

6: Case Briefing - Issues and Holdings

In this chapter, we are going to explore what goes into writing the Issues and Holdings sections of your case brief. These sections go right after your Applicable Statute(s) section. In these two sections, we begin to explain the reviewing court's legal analysis.

[We will be continuing to write a case brief for the Miller v. Thomack decision from the Wisconsin Court of Appeals -- click here to open the decision.](#)

ISSUES

The Issue(s) contain the legal question(s) the court is deciding in the case. What are the parties arguing about? What legal question(s) are you hoping to answer by reading and understanding the court's decision? Some court decisions focus on only one legal question; others analyze two or more closely related legal questions. The purpose of the Issues section of your case brief is to identify each legal question the reviewing court analyzed in its decision.

Finding and Understanding the Issues

The Issue has two components that must be included. The first component is the legal standard. The second component consists of the legally significant facts or circumstances to which the reviewing court applied the legal standard in its decision.

The Legal Standard

The first component of the Issue is the legal standard. The legal standard comes from the statutory language, precedent or other legal authority the reviewing court is interpreting and/or applying to the parties in the case. Legal standards often involve questions such as

- What does the legal authority (for example, a statute) require or prohibit?
- How are specific words or phrases in the legal authority defined?
- What does a party have to prove to successfully assert the claim or defense involved in the case?

If the decision you are briefing has an Applicable Statute (or Administrative Regulation), this is a good starting point for finding and understanding the legal standard. The next step is to identify the specific legal standard(s) the reviewing court analyzed in its decision that guided its application of the statutory requirements to the parties involved in the appeal.

Finding the legal standard(s) in the decision can be tricky. Sometimes the decision expressly identifies them. Other times, you can “reverse engineer” the legal standard by finding the reviewing court's legal conclusions – kind of like what happens on the game show Jeopardy!© where contestants are given the answer and need to come up with the question. And still other times, the reviewing court identifies the legal standard through statements about the parties' arguments or contentions on appeal.

More often, you need to hunt for the legal standard(s) while you carefully and thoroughly read the entire decision for perhaps the second or third time. As you read the decision, use a highlighter to mark all of the places the reviewing court discusses the legal authority being interpreted/applied. Then, reread what you've highlighted and look for the legal issue “indicator language” such as or similar to the following phrases:

- “The issue (or question) before this Court is...”
- “The parties raise the following issues (or questions) on appeal ...”
- “We hold (or conclude) that ...” (using the answer to identify the legal question)
- “Appellant (or other party designation or name) argues (or contents) that ...” (using the parties' arguments to identify the legal question)

As you will recall, we identified two Applicable Statutes in the *Miller v. Thomack* decision:

Section 125.07(1)(a)1., Wis. Stat. (1996): “No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.”

Section 125.07(1)(a)3., Wis. Stat. (1996): “No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control.”

Because we have two different Applicable Statutes, there are at least two different Issues, each with its own legal standard. Let's focus on identifying the specific legal standard the reviewing court analyzed with respect to the first statute (§ 125.07(1)(a)1., Wis. Stat. (1996)), which prohibits procuring, selling, dispensing, or giving away alcoholic beverages to an underage person.

You may have noticed during your previous read-through of the *Miller v. Thomack* decision that the reviewing court used headings or topic titles to guide the reader through its analysis. About $\frac{3}{4}$ of the way through the opinion, you see the heading/topic title, “**LIABILITY UNDER § 125.07(1)(a) 1, STATS., FOR CONTRIBUTING TO PURCHASE**” – this looks like a great place to look for the legal standard! In the paragraph following this heading, the Court wrote:

Rhonda contends that the trial court erred in concluding that Karen, Ransom and Beattie did not violate § 125.07(1)(a) 1, STATS., by contributing to the purchase of the beer. The statute provides: “No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.”

A few sentences later, the court wrote: “In this case, we focus on the term ‘procure for.’ Bingo! We now know the **legal standard**, or the legal question, is

What is the meaning of the phrase “procure for” as used in § 125.07(1)(a)1., Wis. Stat. (1996), which prohibits procuring alcoholic beverages for underage persons who are not accompanied by their parent, guardian or spouse who can legally consume alcohol?

The Legally Significant Facts

The second component of the Issue, the legally significant facts, gives us context for understanding the legal standard and how it is applied to the parties in the appeal. It tells us what the case is really about. Identifying the legally significant facts also gives us useful information we can use later on when we want to compare the decision we are briefing to other decisions discussing similar Issues as part of our macro-synthesis.

When you are looking for the legally significant facts, think of it asking, “Why are we here?” It can be helpful to think of the following questions:

- What happened that is raising the legal question for the reviewing court?
- What did the parties do (or not do) that is making the reviewing court question whether the legal standard has been met (or has been violated, or should be applied to the parties)
- What conduct or facts are the parties arguing about?

Previously, we wrote the Facts section of our case brief, which contains all of the legally significant and contextual facts for the entire appeal. For our Issue, we want to pull out only the facts the reviewing court stated were legally significant when it was determining whether Kimberly, Karen, Craig and Jason “procured” alcohol. Luckily, the reviewing court repeated the legally significant facts related to this legal standard when it discussed (§ 125.07(1)(a)1., Wis. Stat. (1996):

Facts

[7] Clary was willing to purchase the beer for the underage persons in the car, but he needed money, and a reasonable inference from the undisputed facts is that he was not going to use his own. For purposes of this appeal, it is undisputed that when Karen, Ransom and Beattie contributed the money, they knew Clary was going to use it to purchase beer for the persons in the car, including Thomack, and they knew Thomack was underage.

Remember, if the reviewing court repeats facts in its decision, they are probably pretty important.

For each legal authority (or word or phrase in the legal authority), you will want to repeat the process above: first, identify the specific legal standard. Then, identify the legally significant facts relating to each legal standard.

Writing the Issue Section

There are a few different ways to structure your Issues. Some people like to use Roman numerals (I, II, III) for the legal standard and capital letters (A, B, C) when listing the legally significant facts relevant to each legal standard. Other people like to use Arabic numerals (1, 2, 3) for the legal standard and lowercased letters (a, b, c) or bullets when listing the legally significant facts relevant to each legal standard. Still other people like to write the Issue in one sentence (this works best with short legal standards and only a few facts). Regardless of the structure you use, be sure to phrase each issue as a question.

I also recommend using a formula similar to what you see below for writing your Issues, to make sure you include both the legal standard and the legally significant facts:

Is [legal standard, specifically described] met **when the facts show**: [legally significant facts relevant to the legal standard]?

We'll use the Millers' appeal in the *Miller v. Thomack* Court of Appeals decision to write the Issue step by step.

Step 1: Write the legal standard.

Make sure you are writing your legal standard as narrowly as possible, focusing on the words or phrases the reviewing court is interpreting or applying in its decision. You may even want to refer to the legal authority from which you got the legal standard. Do not, however, just generally describe the legal standard. Most importantly, resist the temptation to copy and paste from the reviewing court's decision. Write it in your own words.

✓ Example

Here is a good example of the legal standard:

1. Does a person "procure" alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show:

Here are some poor examples of the legal standard:

- Does a person violate the statute when the facts show (too broad)
- Whether a person "procures" alcohol ... (avoid starting with "whether" – it will almost always result in a grammatically incorrect sentence fragment)

Step 2: Add a list of the legally significant facts relevant to the legal standard.

Pay close attention to which legally significant facts are relevant to the legal standard. Try not to list all of the facts of the case for each legal standard. Also, if you are using lists, make sure each item in the list grammatically fits with the phrase "when the facts show."

✓ Example Issue

Here's an example of an Issue that follows the formula suggested above:

1. Does a person "procure" alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show: (legal standard)
 - a. The person contributed money toward a fund that the person knew would be used to purchase alcohol; (legally significant fact)
 - b. The person knew that underage persons would consume the alcohol purchased with the person's funds; and (legally significant fact)
 - c. The person knew the alcohol would be consumed by underage persons outside the presence of a parent, guardian or spouse who could legally consume alcohol? (legally significant fact)

In the sample case brief for the *Thomack v. Miller* decision, you see another example of how this Issue could be written.

Step 3: Cross-check your list of legally significant facts against the Facts section of your case brief.

It's important to make sure that all of the facts you list in your Issues are also included in the Facts section of your case brief. Yes, it's repetitious; that repetition helps to strengthen your (and your reader's) understanding of the decision being briefed. While you're reviewing the Facts section of your case brief, decide whether you want to add contextual facts to your Issue to flesh out the story or make it more interesting. If you're going to make a mistake regarding which facts to include as part of your Issue, it's better to make the mistake of including facts that don't really matter, rather than leaving out crucial facts.

Step 4: Make sure the question in the Issue can be answered "Yes" or "No" without extra clarification.

The question asked in your Issue will be answered in the Holding. You want to make sure that, based on what you read in the decision, the answer to the question is clearly either "yes" or "no" and not "maybe" or "both yes and no."

Step 5: Repeat steps 1-4 for each additional legal standard.

Even if the legal standards come from the same legal authority or overlap somewhat, write a separate Issue for each one analyzed by the reviewing court. For example, if the court in *Miller v. Thomack* also analyzed whether the minor defendants' behavior constituted dispensing alcohol, or giving alcohol away, those would each be a separate Issue – even though the same legally significant facts would be relevant to each Issue. That means you'd have 3 issues with 3 different legal standards (one for procuring, one for dispensing, and one for giving away) with very similar legally significant facts (though I would add facts about everyone serving themselves alcohol, or perhaps that the person purchased the alcohol with no intent to consume it himself). Writing closely related Issues separately also avoids potential problems when writing the Holding, such as needing to explain that the reviewing court answered one legal standard identified in the Issue with a "yes" answer and another legal standard in that same Issue with a "no" answer.

Step 6: Review your Issues for consistency.

Excellent legal writing is internally consistent with respect to structure and details. Some things to check:

- Is your main numbering system consistent across all Issues (I, II, III or 1, 2, 3, or A, B, C)?
- Are the verb tenses consistent across all Issues (past tense or present tense)?
- Are the nouns consistent across all Issues (plural nouns or singular nouns, for example)?
- Are all Issues phrased as questions?

Take the time to make sure your Issues accurately describe the legal standard and legally significant facts analyzed in the decision, are written well, and are complete before moving on to writing your Holdings. It will definitely make writing your Holdings easier!

Writing the Holding Section

Once you have your Issue section written, writing the Holding section is super easy, at least if you are using the format required in this class! In this class, the Holdings simply answer the questions raised in the Issues, with no extra explanation (sometimes referred to as using "mirror image" language). Here are the steps:

Step 1: Copy and paste your Issues into the Holding section.

After you title the Holding section, this really is the next step! Then make sure that the main numbering system of the Holdings matches the main numbering system of the Issues.

Step 2: Add "Yes" or "No" to the beginning of each Issue.

How did the reviewing court answer the question you asked in the Issue? If you wrote the Issue correctly, it should be either "yes" or "no."

Step 3: Revise the grammar and punctuation in each Holding to a statement.

You wrote your Issue as a question. The holding needs to be a statement that starts with "yes" or "no." That means you'll need to change some words or word order and change the final punctuation from a question mark to a period. Here is what our holding

would look like (the changes are highlighted in yellow):

✓ Example Holding

Here's an example of a Holding that answers the example Issue above:

1. **Yes. A person does** “procure” alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show:
 - a. The person contributed money toward a fund that the person knew would be used to purchase alcohol;
 - b. The person knew that underage persons would consume the alcohol purchased with the person’s funds; and
 - c. The person knew the alcohol would be consumed by underage persons outside the presence of a parent, guardian or spouse who could legally consume alcohol.

Now that you have the Procedural History, Disposition, Applicable Statutes, Facts, Issues and Holdings of the *Miller v. Thomack* decision, you have a good foundation for understanding and writing the case brief section that explains the Court of Appeals’ legal analysis in detail: The Reasoning section.

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