

## **WRITING A CASE NOTE**

### **I. What is a Case Note?**

The basic difference between a case note, a comment, and an article is the breadth of the subject matter covered. A case note should analyze a single case. In contrast, a comment addresses an area of the law, focusing on specific issues, cases, and legislation. An article is broader still and, unlike a case note or comment, is a non-student legal essay written either by a noted legal authority or a person with expertise in a certain area.

In selecting a case that merits analysis, the Law Review Staff looks for a “noteworthy” case. A case of first impression or a case that represents a significant departure from precedent both qualify as “noteworthy.” Please note, however, that a selected case may merely present a “noteworthy” aspect. For example, a case where the court reached the right conclusion for the wrong reasons also qualifies as “noteworthy.” The following list of possible “noteworthy” aspects should assist you in understanding this fundamental feature of a case note.

- An area of significant concern.
- The possibility of intriguing results in later cases.
- The court ignores logical reasoning or common sense.
- The court fails to follow the majority of jurisdictions.
- The first case in a newly legislated area.
- A likely effect on an extra-legal area such as business, consumers, employment, or education.

Note: A case note does not have to address every aspect or issue in the selected case but should address all those that are significant.

### **II. Where do you begin?**

The Law Review Staff suggests the following plan of attack. First, read the case carefully and attempt to recognize and fully understand the “noteworthiness” of the case. Second, read all relevant authority cited by the court. Third, check the court’s use of authority for accuracy. Fourth, if available, read the briefs of counsel to familiarize yourself with the opposing arguments. Additional guidance and authority may also be found elsewhere – treatises, law reviews, etc.

### **III. How is a case note organized?**

A quality case note requires good organization and clear analysis. The Law Review Staff believes one lends itself to the other. Generally, a case note is divided into topical sections. The following organization is a flexible guideline. You may wish to refer to other law reviews for alternative organizations.

The particular format you use matters less than the format’s contribution to the readability and substance of your note.

**A. Introduction.** Briefly introduce the reader to the area of the law and the organization of the case note. Begin forcefully, a few lines may suffice. Explain the “noteworthiness” of your case.

**B. Facts.** Include only the relevant facts presented in a clear, concise, and interesting manner. The idea is to focus the reader’s attention on those critical facts controlling the issue(s). Remember, courts often distinguish cases on their facts. Also, describe the lower court’s holding, appeals, and any subsequent action.

**C. Holding.** State the court’s holding on each relevant issue.

**D. Background or Discussion of Prior Law.** In this section, provide the reader with the relevant background law relating to the issues regardless of whether discussed in the decisions. Describe the existing law and its development. In closing this section, relate the selected case to the prior law to illustrate how, if at all, the selected case affects prior law.

**E. Reasoning or Analysis.** Describe and critically analyze the court’s reasoning and decision. Remain objective, but do not be afraid to express original ideas. If by some accident the reasoning makes sense, say so and support your conclusion. If not, say so and support your conclusion. Present in its full context the law as you contend it is or ought to be. If appropriate, attempt to predict the impact your case will have on future decision. Furthermore, address any ambiguous statements made by the court and questions the court left unanswered. This section affords you the opportunity to demonstrate legal skill and prowess by dissecting the case and raising important issues involved.

**F. Conclusion.** This section is reserved for your exclusive use as an author. Just as each topical section requires a conclusion, so should the case note itself. Bring your case note full circle, reinforcing the “noteworthiness” of the selected case.

#### **IV. Final Comments**

The Montana Law Review attempts to provide research, information, and original thinking to our readers. We do not attempt to instruct judges, courts, or the legislature. You must support your statements fully by logic, authority, or, where possible, by both. Know the law. If you cite to a case, be certain the case stands for the proposition or rule of law you intend. Do not depend on or cite to the head notes. While you need not agree with the court, remember you need not always disagree.