenting opinions should also be presented to give the reader a feel for the controversy involved over the majority's conclusions.

This portion of the article is not the place for the author's opinions concerning the majority's opinion. The author's opinions are appropriately voiced in the Analysis section. The goal of this section, on the other hand, is the straightforward presentation of what the court said/did.

Like the Background, this section of the article must focus on the issues that the author intends to address in the Analysis section. Parts of the opinion that are extraneous to that analysis should not be presented here. Nevertheless, be careful when dismissing issues or facts that you feel are irrelevant to the majority's conclusions. You must present all of the reasons and facts which the majority expressly or impliedly used to justify its holding.

- (4) **Analysis.** The Analysis is the *raison d'etre* of a case comment. A solid, well-organized, and carefully thought-out Analysis is essential.

In the Analysis, you must present and defend your views concerning the majority's opinion. Merely criticizing or applauding the majority's reasoning is insufficient; you

must convince the reader of the validity of your own viewpoint. Nevertheless, you should begin your legal analysis by asking the following questions:

- Did the court use precedent and the reasoning of prior cases correctly (*i.e.*, did the court use precedent and principle as other courts had used it in the past)? If not, how did the court use it? Did the court ignore or miss certain cases or principles?
- Was the court's opinion internally consistent?
- Did the court ignore or gloss over important facts in the case?
- Did the court attach more importance to some facts than prior courts had when faced with similar fact situations?
- Did the court properly construe all relevant statutes?

A good Analysis must include some discussion of the decision's impact on the area of law; it must discuss the probable effect of the decision and its potential ramifications. Predictions are permissible if based on solid legal or historical premises. The central question in any discussion involving impact is: How will courts or legislatures now view the legal problem resolved by the majority? Does the decision foreclose certain options or create new options?

- (5) Conclusion. The Conclusion summarizes what the author has just presented in the article. No new material should be introduced in the Conclusion. You should be able to conclude in two to three paragraphs, briefly stating what the law had been, what has happened to the law as a result of the decision, and where the law will proceed from there.

Footnote Form and Use

Footnotes pose the greatest problems to students new to scholarly writing. The footnotes are an essential element in demonstrating the amount of research performed on the topic as well as the author's understanding of the relative importance of the issues and related areas of law involved in the case or subject matter. Moreover, footnotes contribute to an article's credibility. The following suggestions should be followed:

- (1) Propositions, general premises of the law, and any conclusions, contained in the main text should be supported by case law or other authority cited in the footnotes. Case authority should be cited before secondary authority, although ideally the author will cite to both case law and secondary authority to support a particular proposition. In addition, law review articles and similar materials can sometimes help supplement, explain, or differentiate case law.
- (2) Proper use of introductory signals (see current edition of A UNIFORM SYSTEM OF CITATION) will provide guidance to the reader and is therefore essential.

- (3) Do not footnote to several points at the end of a single sentence. If the cited cases support several different propositions made in the text, separate them so that they will support the actual proposition contained in each clause of the sentence. It is not uncommon to have three or four footnotes relating to the text contained in a single sentence.
- (4) Footnotes are not merely citations to the authorities discussed in the text or support for statements made in the text. Footnotes are an integral part of the article as they shed valuable light on related areas of law or on minor points made in the text. If the author has properly researched and come to understand the particular area of the law, he or she should not experience any difficulty in including appropriate and informative footnotes in the article. The substance of the footnote, as opposed to its brevity, is what is critical to the footnote's contribution to the article. On the other hand, the text of an article must stand on its own; do not require the reader to read the footnotes in order to understand the article.
- (5) All footnotes must conform with the current edition of A UNIFORM SYSTEM OF CITATION.
- (6) Do not "over-footnote" a particular case or article. Over-footnoting is often evidenced by a long series of "Id." citations. Generally, an author should not have more than five such citations in a row.

Use of Quotations

Scholarly writing requires extensive paraphrasing. Long and numerous quotations are inappropriate. A quotation is proper only if it is of particular significance or somehow captures the essence of what the author is trying to say. Paraphrasing the court's reasoning is almost always preferable. If a quotation exceeds fifty words, it must be indented and single-spaced within the text and must not be set off with quotation symbols.