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对应于梅斯、米勒、卡内尔合著的案例教程《银行法》

银行法

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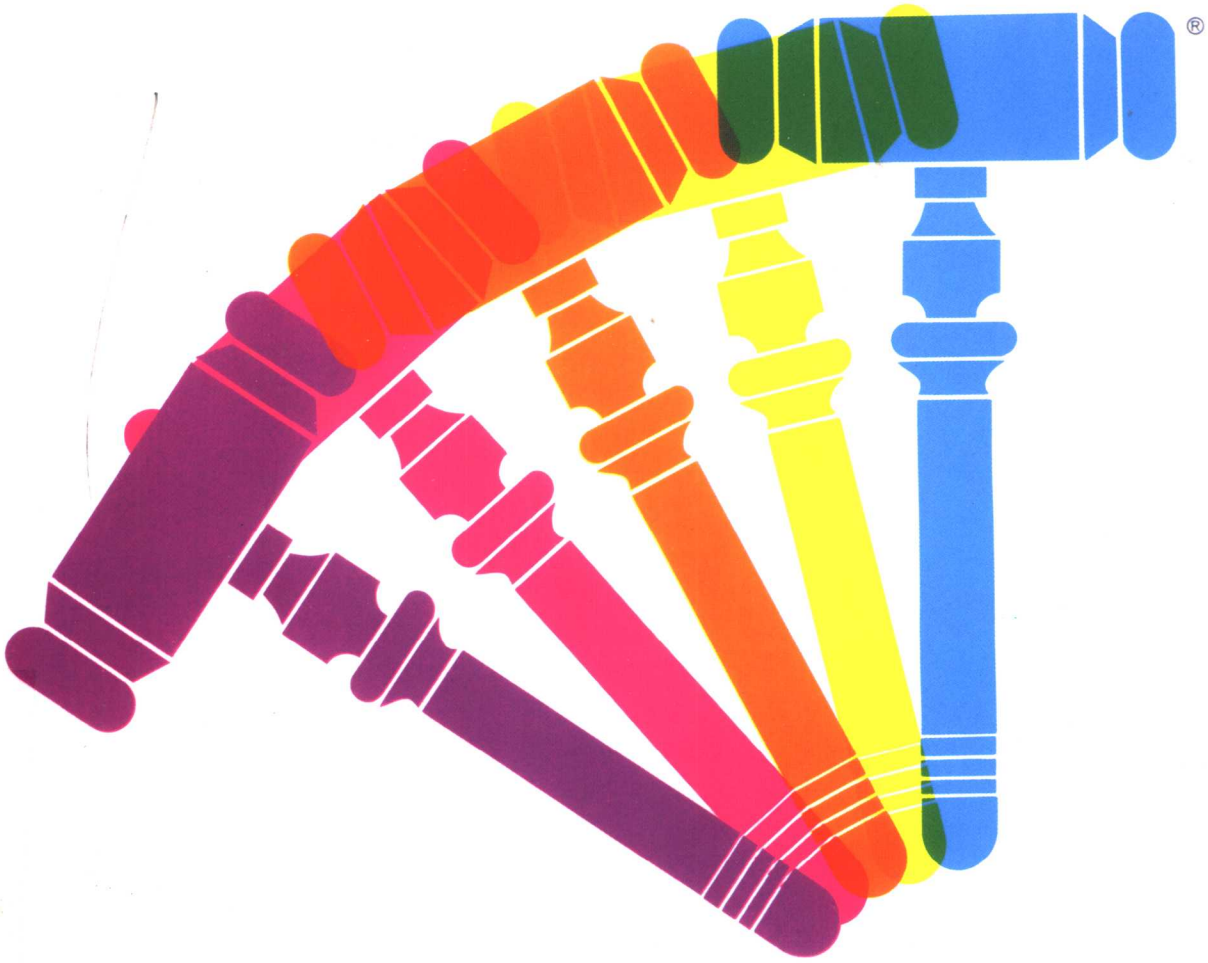

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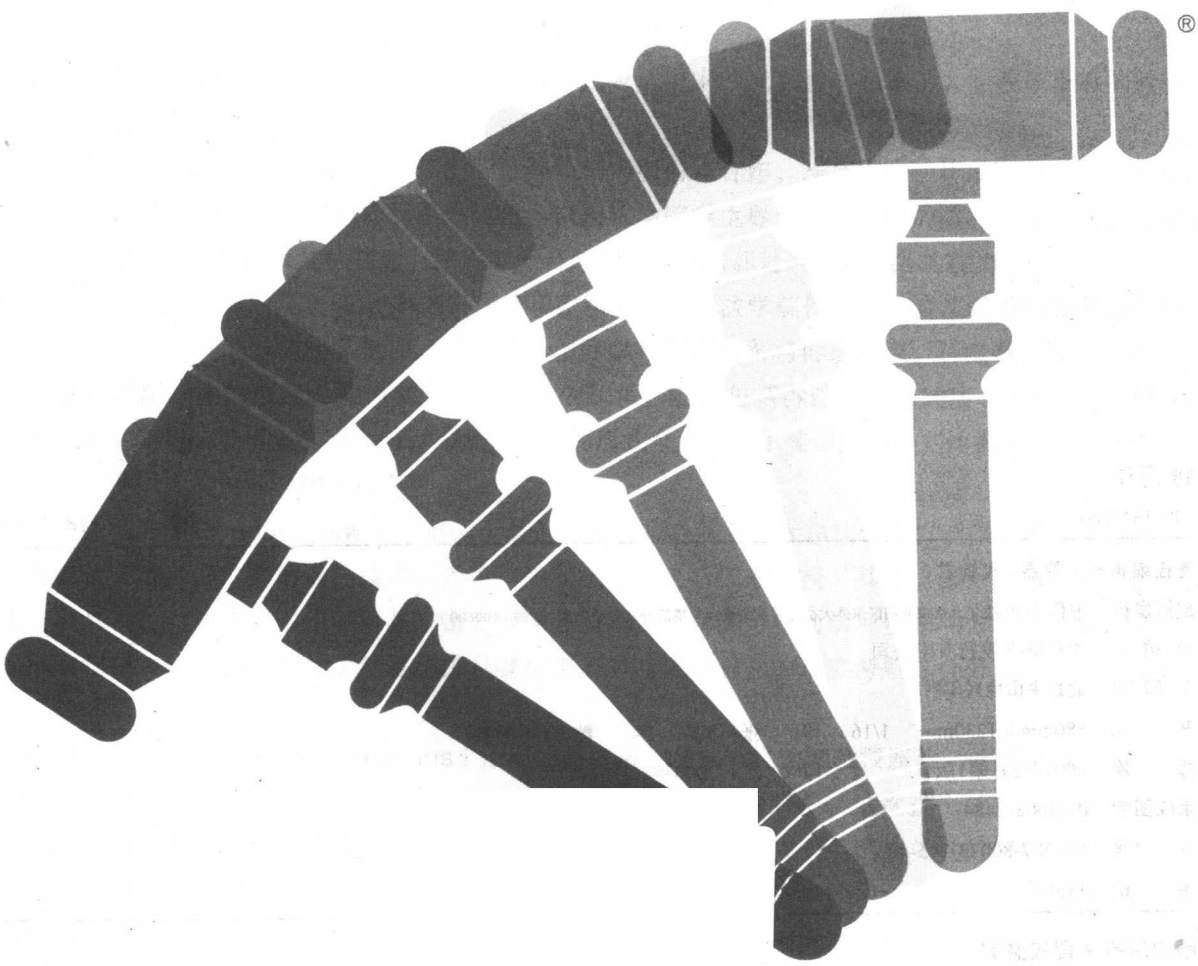

中信出版社
CITIC PUBLISHING HOUSE

图书在版编目（CIP）数据

银行法（案例举要影印系列）/一影印本. —北京：中信出版社，2003.8
书名原文：Banking Law
ISBN 7-80073-745-4

Ⅰ. 银… Ⅱ. 银行法-案例-分析-美国-英文 Ⅲ. D971.222.8

中国版本图书馆CIP数据核字（2003）第040499号

银行法

YINHANGFA

责任编辑：王黎嘉　袁婉君
出版发行：中信出版社（北京市朝阳区东外大街亮马河南路14号塔园外交办公大楼　邮编　100600）
经 销 者：中信联合发行有限公司
承 印 者：北京牛山世兴印刷厂
开　　本：880mm × 1230mm　1/16　**印　　张**：5.5　**字　　数**：110千字
版　　次：2003年8月第1版　　**印　　次**：2003年8月第1次印刷
京权图字：01-2003-2484
书　　号：ISBN 7-80073-745-4/D · 41
定　　价：18.00元

总　序

吴志攀

加入世界贸易组织表明我国经济发展进入了一个新的发展时代——一个国际化商业时代。商业与法律的人才流动将全球化，评介人才标准将国际化，教育必须与世界发展同步。商业社会早已被马克思描绘成为一架复杂与精巧的机器，维持这架机器运行的是法律。法律不仅仅是关于道德与公理的原则，也不单单是说理论道的公平教义，还是具有可操作性的精细的具体专业技术。像医学专业一样，这些专业知识与经验是从无数的案例实践积累而成的。这些经验与知识体现在法学院的教材里。中信出版社出版的这套美国法学院教材为读者展现了这一点。

教育部早在2001年1月2日下发的《关于加强高等学校本科教学工作提高教学质量的若干意见》中指出："为适应经济全球化和科技革命的挑战，本科教育要创造条件使用英语等外语进行公共课和专业课教学。对高新技术领域的生物技术、信息技术等专业，以及为适应我国加入WTO后需要的金融、法律等专业，更要先行一步，力争三年内，外语教学课程达到所开课程的5%-10%。暂不具备直接用外语讲授条件的学校、专业，可以对部分课程先实行外语教材、中文授课，分步到位。"

引进优质教育资源，快速传播新课程，学习和借鉴发达国家的成功教学经验，大胆改革现有的教科书模式成为当务之急。

按照我国法学教育发展的要求，中信出版社与外国出版公司合作，瞄准国际法律的高水平，从高端入手，大规模引进畅销外国法学院的外版法律教材，以使法学院学生尽快了解各国的法律制度，尤其是欧美等经济发达国家的法律体系及法律制度，熟悉国际公约与惯例，培养处理国际事务的能力。

此次中信出版社引进的是美国ASPEN出版公司出版的供美国法学院使用的主流法学教材及其配套教学参考书，作者均为富有经验的知名教授，其中不乏国际学术权威或著名诉讼专家，历经数十年课堂教学的锤炼，颇受法学院学生的欢迎，并得到律师实务界的认可。它们包括诉讼法、合同法、公司法、侵权法、宪法、财产法、证券法等诸多法律部门，以系列图书的形式全面介绍了美国法律的基本概况。

这次大规模引进的美国法律教材包括：

伊曼纽尔法律精要（Emanuel Law Outlines）美国哈佛、耶鲁等著名大学法学院广泛采用的主流课程教学用书，是快捷了解美国法律的最佳读本。作者均为美国名牌大学权威教授。其特点是：内容精炼，语言深入浅出，独具特色。在前言中作者以其丰富的教学经验制定了切实可行的学习步骤和方法。概要部分提纲挈领，浓缩精华。每章精心设计了简答题供自我检测。对与该法有关的众多考题综合分析，归纳考试要点和难点。

案例与解析（Examples and Explanations）由美国最权威、最富有经验的教授所著，这套丛书历经不断的修改、增订，吸收了最新的资料，经受了美国成熟市场的考验，读者日众。这次推出的是最新版本，在前几版的基础上精益求精，补充了最新的联邦规则，案例也是选用当今人们所密切关注的问题，有很强的时代感。该丛书强调法律在具体案件中的运用，避免了我国教育只灌输法律的理念与规定，而忽视实际解决问题的能力的培养。该丛书以简洁生动的语言阐述了美国的基本法律制度，可准确快捷地了解美国法律的精髓。精心选取的案例，详尽到位的解析，使读者读后对同一问题均有清晰的思路，透彻的理解，能举一反三，灵活运用。该丛书匠心独具之处在于文字与图表、图例穿插，有助于理解与记忆。

案例教程系列（Casebook Series）覆盖了美国法学校院的主流课程，是学习美国法律的代表性图书，美

国著名的哈佛、耶鲁等大学的法学院普遍采用这套教材，在法学专家和学生中拥有极高的声誉。本丛书中所选的均为重要案例，其中很多案例有重要历史意义。书中摘录案例的重点部分，包括事实、法官的推理、作出判决的依据。不仅使读者快速掌握案例要点，而且省去繁琐的检索和查阅原案例的时间。书中还收录有成文法和相关资料，对国内不具备查阅美国原始资料条件的读者来说，本套书更是不可或缺的学习参考书。这套丛书充分体现了美国法学教育以案例教学为主的特点，以法院判例作为教学内容，采用苏格拉底式的问答方法，在课堂上学生充分参与讨论。这就要求学生不仅要了解专题法律知识，而且要理解法律判决书。本套丛书结合案例设计的大量思考题，对提高学生理解概念、提高分析和解决问题的能力，非常有益。本书及时补充出版最新的案例和法规汇编，保持四年修订一次的惯例，增补最新案例和最新学术研究成果，保证教材与时代发展同步。本丛书还有配套的教师手册，方便教师备课。

案例举要（Casenote Legal Briefs）美国最近三十年最畅销的法律教材的配套辅导读物。其中的每本书都是相关教材中的案例摘要和精辟讲解。该丛书内容简明扼要，条理清晰，结构科学，便于学生课前预习、课堂讨论、课后复习和准备考试。

除此之外，中信出版社还将推出教程系列、法律文书写作系列等美国法学教材的影印本。

美国法律以判例法为其主要的法律渊源，法律规范机动灵活，随着时代的变迁而对不合时宜的法律规则进行及时改进，以反映最新的时代特征；美国的法律教育同样贯穿了美国法律灵活的特性，采用大量的案例教学，启发学生的逻辑思维，提高其应用法律原则的能力。

从历史上看，我国的法律体系更多地受大陆法系的影响，法律渊源主要是成文法。在法学教育上，与国外法学教科书注重现实问题研究，注重培养学生分析和解决问题的能力相比，我国基本上采用理论教学为主，而用案例教学来解析法理则显得薄弱，在培养学生的创新精神和实践能力方面也做得不够。将美国的主流法学教材和权威的法律专业用书影印出版，就是试图让法律工作者通过原汁原味的外版书的学习，开阔眼界，取长补短，提升自己的专业水平，培养学生操作法律实际动手能力，特别是使我们的学生培养起对法律的精细化、具体化和操作化能力。

需要指出的是，影印出版美国的法学教材，并不是要不加取舍地全盘接收，我们只是希望呈现给读者一部完整的著作，让读者去评判。“取其精华去其糟粕”是我们民族对待外来文化的原则，我们相信读者的分辨能力。

是为序。

FORMAT FOR THE CASENOTE LEGAL BRIEF

PARTY ID: Quick identification of the relationship between the parties.

NATURE OF CASE: This section identifies the form of action (e.g., breach of contract, negligence, battery), the type of proceeding (e.g., demurrer, appeal from trial court's jury instructions) or the relief sought (e.g., damages, injunction, criminal sanctions).

FACT SUMMARY: This is included to refresh the student's memory and can be used as a quick reminder of the facts.

CONCISE RULE OF LAW: Summarizes the general principle of law that the case illustrates. It may be used for instant recall of the court's holding and for classroom discussion or home review.

FACTS: This section contains all relevant facts of the case, including the contentions of the parties and the lower court holdings. It is written in a logical order to give the student a clear understanding of the case. The plaintiff and defendant are identified by their proper names throughout and are always labeled with a (P) or (D).

ISSUE: The issue is a concise question that brings out the essence of the opinion as it relates to the section of the casebook in which the case appears. Both substantive and procedural issues are included if relevant to the decision.

HOLDING AND DECISION: This section offers a clear and in-depth discussion of the rule of the case and the court's rationale. It is written in easy-to-understand language and answers the issue(s) presented by applying the law to the facts of the case. When relevant, it includes a thorough discussion of the exceptions to the case as listed by the court, any major cites to other cases on point, and the names of the judges who wrote the decisions.

CONCURRENCE / DISSENT: All concurrences and dissents are briefed whenever they are included by the casebook editor.

EDITOR'S ANALYSIS: This last paragraph gives the student a broad understanding of where the case "fits in" with other cases in the section of the book and with the entire course. It is a hornbook-style discussion indicating whether the case is a majority or minority opinion and comparing the principal case with other cases in the casebook. It may also provide analysis from restatements, uniform codes, and law review articles. The editor's analysis will prove to be invaluable to classroom discussion.

QUICKNOTES: Conveniently defines legal terms found in the case and summarizes the nature of any statutes, codes, or rules referred to in the text.

PALSGRAF v. LONG ISLAND R.R. CO.
Injured bystander (P) v. Railroad company (D)
N.Y. Ct. App., 248 N.Y. 339, 162 N.E. 99 (1928).

NATURE OF CASE: Appeal from judgment affirming verdict for plaintiff seeking damages for personal injury.

FACT SUMMARY: Helen Palsgraf (P) was injured on R.R.'s (D) train platform when R.R.'s (D) guard helped a passenger aboard a moving train, causing his package to fall on the tracks. The package contained fireworks which exploded, creating a shock that tipped a scale onto Palsgraf (P).

CONCISE RULE OF LAW: The risk reasonably to be perceived defines the duty to be obeyed.

FACTS: Helen Palsgraf (P) purchased a ticket to Rockaway Beach from R.R. (D) and was waiting on the train platform. As she waited, two men ran to catch a train that was pulling out from the platform. The first man jumped aboard, but the second man, who appeared as if he might fall, was helped aboard by the guard on the train who had kept the door open so they could jump aboard. A guard on the platform also helped by pushing him onto the train. The man was carrying a package wrapped in newspaper. In the process, the man dropped his package, which fell on the tracks. The package contained fireworks and exploded. The shock of the explosion was apparently of great enough strength to tip over some scales at the other end of the platform, which fell on Palsgraf (P) and injured her. A jury awarded her damages, and R.R. (D) appealed.

ISSUE: Does the risk reasonably to be perceived define the duty to be obeyed?

HOLDING AND DECISION: (Cardozo, C.J.) Yes. The risk reasonably to be perceived defines the duty to be obeyed. If there is no foreseeable hazard to the injured party as the result of a seemingly innocent act, the act does not become a tort because it happened to be a wrong as to another. If the wrong was not willful, the plaintiff must show that the act as to her had such great and apparent possibilities of danger as to entitle her to protection. Negligence in the abstract is not enough upon which to base liability. Negligence is a relative concept, evolving out of the common law doctrine of trespass on the case. To establish liability, the defendant must owe a legal duty of reasonable care to the injured party. A cause of action in tort will lie where harm, though unintended, could have been averted or avoided by observance of such a duty. The scope of the duty is limited by the range of danger that a reasonable person could foresee. In this case, there was nothing to suggest from the appearance of the parcel or otherwise that the parcel contained fireworks. The guard could not reasonably have had any warning of a threat to Palsgraf (P), and R.R. (D) therefore cannot be held liable. Judgment is reversed in favor of R.R. (D).

DISSENT: (Andrews, J.) The concept that there is no negligence unless R.R. (D) owes a legal duty to take care as to Palsgraf (P) herself is too narrow. Everyone owes to the world at large the duty of refraining from those acts that may unreasonably threaten the safety of others. If the guard's action was negligent as to those nearby, it was also negligent as to those outside what might be termed the "danger zone." For Palsgraf (P) to recover, R.R.'s (D) negligence must have been the proximate cause of her injury, a question of fact for the jury.

EDITOR'S ANALYSIS: The majority defined the limit of the defendant's liability in terms of the danger that a reasonable person in defendant's situation would have perceived. The dissent argued that the limitation should not be placed on liability, but rather on damages. Judge Andrews suggested that only injuries that would not have happened but for R.R.'s (D) negligence should be compensable. Both the majority and dissent recognized the policy-driven need to limit liability for negligent acts, seeking, in the words of Judge Andrews, to define a framework "that will be practical and in keeping with the general understanding of mankind." The Restatement (Second) of Torts has accepted Judge Cardozo's view.

QUICKNOTES

FORESEEABILITY – The reasonable anticipation that damage is a likely result from certain acts or omissions.
NEGLIGENCE - Failure to exercise that degree of care which a person of ordinary prudence would exercise under similar circumstances.
PROXIMATE CAUSE – Something which in natural and continuous sequence, unbroken by any new intervening cause, produces an event, and without which the injury would not have occurred.

NOTE TO STUDENTS

Aspen Publishers is proud to offer *Casenote Legal Briefs*–continuing thirty years of publishing America's best-selling legal briefs.

Casenote Legal Briefs are designed to help you save time when briefing assigned cases. Organized under convenient headings, they show you how to abstract the basic facts and holdings from the text of the actual opinions handed down by the courts. Used as part of a rigorous study regime, they can help you spend more time analyzing and critiquing points of law than on copying out bits and pieces of judicial opinions into your notebook or outline.

Casenote Legal Briefs should never be used as a substitute for assigned casebook readings. They work best when read as a follow-up to reviewing the underlying opinions themselves. Students who try to avoid reading and digesting the judicial opinions in their casebooks or on-line sources will end up shortchanging themselves in the long run. The ability to absorb, critique, and restate the dynamic and complex elements of case law decisions is crucial to your success in law school and beyond. It cannot be developed vicariously.

Casenote Legal Briefs represent but one of the many offerings in Aspen's Study Aid Timeline, which includes:

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To find out more about Aspen Study Aid publications, visit us on-line at www.aspenpublishers.com or e-mail us at legaledu@aspenpubl.com. We'll be happy to assist you.

HOW TO BRIEF A CASE

A. DECIDE ON A FORMAT AND STICK TO IT

Structure is essential to a good brief. It enables you to arrange systematically the related parts that are scattered throughout most cases, thus making manageable and understandable what might otherwise seem to be an endless and unfathomable sea of information. There are, of course, an unlimited number of formats that can be utilized. However, it is best to find one that suits your needs and stick to it. Consistency breeds both efficiency and the security that when called upon you will know where to look in your brief for the information you are asked to give.

Any format, as long as it presents the essential elements of a case in an organized fashion, can be used. Experience, however, has led *Casenotes* to develop and utilize the following format because of its logical flow and universal applicability.

NATURE OF CASE: This is a brief statement of the legal character and procedural status of the case (e.g., "Appeal of a burglary conviction").

There are many different alternatives open to a litigant dissatisfied with a court ruling. The key to determining which one has been used is to discover *who is asking this court for what.*

This first entry in the brief should be kept as *short as possible.* The student should use the court's terminology if the student understands it. But since jurisdictions vary as to the titles of pleadings, the best entry is the one that apprises the student of who wants what in this proceeding, not the one that sounds most like the court's language.

CONCISE RULE OF LAW: A statement of the general principle of law that the case illustrates (e.g., "An acceptance that varies any term of the offer is considered a rejection and counteroffer").

Determining the rule of law of a case is a procedure similar to determining the issue of the case. Avoid being fooled by red herrings; there may be a few rules of law mentioned in the case excerpt, but usually only one is *the* rule with which the casebook editor is concerned. The techniques used to locate the issue, described below, may also be utilized to find the rule of law. Generally, your best guide is simply the chapter heading. It is a clue to the point the casebook editor seeks to make and should be kept in mind when reading every case in the respective section.

FACTS: A synopsis of only the essential facts of the case, i.e., those bearing upon or leading up to the issue.

The facts entry should be a short statement of the events and transactions that led one party to initiate legal proceedings against another in the first place. While some cases conveniently state the salient facts at the beginning of the decision, in other instances they will have to be culled from hiding places throughout the text, even from concurring and dissenting opinions. Some of the "facts" will often be in dispute and should be so noted. Conflicting evidence may be briefly pointed up. "Hard" facts must be included. Both must be *relevant* in order to be listed in the facts entry. It is impossible to tell what is relevant until the entire case is read, as the ultimate determination of the rights and liabilities of the parties may turn on something buried deep in the opinion.

The facts entry should never be longer than one to three *short* sentences.

It is often helpful to identify the role played by a party in a given context. For example, in a construction contract case the identification of a party as the "contractor" or "builder" alleviates the need to tell that that party was the one who was supposed to have built the house.

It is always helpful, and a good general practice, to identify the "plaintiff" and the "defendant." This may seem elementary and uncomplicated, but, especially in view of the creative editing practiced by some casebook editors, it is sometimes a difficult or even impossible task. Bear in mind that the *party presently* seeking something from this court may not be the plaintiff, and that sometimes only the cross-claim of a defendant is treated in the excerpt. Confusing or misaligning the parties can ruin your analysis and understanding of the case.

ISSUE: A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a "yes" or "no" answer. In reality, the issue is simply the Concise Rule of Law put in the form of a question (e.g., "May an offer be accepted by performance?").

The major problem presented in discerning what is *the* issue in the case is that an opinion usually purports to raise and answer several questions. However, except for rare cases, only one such question is really the issue in the case. Collateral issues not necessary to the resolution of the matter in controversy are handled by the court by language known as *"obiter dictum"* or merely *"dictum."* While dicta may be included later in the brief, it has no place under the issue heading.

To find the issue, the student again asks *who wants what* and then goes on to ask *why did that party succeed or fail in getting it.* Once this is determined, the "why" should be turned into a question.

The complexity of the issues in the cases will vary, but in all cases a single-sentence question should sum up the issue. *In a few cases,* there will be two, or even more rarely, three issues of equal importance to the resolution of the case. Each should be expressed in a single-sentence question.

Since many issues are resolved by a court in coming to a final disposition of a case, the casebook editor will reproduce the portion of the opinion containing the issue or issues most relevant to the area of law under scrutiny. A noted law professor gave this advice: "Close the book; look at the title on the cover." Chances are, if it is Property, the student need not concern himself with whether, for example, the federal government's treatment of the plaintiff's land really raises a federal question sufficient to support jurisdiction on this ground in federal court.

The same rule applies to chapter headings designating sub-areas within the subjects. They tip the student off as to what the text is designed to teach. The cases are arranged in a casebook to show a progression or development of the law, so that the preceding cases may also help.

It is also most important to remember to *read the notes and questions* at the end of a case to determine what the editors wanted the student to have gleaned from it.

HOLDING AND DECISION: This section should succinctly explain the rationale of the court in arriving at its decision. In capsulizing the "reasoning" of the court, it should always include an application of the general rule or rules of law to the specific facts of the case. Hidden justifications come to light in this entry; the reasons for the state of the law, the public policies, the biases and prejudices, those considerations that influence the justices' thinking and, ultimately, the outcome of the case. At the end, there should be a short indication of the disposition or procedural resolution of the case (e.g., "Decision of the trial court for Mr. Smith (P) reversed").

The foregoing format is designed to help you "digest" the reams of case material with which you will be faced in your law school career. Once mastered by practice, it will place at your fingertips the information the authors of your casebooks have sought to impart to you in case-by-case illustration and analysis.

B. BE AS ECONOMICAL AS POSSIBLE IN BRIEFING CASES

Once armed with a format that encourages succinctness, it is as important to be economical with regard to the time spent on the actual reading of the case as it is to be economical in the writing of the brief itself. This does not mean "skimming" a case. Rather, it means reading the case with an "eye" trained to recognize into which "section" of your brief a particular passage or line fits and having a system for quickly and precisely marking the case so that the passages fitting any one particular part of the brief can be easily identified and brought together in a concise and accurate manner when the brief is actually written.

It is of no use to simply repeat everything in the opinion of the court; the student should only record enough information to trigger his or her recollection of what the court said. Nevertheless, an accurate statement of the "law of the case," i.e., the legal principle applied to the facts, is absolutely essential to class preparation and to learning the law under the case method.

To that end, it is important to develop a "shorthand" that you can use to make margin notations. These notations will tell you at a glance in which section of the brief you will be placing that particular passage or portion of the opinion.

Some students prefer to underline all the salient portions of the opinion (with a pencil or colored underliner marker), making marginal notations as they go along. Others prefer the color-coded method of underlining, utilizing different colors of markers to underline the salient portions of the case, each separate color being used to represent a different section of the brief. For example, blue underlining could be used for passages relating to the concise rule of law, yellow for those relating to the issue, and green for those relating to the holding and decision, etc. While it has its advocates, the color-coded method can be confusing and time-consuming (all that time spent on changing colored markers). Furthermore, it can interfere with the continuity and concentration many students deem essential to the reading of a case for maximum comprehension. In the end, however, it is a matter of personal preference and style. Just remember, whatever method you use, underlining must be used sparingly or its value is lost.

For those who take the marginal notation route, an efficient and easy method is to go along underlining the key portions of the case and placing in the margin alongside them the following "markers" to indicate where a particular passage or line "belongs" in the brief you will write:

N (NATURE OF CASE)
CR (CONCISE RULE OF LAW)
I (ISSUE)
HC (HOLDING AND DECISION, relates to the CONCISE RULE OF LAW behind the decision)
HR (HOLDING AND DECISION, gives the RATIONALE or reasoning behind the decision)
HA (HOLDING AND DECISION, APPLIES the general principle(s) of law to the facts of the case to arrive at the decision)

Remember that a particular passage may well contain information necessary to more than one part of your brief, in which case you simply note that in the margin. If you are using the color-coded underlining method instead of margin notation, simply make asterisks or checks in the margin next to the passage in question in the colors that indicate the additional sections of the brief where it might be utilized.

The economy of utilizing "shorthand" in marking cases for briefing can be maintained in the actual brief writing process itself by utilizing "law student shorthand" within the brief. There are many commonly used words and phrases for which abbreviations can be substituted in your briefs (and in your class notes also). You can develop abbreviations that are personal to you and which will save you a lot of time. A reference list of briefing abbreviations will be found elsewhere in this book.

C. USE BOTH THE BRIEFING PROCESS AND THE BRIEF AS A LEARNING TOOL

Now that you have a format and the tools for briefing cases efficiently, the most important thing is to make the time spent in briefing profitable to you and to make the most advantageous use of the briefs you create. Of course, the briefs are invaluable for classroom reference when you are called upon to explain or analyze a particular case. However, they are also useful in reviewing for exams. A quick glance at the fact summary should bring the case to mind, and a rereading of the concise rule of law should enable you to go over the underlying legal concept in your mind, how it was applied in that particular case, and how it might apply in other factual settings.

As to the value to be derived from engaging in the briefing process itself, there is an immediate benefit that arises from being forced to sift through the essential facts and reasoning from the court's opinion and to succinctly express them in your own words in your brief. The process ensures that you understand the case and the point that it illustrates, and that means you will be ready to absorb further analysis and information brought forth in class. It also ensures you will have something to say when called upon in class. The briefing process helps develop a mental agility for getting to the *gist* of a case and for identifying, expounding on, and applying the legal concepts and issues found there. Of most immediate concern, that is the mental process on which you must rely in taking law school examinations. Of more lasting concern, it is also the mental process upon which a lawyer relies in serving his clients and in making his living.

ABBREVIATIONS FOR BRIEFING

acceptance	acp
affirmed	aff
answer	ans
assumption of risk	a/r
attorney	atty
beyond a reasonable doubt	b/r/d
bona fide purchaser	BFP
breach of contract	br/k
cause of action	c/a
common law	c/l
Constitution	Con
constitutional	con
contract	K
contributory negligence	c/n
cross	x
cross-complaint	x/c
cross-examination	x/ex
cruel and unusual punishment	c/u/p
defendant	D
dismissed	dis
double jeopardy	d/j
due process	d/p
equal protection	e/p
equity	eq
evidence	ev
exclude	exc
exclusionary rule	exc/r
felony	f/n
freedom of speech	f/s
good faith	g/f
habeas corpus	h/c
hearsay	hr
husband	H
in loco parentis	ILP
injunction	inj
inter vivos	I/v
joint tenancy	j/t
judgment	judgt
jurisdiction	jur
last clear chance	LCC
long-arm statute	LAS
majority view	maj
meeting of minds	MOM
minority view	min
Miranda warnings	Mir/w
Miranda rule	Mir/r
negligence	neg
notice	ntc
nuisance	nus
obligation	ob
obscene	obs
offer	O
offeree	OE
offeror	OR
ordinance	ord
pain and suffering	p/s
parol evidence	p/e
plaintiff	P
prima facie	p/f
probable cause	p/c
proximate cause	px/c
real property	r/p
reasonable doubt	r/d
reasonable man	r/m
rebuttable presumption	rb/p
remanded	rem
res ipsa loquitur	RIL
respondeat superior	r/s
Restatement	RS
reversed	rev
Rule Against Perpetuities	RAP
search and seizure	s/s
search warrant	s/w
self-defense	s/d
specific performance	s/p
statute of limitations	S/L
statute of frauds	S/F
statute	S
summary judgment	s/j
tenancy in common	t/c
tenancy at will	t/w
tenant	t
third party	TP
third party beneficiary	TPB
transferred intent	TI
unconscionable	uncon
unconstitutional	unconst
undue influence	u/e
Uniform Commercial Code	UCC
unilateral	uni
vendee	VE
vendor	VR
versus	v
void for vagueness	VFV
weight of the evidence	w/e
weight of authority	w/a
wife	W
with	w/
within	w/i
without prejudice	w/o/p
without	w/o
wrongful death	wr/d

GLOSSARY

COMMON LATIN WORDS AND PHRASES ENCOUNTERED IN THE LAW

A FORTIORI: Because one fact exists or has been proven, therefore a second fact that is related to the first fact must also exist.

A PRIORI: From the cause to the effect. A term of logic used to denote that when one generally accepted truth is shown to be a cause, another particular effect must necessarily follow.

AB INITIO: From the beginning; a condition which has existed throughout, as in a marriage which was void ab initio.

ACTUS REUS: The wrongful act; in criminal law, such action sufficient to trigger criminal liability.

AD VALOREM: According to value; an ad valorem tax is imposed upon an item located within the taxing jurisdiction calculated by the value of such item.

AMICUS CURIAE: Friend of the court. Its most common usage takes the form of an amicus curiae brief, filed by a person who is not a party to an action but is nonetheless allowed to offer an argument supporting his legal interests.

ARGUENDO: In arguing. A statement, possibly hypothetical, made for the purpose of argument, is one made arguendo.

BILL QUIA TIMET: A bill to quiet title (establish ownership) to real property.

BONA FIDE: True, honest, or genuine. May refer to a person's legal position based on good faith or lacking notice of fraud (such as a bona fide purchaser for value) or to the authenticity of a particular document (such as a bona fide last will and testament).

CAUSA MORTIS: With approaching death in mind. A gift causa mortis is a gift given by a party who feels certain that death is imminent.

CAVEAT EMPTOR: Let the buyer beware. This maxim is reflected in the rule of law that a buyer purchases at his own risk because it is his responsibility to examine, judge, test, and otherwise inspect what he is buying.

CERTIORARI: A writ of review. Petitions for review of a case by the United States Supreme Court are most often done by means of a writ of certiorari.

CONTRA: On the other hand. Opposite. Contrary to.

CORAM NOBIS: Before us; writs of error directed to the court that originally rendered the judgment.

CORAM VOBIS: Before you; writs of error directed by an appellate court to a lower court to correct a factual error.

CORPUS DELICTI: The body of the crime; the requisite elements of a crime amounting to objective proof that a crime has been committed.

CUM TESTAMENTO ANNEXO, ADMINISTRATOR (ADMINISTRATOR C.T.A.): With will annexed; an administrator c.t.a. settles an estate pursuant to a will in which he is not appointed.

DE BONIS NON, ADMINISTRATOR (ADMINISTRATOR D.B.N.): Of goods not administered; an administrator d.b.n. settles a partially settled estate.

DE FACTO: In fact; in reality; actually. Existing in fact but not officially approved or engendered.

DE JURE: By right; lawful. Describes a condition that is legitimate "as a matter of law," in contrast to the term "de facto," which connotes something existing in fact but not legally sanctioned or authorized. For example, de facto segregation refers to segregation brought about by housing patterns, etc., whereas de jure segregation refers to segregation created by law.

DE MINIMUS: Of minimal importance; insignificant; a trifle; not worth bothering about.

DE NOVO: Anew; a second time; afresh. A trial de novo is a new trial held at the appellate level as if the case originated there and the trial at a lower level had not taken place.

DICTA: Generally used as an abbreviated form of obiter dicta, a term describing those portions of a judicial opinion incidental or not necessary to resolution of the specific question before the court. Such nonessential statements and remarks are not considered to be binding precedent.

DUCES TECUM: Refers to a particular type of writ or subpoena requesting a party or organization to produce certain documents in their possession.

EN BANC: Full bench. Where a court sits with all justices present rather than the usual quorum.

EX PARTE: For one side or one party only. An ex parte proceeding is one undertaken for the benefit of only one party, without notice to, or an appearance by, an adverse party.

EX POST FACTO: After the fact. An ex post facto law is a law that retroactively changes the consequences of a prior act.

EX REL.: Abbreviated form of the term ex relatione, meaning, upon relation or information. When the state brings an action in which it has no interest against an individual at the instigation of one who has a private interest in the matter.

FORUM NON CONVENIENS: Inconvenient forum. Although a court may have jurisdiction over the case, the action should be tried in a more conveniently located court, one to which parties and witnesses may more easily travel, for example.

GUARDIAN AD LITEM: A guardian of an infant as to litigation, appointed to represent the infant and pursue his/her rights.

HABEAS CORPUS: You have the body. The modern writ of habeas corpus is a writ directing that a person (body) being detained (such as a prisoner) be brought before the court so that the legality of his detention can be judicially ascertained.

IN CAMERA: In private, in chambers. When a hearing is held before a judge in his chambers or when all spectators are excluded from the courtroom.

IN FORMA PAUPERIS: In the manner of a pauper. A party who proceeds in forma pauperis because of his poverty is one who is allowed to bring suit without liability for costs.

INFRA: Below, under. A word referring the reader to a later part of a book. (The opposite of supra.)

IN LOCO PARENTIS: In the place of a parent.

IN PARI DELICTO: Equally wrong; a court of equity will not grant requested relief to an applicant who is in pari delicto, or as much at fault in the transactions giving rise to the controversy as is the opponent of the applicant.

IN PARI MATERIA: On like subject matter or upon the same matter. Statutes relating to the same person or things are said to be in pari materia. It is a general rule of statutory construction that such statutes should be construed together, i.e., looked at as if they together constituted one law.

IN PERSONAM: Against the person. Jurisdiction over the person of an individual.

IN RE: In the matter of. Used to designate a proceeding involving an estate or other property.

IN REM: A term that signifies an action against the res, or thing. An action in rem is basically one that is taken directly against property, as distinguished from an action in personam, i.e., against the person.

INTER ALIA: Among other things. Used to show that the whole of a statement, pleading, list, statute, etc., has not been set forth in its entirety.

INTER PARTES: Between the parties. May refer to contracts, conveyances or other transactions having legal significance.

INTER VIVOS: Between the living. An inter vivos gift is a gift made by a living grantor, as distinguished from bequests contained in a will, which pass upon the death of the testator.

IPSO FACTO: By the mere fact itself.

JUS: Law or the entire body of law.

LEX LOCI: The law of the place; the notion that the rights of parties to a legal proceeding are governed by the law of the place where those rights arose.

MALUM IN SE: Evil or wrong in and of itself; inherently wrong. This term describes an act that is wrong by its very nature, as opposed to one which would not be wrong but for the fact that there is a specific legal prohibition against it (malum prohibitum).

MALUM PROHIBITUM: Wrong because prohibited, but not inherently evil. Used to describe something that is wrong because it is expressly forbidden by law but that is not in and of itself evil, e.g., speeding.

MANDAMUS: We command. A writ directing an official to take a certain action.

MENS REA: A guilty mind; a criminal intent. A term used to signify the mental state that accompanies a crime or other prohibited act. Some crimes require only a general mens rea (general intent to do the prohibited act), but others, like assault with intent to murder, require the existence of a specific mens rea.

MODUS OPERANDI: Method of operating; generally refers to the manner or style of a criminal in committing crimes, admissible in appropriate cases as evidence of the identity of a defendant.

NEXUS: A connection to.

NISI PRIUS: A court of first impression. A nisi prius court is one where issues of fact are tried before a judge or jury.

N.O.V. (NON OBSTANTE VEREDICTO): Notwithstanding the verdict. A judgment n.o.v. is a judgment given in favor of one party despite the fact that a verdict was returned in favor of the other party, the justification being that the verdict either had no reasonable support in fact or was contrary to law.

NUNC PRO TUNC: Now for then. This phrase refers to actions that may be taken and will then have full retroactive effect.

PENDENTE LITE: Pending the suit; pending litigation underway.

PER CAPITA: By head; beneficiaries of an estate, if they take in equal shares, take per capita.

PER CURIAM: By the court; signifies an opinion ostensibly written "by the whole court" and with no identified author.

PER SE: By itself, in itself; inherently.

PER STIRPES: By representation. Used primarily in the law of wills to describe the method of distribution where a person, generally because of death, is unable to take that which is left to him by the will of another, and therefore his heirs divide such property between them rather than take under the will individually.

PRIMA FACIE: On its face, at first sight. A prima facie case is one that is sufficient on its face, meaning that the evidence supporting it is adequate to establish the case until contradicted or overcome by other evidence.

PRO TANTO: For so much; as far as it goes. Often used in eminent domain cases when a property owner receives partial payment for his land without prejudice to his right to bring suit for the full amount he claims his land to be worth.

QUANTUM MERUIT: As much as he deserves. Refers to recovery based on the doctrine of unjust enrichment in those cases in which a party has rendered valuable services or furnished materials that were accepted and enjoyed by another under circumstances that would reasonably notify the recipient that the rendering party expected to be paid. In essence, the law implies a contract to pay the reasonable value of the services or materials furnished.

QUASI: Almost like; as if; nearly. This term is essentially used to signify that one subject or thing is almost analogous to another but that material differences between them do exist. For example, a quasi-criminal proceeding is one that is not strictly criminal but shares enough of the same characteristics to require some of the same safeguards (e.g., procedural due process must be followed in a parol hearing).

QUID PRO QUO: Something for something. In contract law, the consideration, something of value, passed between the parties to render the contract binding.

RES GESTAE: Things done; in evidence law, this principle justifies the admission of a statement that would otherwise be hearsay when it is made so closely to the event in question as to be said to be a part of it, or with such spontaneity as not to have the possibility of falsehood.

RES IPSA LOQUITUR: The thing speaks for itself. This doctrine gives rise to a rebuttable presumption of negligence when the instrumentality causing the injury was within the exclusive control of the defendant, and the injury was one that does not normally occur unless a person has been negligent.

RES JUDICATA: A matter adjudged. Doctrine which provides that once a court of competent jurisdiction has rendered a final judgment or decree on the merits, that judgment or decree is conclusive upon the parties to the case and prevents them from engaging in any other litigation on the points and issues determined therein.

RESPONDEAT SUPERIOR: Let the master reply. This doctrine holds the master liable for the wrongful acts of his servant (or the principal for his agent) in those cases in which the servant (or agent) was acting within the scope of his authority at the time of the injury.

STARE DECISIS: To stand by or adhere to that which has been decided. The common law doctrine of stare decisis attempts to give security and certainty to the law by following the policy that once a principle of law as applicable to a certain set of facts has been set forth in a decision, it forms a precedent which will subsequently be followed, even though a different decision might be made were it the first time the question had arisen. Of course, stare decisis is not an inviolable principle and is departed from in instances where there is good cause (e.g., considerations of public policy led the Supreme Court to disregard prior decisions sanctioning segregation).

SUPRA: Above. A word referring a reader to an earlier part of a book.

ULTRA VIRES: Beyond the power. This phrase is most commonly used to refer to actions taken by a corporation that are beyond the power or legal authority of the corporation.

ADDENDUM OF FRENCH DERIVATIVES

IN PAIS: Not pursuant to legal proceedings.

CHATTEL: Tangible personal property.

CY PRES: Doctrine permitting courts to apply trust funds to purposes not expressed in the trust but necessary to carry out the settlor's intent.

PER AUTRE VIE: For another's life; in property law, an estate may be granted that will terminate upon the death of someone other than the grantee.

PROFIT A PRENDRE: A license to remove minerals or other produce from land.

VOIR DIRE: Process of questioning jurors as to their predispositions about the case or parties to a proceeding in order to identify those jurors displaying bias or prejudice.

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CASENOTE LEGAL BRIEFS — BANKING LAW

TABLE OF CASES

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TABLE OF CASES (Continued)

CHAPTER 2*
ENTRY INTO THE BUSINESS OF BANKING

QUICK REFERENCE RULES OF LAW

1. **The Chartering Process.** The Comptroller's decision regarding a bank chartering application will be upheld unless, on review, the court finds the decision was arbitrary, capricious, or an abuse of discretion. (Camp v. Pitts)

2. **Chartering Process for State Banks.** A banking regulator has discretion as to the form its factual findings will take when a bank charter is issued. (State Banking Board v. Allied Bank, Marble Falls)

***There are no cases in Chapter 1.**