

## **The English Case Brief: A Saudi Lawyer's Guide to Creating a Competent and Applicable Records of Court Decisions**

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### **Abstract**

*This research is meant to help Saudi lawyers who speak and write in English to write case brief using the American legal form and legal language. Also, this guideline can be proposed and transferred into Arabic to be utilized adopted in the Saudi colleges of Law since there is no unified form to write a case brief in Arabic.*

**Keywords:** *Students, judges, rules, issues, holdings, writing, paralegals, professors.*

### **Introduction**

The purpose of this monograph is to support the Saudi lawyers and legal professionals who may want guidance as they navigate the challenges of delineating a Case Brief in English for reviewing and preparing for court, or when consulting with businesses, governments, or individual clients who are English speakers. Most Saudi JSDs who attain their law degrees in English-speaking countries, primarily the USA and England, have different levels of English proficiency. Hence, this paper aims to primarily target Saudi legal professionals who wish to hone their law abilities, specifically, for case briefing skills, when working with English-speaking clients.

The “case brief” is an essential legal document that all lawyers must master to further their law practice; it is also used to inform the instruction of law students by professors at law colleges in the Kingdom of Saudi Arabia (KSA). Unfortunately, students as well as qualified legal personnel tend to rely on various websites for summaries written by others rather than doing the work themselves. Case summaries and briefs can be easily accessed online for free on a variety of sites; hence, utilizing the work of another lawyer rather than taking the time to personally analyze and create one’s own case brief may seem like a less time consuming option. When briefing a case, a lawyer or law student reads and construes the judge’s own review of cases that were previously heard and decided. Therefore, the facts of the case are unpacked, the parties involved are labeled, the applicable laws are outlined, and the reasoning underlining their decision is examined. Lawyers prepare themselves for organizing a client’s case by analyzing case briefs, researching and selecting the applicable laws and relevant case precedents, and understanding judicial reasoning; this process also helps enhance one’s legal skills. It is also useful to paraphrase the court’s language into layman’s terms while preparing for discussions with others. These notes can be organized in many ways depending on one’s own strategies and inclinations (Putman, 2012: 220).

A case brief essentially consists of notes summarizing a judge’s opinion/decision about a case heard at a circuit court, an appellate court, or even a Supreme Court. Why must a

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legal professional prepare a case brief? Primarily, the notes contained in the case brief, including case precedents, legal procedures, and court citations relevant to the current case, become an archived record that can be referred to when a lawyer is researching information for a client. A case brief is also used to investigate/probe a case and its legal implications for future cases. A case brief is a specific document written with a particular purpose of simplifying a written legal opinion into a condensed document; it summarizes complex ideas that can be difficult to write.

#### I. Components of a case brief:

Lawyers note down the most important aspects of a legal case in a case brief and use it to refresh their memory instead of reading the entire case (Plus, 2016: 4). In the process of writing a case brief, legal practitioners also get involved in active learning as they write the summaries in their own words rather than reading or underlining what they think is important. Another benefit of writing a brief is that it can improve one's research and writing skills. Searching for a problem and writing summaries of the cases found to find the rule of law that applies to the problems (Bast & Hawkins, 2012: 119).

Although most professionals may be required to turn in their case briefs in a certain format when learning to write case brief. A case brief is only read by the writer, and there is no one standard format. Legal professionals usually create their own format of case briefs, especially when they do not have to turn them in. As the name reflects, a case brief should be concise. If the brief is longer than the case itself, then reading the case itself might as well be better than writing a case brief. The length of brief for most cases is a page or less, but in some cases, it can 3–4 pages long (Putman & Albright, 2023: 131).

The process of writing a case brief begins with the discussion of the goal and ends with final proofreading. During the learning journey and in between the first and the last stops, lawyers must learn how to write each element of the case brief, step-by-step. The breakdown elements show in particular what to include under every element or section in the brief. Following the booklet listed below, and there will no longer guess what to write or where to write it. After putting together, the elements would work with each other to create a concise and complete brief. (Marinac et al., 2021: 186).

Most instructors teach their students how to write case briefs, but some instructors are better than others in terms of teaching this skill. Students may be able to understand who won or lost a legal case, but if they do not realize the reasons why the prevailing party won the case, they will not recognize the part of the ruling that can be used as a precedent in future court proceedings. Sometimes, it is difficult for undergraduate students to identify the important legal principles of a case. Saudi students may have greater difficulty in doing so, as they do not have the curriculum or format for legal case briefs, and they also have language barriers when working with English-speaking clients (Hricik, 2021: 12,13).

Students should use the correct language when analyzing a case, since the use of a wrong word in a case brief might have a profound effect. Therefore, the challenge facing students is that of applying the issues, rules, and laws to a clear statement of the issue and concluding a given case succinctly. A case brief should apply the legal principle to the issue of the case, and this is the goal of any legal writing (Guest & Jack 2010).

Lawyers need to be able to attain important skills, one of them being how to address a legal problem, and this requires knowing the following: finding the applicable precedent, evaluating the evidence, and drafting in legal language (Echaore-McDavid, 2007: 180). While good communication skills contribute to the success of every career including law, research, analysis, and writing skills are very important skills for successful lawyers. Legal writing is imperative for legal systems to actually exist (Donahoe, 2011: 66).

The importance of legal writing and how vital it is to the legal practice is well recognized. There is also a wide agreement that law professionals do not write well, especially in the context of the KSA. In fact, in the Saudi law colleges, legal writing does not receive the

recognition, priority, and resources that it deserves. Successful written communication requires effective writing and collating of thoughts. This aspect is essential for witting case analyses as well as witting summaries for legal cases. A case brief has two uses: it can be used as a written argument submitted to a court by a lawyer, and it can be used to summarize court opinion. This article is about the latter usage.

1) Initial section:

a. The first part of the written court opinion contains the IDENTIFYING INFORMATION regarding the parties involved, the plaintiff(s), and the defendant(s). It is important to note the parties' names as well as their roles in the case to avoid any confusion. As a case moves forward and as the parties move to different courts for the lawsuit, the labels change:

Circuit Court = plaintiff/defendant

Appellant Court = appellee/appellant

Supreme Court = petitioner/respondent

b. The type of court (district, appellant, Supreme Court) and the reference numbers assigned to the case, including the judge of record, should be noted.

2) Main section/text: Delineation of the facts

a. The next paragraph of the brief contains the FACTS OF THE CASE. It should contain the essential points extracted from paragraphs that tell the story of the case, the parties, and activities leading to a lawsuit. Under this portion, only significant facts should be contained in light of the legal question asked. It may state what facts are unknown and whether the absence of those facts were necessary (Samborn & Yelin, 2020: 89).

b. It may be helpful to use a bulleted list to avoid including non-essential details.

c. (NOTE: Sometimes, a judge places the court decision among the facts. Such decisions should be placed under the segment labeled Legal Procedures/Legal History of the case to make the information less confusing to locate.

3) Mapping the legal procedures/legal history of the case

a. It is important to outline the legal history of the case in the order of events, lawsuits, and other legal maneuvering by both parties.

b. Specify the courts involved and judgments made at each level of judicial action.

Typically, the first part of a case brief is the procedural history. In this section, the court procedures should be described. This section should not explain the what happened between the parties, but what happened in the court.

4) Scrutinizing the case opinion for the issues

a. Judges may distinguish the crucial issues by discussing them more than once. One must identify the problem of the case. Why is there a dispute? Is it a breach of contract, personal injury, or others? (Garner, 2009: 119).

b. Investigate "case law" or "precedents" which further reveal the judge's reasoning applicable to the current case. Such precedent cases are usually listed and analyzed as documentation for their decisions.

5) Deciphering the issues and the rule of law used to determine decisions

a. The Rule of Law or the issue/issues may not be obvious, so this must be discovered. In fact, there may be more than one specific law or an interaction between many laws (Steadman, 2013: 124).

- b. Pay attention to terms such as standard, application, denial, constitutional rights, affirm, violation, etc.
- c. Follow the thinking of the judges and whether certain issues come up more than once.

When writing this section, the issue or issues that are going to be considered by the court should be stated. An issue should be one sentence long, and if there are many issues, they can be numbered. An issue is better understood if it is written in the form of a question.

#### 6) Holdings, decisions, and outcomes

Lawyers must understand how the judges decided the cases, and not just the holdings. Engaging in such reasoning is an essential skill for lawyers; they must comprehend the way the law and its meaning are consequently supportive or disqualifying of the claims made by the defendants and plaintiffs. The reasoning is an explanation of how the court reached the holding based on the issue at hand (Putman & Albright, 2023: 130).

a. What were the obligations of each party in their respective positions and situations? What would be a reasonable response from anyone in a position of authority in similar situations? Thus, it becomes clear that judges compare acts and reactions to what is considered reasonable and responsible.

b. How do all the actions, precedents and judgments of this case come together to make sense?

Usually, a court decision would have as many holdings as the number of issues, with each holding containing the answer to the corresponding issue. However, sometimes, a court decision may include more than one holding for one issue because the issue is too broad or there is more than one answer for the same issue. Also, each holding should be written in one sentence even if the court does not issue its holdings to be explicit or does not provide a simple “yes” or “no” for each issue. Therefore, this part deals with the application that answers the legal question posed by the issue (Strong, 2022: 55).

A brief should end with an obvious and simple conclusion. Usually, in American court decisions, the conclusion is framed using words such as “we conclude” or “we hold.”

#### 7) Dissenting or assenting judicial opinions

a. In Appellate Courts, there is a three-judge panel who may or may not agree with the decision made by the lower or circuit court judge.

b. Opinions in favor of or against the ultimate outcome are significant and should be valued for differing perspectives. These viewpoints enhance the understanding of the law and thoughtfulness of a case's significance for future suits (Saltzman et al., 2015: 43).

While the methods of writing a brief vary, most would not deviate strongly from the sections listed above. Some writers may find it easy to write facts first, while others may prefer writing the rationale first. Even if the elements are written in a different order from the order listed herein, the important thing is to make sure that the brief includes all the elements. By making sure you have the right assortment of aspects and the right details for each aspect, the case can be summarized and simplified (Emiri, 2018: 138). Brief writing can help strengthen several skills despite the career goal of the writer. Usually, students do not want to learn about legal writing and writing case briefs because they believe legal writing is related to entry level careers, so they want to focus on advanced study. However, they fail to realize that by writing case briefs, they can sharpen their research and analytical skills. The ability to write a good case brief is crucial for achieving success in the legal profession.

Paralegals and clerks study how to write case briefs as part of their training. Furthermore, writing case briefs is a great method to foster the thinking skills needed to succeed in the legal profession. However, paralegals and clerks may use case briefs differently from law students. For the clerks and the paralegals, case brief is a critical component of their jobs,

whereas for students, it is a study tool. Busy lawyers leave research to staff members including case briefs. Saudi law colleges currently do not offer programs for paralegals or clerks, but they are working to establish a new degree program for these professions (Miller, 2018: 30).

As stated earlier, by writing case briefs, legal professionals can enhance their thinking and reading skills and legal practice. By determining the key facts of a case to be included in the case brief, attention can be focused on those facts. The practice of writing a brief also enhances one's understanding of other cases, as they would be equipped to breakdown and absorb the important points of a given case. Moreover, case briefs help the reader recall memories because the case is reduced to its vital elements that can be better organized by the brain. When legal professionals want to refresh their memories of a case, they will find that the case brief is a useful tool. In court or during an important oral argument, a brief is critical for remembering important details. A case brief gives one a better understanding of procedures in the practice of law, so with continuous practice in writing briefs, one gains the skill to plan the trajectory of a case in court. In addition, case briefs improve one's understanding of law itself (Slagter et al., 2022: 5).

In the most Western law colleges, English legal writing is included in the curriculum. Hence, students learn legal writing learning – the legal vocabulary, proper length of sentences, transition signals, and legal language. Western colleges offer more than one level of legal English where students can enhance their ability to write memorandums, motions, case briefs, and others. According to the Western law schools, it is also crucial to understand the legal hierarchy principle: Constitutional rules take precedence over statute rules, and statutory rules over common law rules (Kerr, 2005). Legal professionals can, therefore, sharpen their cognizance and attentiveness regarding the relevance of judicial sources (Mueller, 2020).

In the KSA, law colleges do not offer legal writing courses during the length of study, and writing case briefs is an unknown practice in the legal field in the KSA. Law colleges lack the material on legal writing, depriving the students of learning skills such as searching for applicable laws/precedents and analytical reasoning. Therefore, legal writing must be introduced in the Saudi law colleges to help law students learn how to write case briefs. Recently, the awareness of the importance of the legal writing in colleges has been increasing among the law faculty in KSA. Saudi law colleges can benefit from the Western experience and practice of legal writing including case briefs. One course on legal writing might not be enough for Saudi law students to gain proficiency; it would be better for them to learn legal writing in one course and writing case briefs in another course. It would be better to practice crucial skills rather than wait to learn them after graduating. Saudi law students must learn how to write case briefs as well as learn legal English. It is not the law students' fault if they do not know how to write a legal brief since the colleges in KSA do not offer proper instructions for the students. Instructors teach the theory on case briefs rather than actually inviting the students to write one. It might be difficult for students to write a case brief if they are taught the benefit of case briefs but not the skills involved in the writing process.

Similar to students in other countries, law students in KSA have to submit different assignments in writing. Saudi students share the same concerns as other students of what to write and where to write it. Saudi students may have topics in their minds and know what to say. However, they do not know how to express it in an organized template. Adopting the American style of legal writing will help Saudi students to overcome their concerns when writing assignments.

## II. Significance of the case brief: Becoming a competent lawyer

The brief writing process requires a legal professional to adopt an analytical mindset. Close study of judicial opinions of appealed lawsuits can help one achieve the skills of scrutinizing and interpreting laws and their complicated adaptations to plaintiff and defendant circumstances. Case precedents, standards, and parallel cases are created, cited, and applied throughout judicial interpretations and are the mainstay of legal practice (Mueller, 2020). Most of American law is case law or case precedents – the rules appellate judges configure from their interpretation of laws as well as the source of the laws, based on the Constitution, statutes, or common law (case precedents).

On one level are the facts of the case, and on the other level, the sequence of events leading up to the dispute between parties. The background, actions, and reactions of the plaintiff and defendant form the framework of the case. As the panel of appellate judges (three judges) examines the legal moves by each party and their justifications, the initial circuit court judge renders a decision, provoking push back by one of the parties that results in an appeal against the decision.

Case laws have been applied to current statutes to close loopholes, define confusing terms, and even extend human rights claims for summary judgement (lack of evidence for a trial) as well as qualified immunity (official exemption from civil suits unless the plaintiff shows that the official violated "clearly established statutory or constitutional rights of which a reasonable person would have known"). For instance, although the 8th Amendment specifically prohibits cruel and unusual punishment in prison centers, according to Dolovich (2009), it also includes prisoner safety from other inmates. In the *Farmer v Brennan* case, the Court found that "prison conditions not explicitly authorized by the statute, or the sentencing judge qualify as punishment only if some prison official actually knew of and disregarded the risk of harm" (Dolovich, 2009).

Thus, lawyers and law students must be knowledgeable regarding the parts of laws that judges dissect to determine culpability. It is helpful to break down how legal principles as well as the source of laws are relevant to the case (Miller, 2018: 29). With rare exceptions, the outcome of an appellate case will turn on the meaning of a provision of the Constitution, a law, or a judicial doctrine. The provision or debated point must be captured in the restatement of the issue. Interpreting the constitutional basis for laws, reiterating statutes and legislative processes used to enact laws, and elucidating common law or case precedents are essential elements of the legal profession. Common law or case law, includes unwritten laws based on legal precedents established by previous court cases, judges' opinions, and juries. Common laws may in fact inspire new legislation to be enacted.

When considering the various skills a lawyer must demonstrate, critical thinking is high on the list (Kerr, 2005). Patience is an achievable attitude as is open-mindedness. It is hoped that one's interest in deciphering case briefs will increase as one become adept at identifying the relationships between laws and their interpretations and additional complexities (Kerr, 2005). Another strategy to use during analysis is to expand strategic thinking by asking the following questions: "What is the legal rule of this case?," "What is the significance of this case for human rights, etc.?" and "What did the Court want to change or enlarge with this case?" (Kerr, 2005). When questioning the importance of a case, a lawyer needs to evaluate its relationship to other cases and determine "...its place in history, and what it shows about the Court, its members, its decision-making processes, or the impact it has on litigants, government, or society" (Dolovich, 2009).

Furthermore, one may also question the judges' "implicit assumptions," their ethics, and integrity of the decision debated. Finally, the rationale underlying the judges' thought processes behind their decision should be examined. Cases relevant to constitutional issues usually involve numerous issues that will be instructive to future litigations and should also be in students' notes, whether connected to litigants, lawyers, or society.

## Conclusion

In this report, the author recognizes the skills developed by writing case briefs that can enable one to become a strategic and cognizant law professional. Specifically, the intent of this article is to encourage the lawyers and law students who speak English as a second language who have to grapple with judges' opinions that contain the wisdom of interpreting laws and case precedents and can influence future cases (Donahoe, 2011: 66). Saudi law professionals and students need to learn advanced English to become adept at recognizing patterns used by judges as well as legal vocabulary, including the ability to elucidate American, English, and Saudi laws. This may seem like a heavy load but undertaking such an effort will certainly pay off with English-speaking clients and companies. Developing critical thinking skills, breaking down various laws, and using case precedents are desired goals for any lawyer. In the long run, realizing how judges create legal precedents for future similar situations and their influence in expanding human rights and emphasizing the need for clarifying statute language can revitalize one's practice and skill sets.

Thus, by specifying the judges' conceptualization of a court case, one can trace the information in an appealed case when preparing a prosecution or a defense. The more practice a lawyer has with case briefing, the faster and more competent their deductions as they assist clients in their legal quest. Likewise, studying and reading related laws, amendments, and precedents of each case, enable lawyers to make correct correlations demonstrating confidence and assurance when representing clients in court. Such confidence and assurance will be quite shallow if the only experience with case briefing is that of reading briefs written by others. On the other hand, one may be an excellent translator of the judges' analysis and how their reasoning prepares succeeding courts to comprehend law, which may be the basis of a case (Mueller, 2020). A deeper knowledge of laws enables one to determine how the judges examine statutes to identify the ones relevant to the case. Enhancing legal skills is a lifelong endeavor in one's legal career – this is necessary to develop a depth of knowledge, strategic thinking, and confidence when handling a variety of complex suits. When a lawyer delivers outcomes in an effective and efficient manner, their client will also realize the competence of their approach in their interests.

The purpose of each legal document used in the legal community is different. Legal documents are based on precedents, and not on the personal opinions. Undergraduate students might write papers to present their ideas and initiatives on a particular topic. However, in legal writing, opinions and personal beliefs do not have the same value as legal precedents. This does not mean that ideas cannot be used in a creative way to craft a discussion. Legal documents should be based on laws and refrain from using phrases like "I think" and "I believe" (Donahoe, 2011: 65).

Legal writing can have an impact on whether a case is lost or won by a lawyer. Judges and clerks writing may exceed the limitation of deciding a case in hand, so their writing may outlive them in deciding other cases in the future. Written contracts bind the said parties for many years. Good legal writing helps distinguish a good lawyer and enhances a lawyer's reputation. Furthermore, legal writing comes with responsibilities attached to it, so the writing has to be accurate and complete. If a legal document misses vital information, the lawyer who wrote it can be held responsible for malpractice. Inaccurate and unethical writing can lead to disbarment. Laws and precedents are usually complex, so legal writing should be well organized. A reader should not have to struggle to follow legal arguments and analyses, and convoluted legal complexity should be avoided in case briefs. Law offices, courts, and legal entities have rigorous writing rules for legal documents, and if a lawyer fails to follow the rules, their work can be rejected. In addition, legal writing in undergraduate school might be long and detailed, but in real practice, it should be clear and concise. Finally, legal documents may have the same purpose, but each document has different audiences and goals. Different legal documents

need to be written for different clients of the same law firm. It is crucial to think about the purpose of a legal document, the audience, and the scope before starting the writing process (Donahoe, 2011: 66).

## **Recommendations**

1. Analyze case briefs as though they were your own cases.
2. In your case briefs, include judicial interpretations, inferences, and dissenting opinions.
3. Discuss how the judges compare a current case under review with other cases, and how they are related in setting case precedents.
4. What judicial assumptions are used in deciding case outcomes and holdings?
5. What, if any, research will be useful as you make sense of the decisions and holdings that may help to clarify the issues and outcomes?
6. Adopt legal case brief writing in Saudi law colleges.
7. Urging Saudi law colleges to enhance the courses on legal writing for their students.
8. Incentivize researchers to conduct more research on legal writing that could benefit the Saudi Students and professionals.
9. Saudi students should be taught how to take notes of a legal case in legal writing classes as an introduction for writing case briefs.

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#### Glossary

- Appellee/appellant:** If a case is appealed, the person who files the appeal is called the appellant, and the other side is called either the respondent or the appellee.
- Affirm:** Judges agree with the lower court's decision.
- Opinion:** Appellant judges review a lower court ruling to either affirm or reverse the judge's decision.
- Precedent:** Appellant judges create precedent when they have decided a case, giving their reasoning, legal interpretation, and applicable laws. Such precedents are used by other judges and courts when encountering similar cases.
- Case law:** Another term for precedent. Case law is utilized more than applicable laws for decision making in court holdings.
- Rule of law:** This refers to basic laws protecting human rights, restricting arbitrary governmental actions, and the governing law of the country. The rules of just conduct. All persons are subject to the laws of the land without distinction of rank or position.
- Procedural:** The history of court cases as they are heard by various levels of courts and judges.
- Applicable law:** Law or precedent that most nearly matches the circumstances of the case in hand; laws appropriate in the jurisdiction, county, or country.
- Holding/held:** Judge's decision and reasoning to support it.
- Explicit vs inferred:** Explicit means to explain an issue or decision in detail. Implicit is an issue or decision that is deduced, guessed, or figured out from the reasoning, laws utilized or applied, and case precedents.