This is meant for your own personal reference. This can be done when studying an area of law or when a case will be used in your work.

A brief should include each of the following elements:

- Title and citation
- Procedural facts
- Issue
- Rule/ Holding of the case
- Reasons/ Analysis that support the holding
- Disposition of the case
- Dissent, if applicable
Keys to Deciphering a Case 1

- “Thinking in reverse”
  - From the decision, you need to first put together what happened, including the facts, how the case got to where it is, etc.
- Using the overview and headnotes
- Reading the Opinion
- Identify the holding and the key rules of the case
- Separate the holding from the dicta
- Determine what key facts led to the holding
  - What facts, if not present, might have led to a different result?
Keys to Deciphering a Case 2

- Facts can be:
  - Legally relevant
  - Procedurally significant
  - Irrelevant

- Make sure you can understand the interplay between the facts, law and disposition. A good brief follows the same basic issue through each part of the case (issue, rule, disposition, etc.)

- If there are multiple issues dealt with by the case, analyze each issue separately!
**Stare Decisis**

- This concept dictates that, in general, courts should follow the historical precedent on a given question.

- Stare Decisis can be:
  - Mandatory, as in the case of a higher court which has appellate jurisdiction over the court in which a case is pending
  - Persuasive, as in the case of any other court

- The previous decisions of the same court, stare decisis, is not binding but is generally followed unless there is a good reason not to.
  - A court can reverse itself in a later case, as the Supreme Court often does!
Opinions in a Court Decision

- The “majority” opinion becomes “the law,” but only the part that is key to the holding, not the *dicta*.
- **Dissenting** opinions are not “the law.” However, they can be useful because:
  - They can be used as persuasive authority in non-bound jurisdictions
  - They can be the basis for the court to reverse itself in a future case
    - “Today’s dissent can be tomorrow’s majority.”
- Are “concurring opinions” the law?
  - Maybe
  - Basically, it depends on whether the concurrence was necessary to build a majority for the decision.
Exercise 3 – part 1

- The following exercise is designed to introduce you to case analysis. Each opinion contains all of the components discussed in this chapter. Write a brief for the case below. The goal is to identify the various components as precisely as possible.


- The appellee, Michael Toad, operates a roadside stand where he sells hand-carved, three-legged wooden stools to tourists. Toad’s business started slowly, but it has increased substantially in recent years. Toad now derives a modest income from his enterprise. From the start, he has advertised and referred to his stools as “Toad Stools”. After Toad operated his stand for one year, the appellant, Bruce Ulrich, began operating a similar stand and selling similar stools, which Ulrich also called “Toad Stools”, but Ulrich did so for two years. Toad made no further effort to prevent the use of the name until he started this suit.
Exercise 3 – part 2

- Toad filed suit alleging that the appellant had infringed on his trademark. Toad requested $45,000 in damages for lost sales and an injunction barring Ulrich from using the name “Toad Stool”. The trial court awarded Toad $40,000 in damages and granted his request for an injunction. Appellant Ulrich now contends that the trial court erred in finding a trademark infringement because Toad did not actively defend his use of the name.

- Common law trademark principles can protect the name of a business or product, but that protection is not absolute. A person must actively defend that trademark against known infringements. If he or she does not actively defend the name, a competitor is free to use that name after two years. “Actively defend” means making diligent efforts according to the traditional rule.
Exercise 3 – part 3

- We must, however, distinguish between large businesses that have the capacity and the resources to litigate such claims, and small businesses that do not have these resources and should not be held to the same standards. The smaller the business, the easier it should be to satisfy the active defense requirements. When Toad approached Ulrich and asked him not to use the name, he satisfied that requirement. Therefore, Toad is entitled to common law trademark protection. Affirmed.
Exercise 4 – part 1

- Assume you are a trial judge in a civil action in which Elizabeth Fowler, the defendant, claims the court has no jurisdiction because service was obtained “by trickery and fraud”. Fowler, a resident of another state, knew she was the possible subject of two civil actions in your state, one for a $5,000 damage deposit she had not returned to a merchant, and the other for a $20,000 insurance swindle. She wanted to resolve the first potential suit but not the second. To do this, she arranged a vacation in your state so she could pay off the merchant, who said he wanted “to avoid litigation over the deposit”. She met the merchant at the airport and paid his deposit. The merchant, who secretly worked for the allegedly defrauded insurance company, then served her with papers for the insurance scheme.
Exercise 4 – part 2

- The following case is the only relevant precedent in your state:

  - **Eckersly v. Ramon (1981)**

- The appellant, Sean Eckersly, a resident of this state, sought to bring an action against Hal Ramon, a nonresident, for breach of contract. To secure service of process on Ramon, Eckersly requested several of Ramon’s acquaintances to persuade Ramon that his mother, who also lives in this state, was terminally ill. Ramon agreed to come to this state to visit her. In reality, Ramon’s mother was hiking in the Rocky Mountains. Ramon was met at the airport by Eckersly’s agent, who served Ramon with papers in the contract action. The trial court rejected Ramon’s claim that it lacked jurisdiction because service was fraudulently obtained. We disagree. When plaintiffs resort to such shocking fraud to obtain service of process, the integrity of the entire judicial system is undermined. The trial court had no power to render judgment in this case. Reversed.
Exercise 4 – part 3

1. Decide whether your court has jurisdiction, using the *Eckersly* case as precedent. Justify your decision.

2. Is your answer to 1 consistent with your sense of a just result? Explain.

3. Could you have used *Eckersly* to support a decision contrary to the one you reached in response to 1? Explain.