Welcome to Loyola, welcome to law school. During orientation, you will attend a class on how to read and brief cases. A case brief is a short summary and analysis of a case. Taking notes on a case in the form of a case brief will help you understand cases as you read them, and provide you with a set of study materials that summarize the key elements of each assigned case.

The exercise below will not be collected or scored, but must be completed before we meet during orientation.

**Background: Court Structure and Precedents**

The federal judiciary and most state judiciaries have court systems organized in a three tier system. The lowest tier consists of trial courts, and this is where almost all cases begin. When a trial court makes a final decision in a case, the losing party will sometimes appeal, moving the case up to the middle tier (intermediate appellate court).

Intermediate appellate courts hear appeals from trial court decisions. Appeals involve reviewing the trial and determining whether the trial court judge applied the law correctly in the case.

Some cases can be appealed from an intermediate appellate court to the highest appellate court. The highest appellate court in our state system is the Illinois Supreme Court (United States Supreme Court in the federal system). The job of these high courts it to review how the trial court and the intermediate appellate court interpreted the law to determine whether either or both of them were correct.

Most of the cases you will read during law school will be appellate opinions (i.e. an appellate decision put into writing). Appellate opinions often delve into complicated questions of law in some detail, and for this reason are useful for law students in understanding what the law is and how it applies in practice.

Appellate opinions also create precedent – i.e. rules that emerge from cases and must be followed by lower level courts within the same jurisdiction in subsequent decisions. The principle of applying precedents is called stare decisis; and is the defining feature of common law systems.

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1 Note that the US Supreme Court has jurisdiction to hear certain appeals from state supreme courts. You will learn more details about the federal and state judicial systems in future classes and tutorials.

2 “Let the decision stand.”

3 The American system is a common law system, which relies heavily on court precedent in formal adjudications, even when the interpretation of legislation is at issue. Civil law systems rely less on court precedent and more on codes, which explicitly provide rules of decision for many specific disputes. In a civil law system, judicial opinions/decisions do not create binding precedents.
Summary: cases travel up the three-tiered system through the appellate process (trial court – intermediate appellate court – highest appellate court); the binding effect of rules established in court opinions travel down the system, in accordance with stare decisis.

Case Briefs: How-To, Example and Exercise

It should now be apparent why law school relies heavily on reading appellate opinions – cases – to learn the law. You will read hundreds of cases during your legal education, and will need an efficient and organized way to take notes on the key points of each case.

Below you will find:

• Guidelines on how to write a case brief;
• Case: R v Cunningham;
• Example case brief: R v Cunningham; and
• Case: People v Conley.

Briefing Exercise: After perusing the guidelines and example case/brief, read the People v Conley excerpt. Draft your own brief of People v Conley and bring it with you to the orientation session on reading and briefing cases. You may be called on to share some parts of your brief with the class.

Optional: Before you look at the example brief and attempt the exercise, you may want to try drafting your own brief of Cunningham, then comparing your efforts with the example case brief.

Note on Case Excerpts: Like most of the cases you will find in your casebooks, the assigned cases have been extensively edited for brevity and clarity. Where the editor has deleted words from the original text, you will see ellipses. Where the editor has added words, these will be in square brackets.
BRIEFING GUIDELINES

Keep in mind that a brief is a learning tool that helps you understand the significance of a case by identifying and describing its most important parts. There is no “correct” format for a brief, and your professors may suggest formats that differ to the example I have provided. So relax, and remember that your personal briefing method will likely change and evolve as you learn what works best for you and your personal studying needs. In time you will become more adept at identifying the truly important aspects of a case, leading to shorter and more efficient briefs.

All suggested brief formats will recommend including the essential aspects of a case: facts, issue, holding and reasoning.

I suggest reading through the case you intend to brief at least once (preferably more), underlying key passages or jotting notes in the margin. Once you have a good overall sense of the case, begin to draft your brief.

Name/Citation: These will be included in your casebook. The title of the case shows who is opposing whom. The citation tells how to locate the reporter of the case. In Conley, “187 Ill.App.3d 234” means that a lawyer could find this case in a law library in volume 187 of the third series of a set of books called the Illinois Appellate Court Reports on page 234. Similarly, “543 N.E.2d 138” means that a lawyer could also find this case in volume 543 of the second series of a set of books called the North Eastern Reporter at page 138. You will study reporters later in law school.

Facts: Try to include only facts that are relevant to the issue being decided – i.e. the facts that gave rise to the issue, or which really affected the outcome. In Conley, the opinion goes into quite some detail regarding the facts, and you will have to decide which facts really “count” and which are superfluous for the purposes of your case brief.

Procedural History: What happened procedurally between the time the lawsuit began and the time a party appealed? This section will become easier to draft in time as you become more familiar with criminal or civil procedure. For now, note the court hearing the appeal, and the crime the Defendant was charged with. In civil cases, note the theory the plaintiff was suing under (e.g. negligence), what relief the plaintiff was seeking (e.g. monetary damages) and how the lower court disposed of the case.

Issue: This is the heart of a case brief! Try to identify a yes-or-no question that the court must answer to determine the appeal. The issue statement should be clear and concise – you may need to include a few key facts to help with this. Note that one case may involve multiple issues.

Arguments: Not all case excerpts will include an overview of the arguments made by the parties, but Conley does, so be sure to include these in your brief. Note that there may be multiple arguments made on both sides of the case.

Holding (and Judgment): Also a key section – the holding is the answer to the issue presented – that is, the applied rule of law that serves as the basis for the ultimate judgment. Include any qualifications needed or a brief “because” clause. (Judgment notation usually describes the
procedural outcome resulting from the opinion – usually the court will have either affirmed or reversed the judgment below – in other words, who won?).

**Reasoning:** Describe the chain of reasoning that led the court to answer the issue question as it did. Often the court will describe pre-existing principles of law, and explain how they apply to the case before the court. The court may also identify policy reasons that support the decision, or describe the negative consequences of coming to a different conclusion. You may find it helpful to outline the reasoning point by point in numbered sentences or paragraphs.

**Other Sections:** Remember, unless the brief is to be collected/graded, your briefs are for you and should suit your study needs. Depending on the case, you may want to include additional elements, such as:

- **Dicta:** “dicta” refers to statements of opinion or belief that are extraneous to the line of reasoning that leads to the decision, and as such are not binding authority. For example, the court may discuss a question not raised by the record, or suggest a rule not applicable in the case at bar. From *obiter dictum* for “something said in passing”.

- **Dissent (or Concurrence):** A dissenting opinion is one that disagrees with the majority; a concurrence agrees with the majority about the end result but disagrees about the reasoning. If you’ve been asked to read these opinions, they should be included in the brief with the same depth of analysis, in order to understand the major points of contention and agreement/disagreement.

- **Personal Commentary:** It might be helpful to leave space to make your own notes about the case, and your reaction to the decision. Did you agree with the outcome and with the logic? What is the significance of the case – why do you think the professor assigned the case, what were you supposed to learn from it? Does it shed light on other aspects that you’ve already covered in the course? Was there anything you found puzzling about the case – questions you plan to return to after further study?

Finally, remember that a brief should be brief. An overly detailed brief will be less useful when it comes time to review your notes or prepare for class. As a general rule, try to keep your briefs to one page in length. Learning to brief is a skill that takes time, and extracting relevant information while ignoring superfluous information will become easier over time.
BYRNE, Justice:

The appellant was convicted … upon an indictment framed under section 23 of the Offences Against the Person Act, 1861, which charged that he unlawfully and maliciously caused to be taken by Sarah Wade a certain noxious thing, namely coal gas, so as thereby to endanger the life of the said Sarah Wade. The facts were that the appellant was engaged to be married, and Mrs. Wade, his prospective mother-in-law, [lived next to], No. 7a, Bakes Street, Bradford, which was unoccupied but which was to be occupied by the appellant after his marriage. Mrs. Wade and her husband, an elderly couple, lived in the house next door. At one time the two houses had been one, but when the building was converted into two houses a wall had been erected to divide the cellars of the two houses, and that wall was composed of rubble loosely cemented.

On the evening of Jan. 17 last, the appellant went to the cellar of No. 7a, Bakes Street, wrenched the gas meter from the gas pipes and stole it, together with its contents. … The facts were not really in dispute, and in a statement to a police officer the appellant said: “All right I will tell you, I was short of money, I had been off work for three days, I got 8 schillings from the gas meter. I tore it off the wall and threw it away.” Although there was a stop tap within two feet of the meter, the appellant did not turn off the gas, with the result that a very considerable volume of gas escaped, some of which seeped through the wall of the cellar and partially asphyxiated Mrs. Wade, who was asleep in her bedroom next door, with the result that her life was endangered. …

The act of the appellant was clearly unlawful and, therefore, the real question for the jury was whether it was also malicious within the meaning of section 23 of the Offences Against the Person Act, 1861.

… Section 23 provides as follows:

“Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, shall be guilty of felony…”

Counsel argued … that the learned judge misdirected the jury as to the meaning of the word “maliciously.” …

… [T]he following principle … was propounded by the late Professor C.S. Kenny … in 1902 …: “…in any statutory definition of a crime, malice must be taken not in the old vague sense of ‘wickedness’ in general, but as requiring either (i) an actual intention to do the particular kind of harm that in fact was done, or (ii) recklessness as to whether such harm should occur or not (i.e. the accused has foreseen that the particular kind of harm might be done, and yet has gone on to take the risk of it). It is neither limited to, nor does it indeed require, any ill-will towards the person injured.” …

In his summing-up, the learned judge directed the jury as follows: …

‘Unlawful’ does not need any definition. What
about ‘malicious’? ‘Malicious’ for this purpose means wicked – something which he has no business to do and perfectly well knows it. ‘Wicked’ is as good a definition as any other which you would get. …

With the utmost respect to the learned judge, we think it is incorrect to say that the word “malicious” in a statutory offence merely means wicked. We think the learned judge was, in effect, telling the jury that if they were satisfied that the appellant acted wickedly – and he had clearly acted wickedly in stealing the gas meter and its contents – they ought to find that he had acted maliciously in causing the gas to be taken by Mrs. Wade so as thereby to endanger her life. In our view, it should have been left to the jury to decide whether, even if the appellant did not intend the injury to Mrs. Wade, he foresaw that the removal of the gas meter might cause injury to someone but nevertheless removed it. We are unable to say that a reasonable jury, properly directed as to the meaning of the word “maliciously” in the context of section 23, would, without doubt, have convicted.

In these circumstances, this court has no alternative but to allow the appeal and quash the conviction.

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**BRIEF: R v Cunningham**

**Case Name:** Regina v Cunningham, 41. Crim.App. 155, 2 Q.B. 396, 2 All. Eng. Rep. 412

**Facts:** Cunningham, the defendant in this case, stole a gas meter from the cellar of his prospective parents-in-law’s home, causing a gas leak in the process. Although there was a stop tap within two feet of the meter, the Defendant did not turn off the gas. A large amount of gas seeped into Mrs. Wade’s home and partially asphyxiated her, endangering her life.

**Procedural History:** The Defendant was convicted at trial under section 23 of the Offences Against Persons Act (elements: unlawfully and maliciously – administer/cause administration of poison/noxious thing to a person – so as thereby to endanger life of such person or inflict grievous bodily harm upon such person). The Defendant appeals his conviction on the basis that the trial judge misdirected the jury as to the meaning of the word “maliciously”.

**Issue:** Did the trial judge err in instructing the jury that “malicious” for purpose of section 23 means merely “wicked”?

**Holding (and Judgment):** Yes, the trial judge erred. “Malice” does not mean general wickedness, but requires (i) actual intention to do the particular harm or (ii) recklessness as to whether such harm should occur or not (appeal allowed, conviction quashed).

**Reasoning:** The court conceded the Defendant had acted wickedly, but adopted Professor Kenny’s definition of “malice”, holding that “malicious” in a statutory offence does not mean merely “wicked”. The jury should have been instructed to consider whether Defendant either (i) intended to cause injury or (ii) foresaw the possibility of injury to somebody and chose to remove the gas meter anyway (i.e. recklessness).

**Dissents/Concurrences:** None.

**My Comments:**

- Wickedness neither sufficient nor necessary to establish “malice”
- Appellate court treats “malice” as shorthand for either “intent” or “recklessness” vis-à-vis the harm proscribed by statute (death or injury due to poison)
- *Actus reus* not in issue/clearly established – *mens rea*? Unclear if jury would have found Defendant reckless – e.g. did he know the gas might leak out, and that people might be exposed?
Illinois Appellate Court, 1989.
187 Ill.App.3d 234, 543 N.E.2d 138
People, Respondent,
v.
CONLEY, Appellant.

JUSTICE CERDA delivered the opinion of the court:

[Defendant William J. Conley was convicted of aggravated battery based on permanent disability. Section 12-4(a) of the Illinois Criminal Code of 1961 defined this offense as follows: “[a] person who, in committing a battery, knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated battery.” This appeal followed.]

The defendant was charged with aggravated battery in connection with a fight which occurred at a party .... Approximately two hundred high school students attended the party and paid admission to drink unlimited beer. One of those students, Sean O’Connell, attended the party with several friends. At some point during the party, Sean’s group was approached by a group of twenty boys who apparently thought that someone in Sean’s group had said something derogatory. Sean’s group denied making a statement and said they did not want any trouble. Shortly thereafter, Sean and his friends decided to leave and began walking toward their car which was parked a half block south of the party.

A group of people were walking toward the party from across the street when someone from that group shouted “there’s those guys from the party.” Someone emerged from that group and approached Sean who had been walking with his friend Marty Carroll .... That individual demanded that Marty give him a can of beer from his six-pack. [Marty refused. The individual, later identified as defendant Conley, attempted to strike Marty with a wine bottle, but Marty ducked. The bottle struck Sean in the face, causing him to fall to the ground.] Sean ... sustained broken upper and lower jaws and four broken bones in the area between the bridge of his nose and the lower left cheek. Sean lost one tooth and had root canal surgery to reposition ten teeth that had been damaged. Expert testimony revealed that Sean has a permanent condition called mucosal mouth\(^5\) and permanent partial numbness in one lip. The expert also testified that the life expectancy of the damaged teeth might be diminished by a third or a half. …

The defendant … argues that the State failed to prove beyond a reasonable doubt that he intended to inflict any permanent disability. The thrust of defendant’s argument is that under section 12-4(a), a person must intend to bring about the particular harm defined in the statute. The defendant asserts that while it may be inferred from his conduct that he intended to cause harm, it does not follow that he intended to cause permanent disability. …

For proper resolution of this issue, it is best to return to the statutory language. Section 12-4(a) employs the terms

\(^4\) Ill.Rev.Stat.1983, ch.38, par.12-3(a): “A person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.” Battery is a misdemeanor under Illinois law.

\(^5\) This condition was not defined in the trial record or court opinion.
“intentionally or knowingly” to describe the required mental state. The relevant statutes state:

“4-4. Intent. A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct.”

“4-5. Knowledge. A person knows or acts knowingly or with knowledge of: (b) The result of his conduct, described by the statute defining the offense, when he is consciously aware that such result is practically certain to be caused by his conduct.”

Section 12-4(a) defines aggravated battery as the commission of a battery where the offender intentionally or knowingly causes great bodily harm, or permanent disability or disfigurement. Because the offense is defined in terms of result, the State has the burden of proving beyond a reasonable doubt that the defendant either had a “conscious objective” to achieve the harm defined, or that the defendant was “consciously aware” that the harm defined was “practically certain to be caused by his conduct.” …

Although the State must establish the specific intent to bring about great bodily harm, or permanent disability or disfigurement under section 12-4(a), problems of proof are alleviated [by] the ordinary presumption that one intends the natural and probable consequences of his actions …. … Intent can be inferred from the surrounding circumstances, the offender’s words, the weapon used, and the force of the blow. … [T]he surrounding circumstances, the use of a bottle, the absence of warning and the force of the blow are facts from which the jury could reasonably infer the intent to cause permanent disability. Therefore, we find the evidence sufficient to support a finding of intent to cause permanent disability beyond a reasonable doubt. …

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