How to phrase the issue of a case

As you probably expect, part of the challenge of being an entering law student is to learn the substantive content of the courses you will be taking, but, at least at the beginning, the most important challenge will be to learn and develop the skills necessary to the study and the practice of law. For this reason, in addition to providing an introduction to the study of tort law, this course is designed to provide you with the opportunity to develop these skills.

The three most important of these skills are legal analysis, synthesis, and argument construction. Legal analysis refers to the ability to read and learn from cases. This includes the most important skill you will need to master: the ability to correctly identify the issue of a case. Legal synthesis refers to the ability to perceive the relationship among cases or legal principles. Argument construction refers to the ability to apply these principles to new factual situations by creating and clearly expressing persuasive reasons in support of legal conclusions you believe to be correct.

All of these skills have one thing in common: they depend on your ability to identify the issue of a case (whether “a case” refers to a court decision you read in the textbook or a hypothetical case created for class discussion). Identifying the issue correctly will allow you to understand what the case is about, to figure out the arguments of the parties and to construct arguments for new cases that raise the same issue in a different context. Going through the process of actually writing down what you think is the issue in every case you read will also allow you to test your understanding of the case and your ability to express your ideas clearly.

Given how important it is to develop the skill to recognize and express the issue of a case correctly, it is worth spending a bit of time reviewing what an issue is and how it should be phrased.

Remember that the first important skill you need to develop is the ability to read cases efficiently and, most importantly, to learn legal principles from those cases. The word “case” here is used to refer to actual decisions issued by courts. Typically, those decisions explain the facts of the case, the arguments of the parties and the reasons for the court to decide the way it does. It is from reading all those elements in the decision that you should be able to extract both the issue of the case and the legal principle you are expected to learn from the case.

Once you read the case and understand the arguments of the parties and the reasons for the court’s decision you can identify and express the issue. The statement of the issue in a case should be a question – or an affirmative statement that starts with the word “whether” – the answer to which is a legal principle that can be used to decide future cases. The statement of the issue should explain the question in one sentence and, ideally, it should be understandable to someone who has not read the case. Also, the statement of the issue should be general enough so that the answer to it expresses a general principle of law that can be used in other similar cases, but it has to be specific enough to make it possible to determine what it is about the particular case that makes it special.
Note that the statement of the issue poses a question, which suggests there has to be an answer. That answer is the holding of the case, which should be a statement that sounds like a legal principle. The answer should be stated as "yes", "no" or "yes, if (whatever conditions need to be met for the answer to be yes)" followed by a short explanation.

Let’s look at an example. Suppose that for someone to recover for injuries to property caused by blasting as part of construction work the law in this state requires that the plaintiff show that the defendant was negligent in performing the construction work. Assume then that a plaintiff’s property is damaged because of the resulting vibration when a contractor uses dynamite as part of his construction work, but that there is no evidence of negligent conduct on the part of the contractor. Yet, the person whose property was damaged sued to recover the value of the damages. Suppose the judge decides that even though the plaintiff could not prove the elements of a claim based on negligence, the plaintiff should be allowed to state a claim because the court believes that blasting creates so much risk of injury to others that contractors should be liable for the damages they cause regardless of whether they were negligent. The contractor appeals from this ruling. How would you phrase the issue presented by the appeal?

Obviously, the claim presents a very simple question: “whether the plaintiff can recover for his damages.” There is no question this is the underlying question that will need to be addressed, but this is not the issue. First note that “whether the plaintiff can recover for his damages” has been, and will always be, the question in every single case ever filed in the history of tort law. This statement does not say anything distinctive about the particular case. Second, note how the answer to that question does not result in a statement that sounds like a legal principle that can be used to decide future cases.

A correct statement of the issue for this case should do both of those things: give enough information about it to make it distinctive and suggest the legal principle at issue in the case. So how do we phrase the issue in this case correctly? Start by asking what makes the case distinctive. First note that the plaintiff asked the court to change the current law and that the lower court did so. Then note what it is that the lower court changed about the law: it recognizes a claim based on a different theory of liability. Before, the plaintiff could only recover based on a theory of negligence but here the trial court recognized a claim even though the plaintiff could not show negligence. The court recognized a claim based on a theory that depends on the dangerousness of the activity that caused the injury.

Given all this, then, a better way to state the issue would be something like “whether a plaintiff can recover for property damage absent evidence of negligence” and the answer could be something like “yes, if the activity that causes the damage is particularly dangerous.” Of course, from there you would have go on to develop the idea of how to determine if an activity should fall in the category of “particularly dangerous” which, presumably, the court would explain in its decision.
Here is another example. Assume the law recognizes the right of a person to recover for battery if the person is touched without his or her consent. Assume then that when trying to steal a woman’s purse, a thief grabs and pulls her purse causing her an injury to her shoulder but that in doing so, the thief did not actually touch the woman. If she sues for battery, what would the issue be?

One way to state the question would be “was the defendant’s action a battery?,” but, again, this would be incorrect because it does not say anything distinctive about the case that suggests a legal principle. So here are two better alternatives: (a) “does a person commit a battery when he pulls an object from another person’s hands but does not touch the body of the other person?” or (b) “can a plaintiff support a claim for battery absent evidence that the defendant made contact with the plaintiff’s body?”

Note how these statements of the issue are specific to the facts of the case and suggest how the facts present a question that is novel to the concept of battery. In other words, the statements suggest how the case is different from other battery cases. Also note how the answer to either of the questions will result in a statement of a legal principle.

One final thing to remember when working on stating the issue of a case is that you will need to develop a feel for how broadly or narrowly to identify the relevant facts of the case (what I have been referring to as “what makes the case special”). Usually, an issue should tend towards more general terms. In the example of the battery action, you wouldn’t want to state the issue in terms of “whether a person commits battery when he pulls on a purse off a woman’s shoulder....” for example, because then the legal principle would be too limited to be useful in future cases. If it were limited to that, it could only be used to decide cases that involved purses and women plaintiffs. A better statement of the issue should find a balance between the general and the specific.

At first, it may be difficult to decide just how general or specific to be, but you should be able to get a feel for the right compromise as you go along. For case briefs and class discussion, since you are using the reading to develop general legal principles, chances are the tendency will be to move towards abstraction and generalization.

I can not overemphasize how important it is to develop the ability to identify and state the issue of a case correctly. All other important skills you need to become an effective lawyer depend on it. Work hard at it. Even if you don’t have time to brief the cases in detail, get in the habit of always trying to write down what you think is the correct statement of the issue in every case you read. Doing so will only require you to come up with one sentence per issue but the exercise of writing that one sentence will teach you a lot more.