

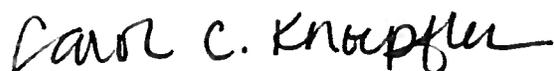
Dear Law Student,

Soon you will be here at Creighton School of Law and busily settling in for three tough but rewarding years of studying and learning the law. Part of this process will involve reading decided cases reprinted in casebooks. A casebook is a legal text which presents general information and specific rules governing an area of law and then illustrates these principles with an excerpt drawn from one or more actual cases decided by courts. Part of your job as a law student is to read one or more cases each day for each subject and be ready to discuss the facts, the legal issues presented, the rules of law that may apply to the case, the court's decision in the cases, the court's reasoning for its decision and the rule of law for which the case ultimately stands. This is no easy process. It involves reading a case pro-actively and then taking it apart so that you understand why the court decided the way it did. You will also be asked to discuss if the decision demonstrates sound legal judgment and then reconcile the case with similar cases, some of which may not have reached a similar result.

Pro-actively reading a case requires that you do more than simply read the case along with its introductory and concluding remarks. It requires more than highlighting key passages and then thinking you are ready for class. Pro-active reading requires a law student to 1) read the case, 2) form an hypothesis about what the case will teach the student about the law, 3) reread the case and 4) alter the hypothesis as the reading of the case demands, followed by creating a written document called a "case brief" to memorialize your understanding of the case. This takes a lot more time than simply reading a case.

On Friday, August 22, as part of your orientation, I will be presenting a seminar designed to introduce you to preparing for law school and the case briefing process. In preparation for this session, I have included with this letter a reprint of a case, *Baxter v. Fugett*, a Torts case which will introduce you to each requirement in the case briefing process. On Friday, August 22, we will, as a large group, discuss this case as mapped out on the accompanying attachment and conduct a verbal briefing of it. I expect each of you to be prepared for this session by bringing a sample case brief: typed and formatted as explained on the next few pages, along with any questions or concerns you have about the case briefing process. I look forward to meeting you in August and introducing you to the study of law.

Sincerely,



Carol C. Knoepfler
Director of Legal Writing and Assistant Professor of Law

BRIEFING A CASE

An extremely important part of law school is learning legal analysis: applying a rule of law to a set of facts to reach a legal conclusion. Learning legal analysis takes a good deal of time and practice. The classes you will take as first-year students will utilize and develop your skills by using legal analysis daily.

For each class session, whether the class is torts, contracts, constitutional law, property or civil procedure, you will be assigned to read one to three reported judicial opinions taken from current or established case law. After reading each case, you will be expected to draft a case brief which summarizes the important legal issues or questions raised and then discuss how the court answered or resolved these legal issues. While the structure of a case brief can vary among professors, all case briefs basically accomplish the same purpose: explaining the law on which the court relied and applying the law as stated to the facts of the case.

In an effort to make your preparation for the first week of class more productive, I am providing you with the structure of a typical case brief. As you read your first cases in each class, use the outline below as a guide in summarizing and then analyzing the legal principles presented in each case. Once you are in class, each professor will explain his or her own preference for structuring a case brief. Use this model until instructed to modify it by each professor.

Structure of the Case Brief

1. Case name and citation: Include the first name on either side of the case caption (the "versus") and a citation to the reporter(s) in which the case is found. (This is simple; just copy the case name and reporter reference found under the case caption. Legal Research & Writing will teach you the correct citation form for each reporter.)
2. Facts: Discuss the legally significant facts - those which have a bearing on the issue and outcome of the case. Include both substantive facts (ones which make up the plaintiff's claim) and procedural facts (ones which affect the ability of the claim to progress within the court system). The facts should typically be no more than two (2) paragraphs in length.
3. Issue: State in question form the question which the court must answer to resolve the controversy. Frame the issue as precisely and narrowly as possible.
4. The Rule In Question: Identify the general legal rule called into question by this case's particular factual situation. The rule may be stated in text, a synthesis from the prior cases discussed in the opinion, or inferred from the issues, facts and rulings in the case. The rule should be one or two sentences long, written in the present tense.

5. **Application: Reasons and Policies:** Explain **why** the court ruled as it did (**the court's reasoning**). **This court's reasoning is a crucial part of the case brief.** It allows the writer to 1) examine the law or rule the court applied, and 2) explain how the law was applied to the facts of the pending case. Usually the reasoning begins by discussing the rule or rules of law which are called into question by the issue. Then the reasoning discusses to what extent the rule applies to the pending case by applying the facts of the case to the rule. If the court struggled with deciding which of several conflicting legal principles to apply, the reasoning will present a) the conflicting rules, b) opposing arguments and c) a discussion as to why the court chose to apply one rule over another. The court may also discuss any underlying social **policies** the court considered in deciding the case, e.g., fairness to the parties, advancing the rights of the poor, etc. This section will typically run one to four paragraphs in length, but may be longer depending upon the difficulty the court has in either choosing the applicable rule or discussing key facts as they apply to that rule.

6. **Holding and Disposition:** The writer should state if the court found the rule did or did not apply to these facts. The holding enunciates a short answer to the issue. The disposition varies depending on whether the case is on the trial level or on appeal. On the trial level the disposition may be a verdict for the plaintiff or defendant, an award of damages or an equitable remedy such as granting an injunction. If the case is on appeal, the disposition will be the court's decision to affirm, reverse, remand, etc., the lower court's decision.

7. **Rule of the Case:** Enunciate the general rule of law which you have inferred from the case; that is, a statement which summarizes the court's position on the issue presented. This is not simply rehashing the rule called into question, but using the facts of this case to articulate its own rule. This is generally one sentence.

8. **Evaluation:** Explain the validity of the decision. Be critical: Did the court apply the law correctly? Did the court focus on certain facts while ignoring others? Did the court emphasize a general rule while ignoring more precise rules or equitable principles? This is generally a paragraph long, but may be longer if you are convinced the case was decided incorrectly. Your evaluation should not be merely conclusory (i.e., "The court was wrong.") but explain **why** the court was correct or incorrect providing factual or legal arguments.

Most students' first efforts at writing a case brief are anything but brief. This is usually because as new law students you do not yet have a frame of reference as to what facts and legal principles are controlling or important in a given case. Don't worry; with time and exposure to an area of law you will start to focus on the key or controlling legal principles. At this juncture, it is important to try to analyze why each case was decided the way it was based on its facts and the law discussed. To get you going, attached to these notes is a case entitled *Baxter v. Fugett*, 425 P.2d 462 (Okla. 1967) a torts case dealing with liability of minors for torts. Tort law deals with civil liability that is imposed by a court upon an individual who in some fashion injures another person or damages a person's property. For our meeting on Friday, August 22, I would like each of you to try writing a case brief for the *Baxter* case using the format discussed above. Come to the session ready to discuss your case brief. After we engage in a discussion of the case, I will provide you with a sample case brief to which you can compare your first efforts.

Please feel free as well to stop by my office (Room 249) any time with any questions you have concerning your writing or legal analysis.

Professor Knoepfler

an immediate hazard." The trial judge also told the jury, among other things, that the defendant alleged that the 12 year old plaintiff was guilty of contributory negligence. No objection to the court's statement of the issues and pleadings was made by either party.

From verdict and judgment for defendant, plaintiff appeals.

The precise argument made on appeal, and the only one, is that the court erred in giving the following instruction:

You are instructed that the plaintiff Robert Baxter at the time of this accident was 12 years of age and the defendant William M. Fugett was 16 years of age. In determining whether or not the defendant William M. Fugett was guilty of negligence and whether or not the plaintiff Robert Baxter was guilty of contributory negligence as heretofore defined in these instructions, you are instructed that by the term "ordinary care" as applied to children is meant that degree of care and caution which would usually and ordinarily be exercised by children of the age of 12 and 16 years under the same or similar circumstances. The conduct of children 12 years of age and 16 years of age is not necessarily to be judged by the same rules which would apply to an adult. The degree of care and caution required of a child is according to and commensurate with his age and mental capacity and his power to exercise such degree of care as a child of his age may be fairly presumed capable of exercising. Insofar as Robert Baxter and William M. Fugett may be presumed to do so it was their duty to take into consideration the fact that each was attempting to cross a public street upon which vehicular traffic could ordinarily be expected and in crossing the street to exercise ordinary care for his own safety and to watch out for traffic proceeding along the street.

It was the duty of each to take into consideration all the circumstances and conditions surrounding the place of the accident and the possibility of injury which might result in crossing or attempting to cross the street at the time and place in question.

This instruction follows the general rule that when a minor is charged with common law negligence, his conduct is to be measured by a "child's standard of care" under which consideration is given to his age, mental capacity, judgment, etc. *Davis v. Bailey*, 162 Okl. 86, 19 P.2d 147; *Witt v. Houston*, 207 Okl. 25, 246 P.2d 763; *Morris v. White*, 177 Okl. 489, 60 P.2d 1031; *Bready v. Tipton*, Okl., 407 P.2d 194. These cases, however, involve the standard of care required of a child while engaged in activities commensurate with his age.

We are asked to approve the above standard of care for a 16 year old minor engaged in an adult activity. We decline to do so. The better reasoning is expressed in *Deftos v. Pearson*, 259 Minn. 452, 107 N.W.2d 859, 97 A.L.R.2d 868. The Minnesota Supreme Court, in disapproving a similar instruction, and distinguishing between the contributory negligence and primary negligence of minors, said as follows:

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BAXTER v. FUGETT

Supreme Court of Oklahoma, 1967.
428 P.2d 423

MCINERNEY, JUSTICE.

This is an appeal by plaintiff from verdict and judgment for defendant in a negligence action arising out of a collision, at an Oklahoma City street intersection, between a bicycle ridden by a 12 year old plaintiff and an automobile driven by a 16 year old defendant. The mothers of the two boys were made parties plaintiff and defendant respectively, but in view of the single proposition argued on appeal, it will not be necessary to notice their respective interests in the case.

In the petition, the 16 year old defendant was charged with specific acts of negligence; in the answer, defendant pleaded contributory negligence, unavoidable accident, and the defense of sudden emergency.

No detailed summary of the evidence is necessary to an understanding of the single question raised on appeal. Plaintiff was riding his bicycle north on a through street. He could not recall any facts pertaining to the cause of the accident. Defendant testified, as a witness for plaintiff, that he was driving his automobile west toward an intersection where the through street was protected by a stop sign. After stopping and observing plaintiff about fifty feet away, defendant proceeded into the intersection and his automobile was struck at a point just behind the driver's seat on the left side by plaintiff's bicycle.

In his "statement of the case and pleadings" the trial judge informed the jury that plaintiff alleged that the defendant automobile driver was negligent in two particulars: (1) failure to keep a proper lookout, and (2) failure to yield the right of way. From the language in the petition, and from uncontradicted circumstances shown in evidence, it is clear that the allegation of failure to yield the right of way was based upon the requirement of 47 O.S.1961, § 11-402(b) that "every driver" approaching an intersection protected by a stop sign shall stop, and "after having stopped shall yield the right of way to any vehicle which . . . is approaching so closely on said highway as to constitute

However, this court has previously recognized that there may be a difference between the standard of care that is required of a child in protecting himself against hazards and the standard that may be applicable when these activities expose others to hazards. (Emphasis supplied.)

The instruction complained of permits a minor to engage in adult activities which expose others to hazards, while imposing only a child's standard of care on the minor so engaged. This legal sanction is impractical and contrary to the circumstances of modern life. We hold that a minor, when operating an automobile, must exercise the same standard of care as an adult. Jurisdictions surrounding Oklahoma generally follow the rule announced in this case. See *Hartelton v. Whitehead*, 236 Ark. 325, 365 S.W.2d 888; *Allen v. Ellis*, 191 Kan. 311, 380 P.2d 408; *Wilson v. Shumate*, Mo., 398 S.W.2d 72; *Reinger v. Cramer*, Tex.Civ.App., 354 S.W.2d 663.

The Highway Safety Code, Title 47, Motor Vehicles, makes no distinction between minors and adults in defining "person", § 1-144, "driver", § 1-114, and "operator", § 1-140. No statute or rule of the road prescribing the operation of a motor vehicle makes any such distinction, but refers to "every person," when reference is made to the person, operating a vehicle and the duties required in the operation of a vehicle. It is the announced legislative policy of this state to prescribe only one standard of care upon a person operating a motor vehicle, regardless of the age of the person, and that is an adult standard of care. There is no reason to apply a different standard of care to negligent acts committed by a minor while driving an automobile, even though the negligent act is not a specific violation of a statute, since the activity of operating a motor vehicle on a public highway is the basis for imposing the standard of care, rather than the age of the person, and that is an adult standard.

Having determined that the giving of the instruction was error, and being of the opinion that this error was prejudicial to the plaintiff, the judgment of the trial court is reversed and the cause is remanded with directions to grant a new trial.