I am a firm believer in briefing cases. I suspect I am not the only one of your teachers who takes this view. As with nearly everything else, however, teachers have different notions of what a case brief ought to include. For this class, briefing format is unimportant. What I ask instead is that, for each court opinion included within a given assignment, you prepare a brief that enables you to answer the following questions:

• **What court does the opinion come from?**

  [Examples: United States Court of Appeals for the 6th Circuit, Michigan Supreme Court]

• **How did the case make its way to that court procedurally – i.e., who sued whom for what (what sort of lawsuit was brought, stemming from what sort of incident/event, and what sort(s) of injuries were alleged and damages sought), what happened (procedurally) in the trial court and any intermediate appellate court, what was the posture of the case when it was presented to the current court, etc.?**

  [Examples (from a case we will study later in the semester):

  Plaintiff brought a negligence action against a grocery store, seeking damages for injuries allegedly suffered when the plaintiff slipped and fell while shopping in the defendant store. The case went to trial, the jury returned a verdict for the defendant, and the plaintiff appealed.

  OR

  This is an appeal from a judgment entered on a jury verdict for the defendant grocery store in a negligence action brought by a shopper in the store seeking damages for injuries allegedly suffered when plaintiff slipped and fell while shopping in the defendant store.

  etc., etc., etc. (anything along those lines will do just fine)]

• **What is the basis for the appeal – i.e., what error/mistake/wrong ruling does the appealing party claim the lower court made, such that it warrants reversal of the decision below?**

  [NOTE: Underlying this question is an important point. In one sense, the basis for every appeal is that the appealing party lost and they think they deserved to win. However, “I think I should have won” is not a legally cognizable basis for appealing. Instead, the party must point to some claimed legal error, such as a wrong jury instruction, erroneous grant of a directed verdict, etc.]

• **What are the relevant facts from the point of view of the current court and how does the court “know” these facts?**

  [NOTE: Here, you don’t want all the facts – just the ones that, if asked, you can explain the
reason(s) why they are important. Separating the important from the unimportant is an absolutely indispensable lawyering skill, and one that you will be practicing a lot during your first year of law school. As to the “how does the court ‘know’ these facts” part of the question, examples of what you might say here include (although are not limited to), the trial testimony established... (appropriate if the case was tried and a verdict was returned), according to the allegations of plaintiff’s complaint... (appropriate if the trial court directed a verdict and so no trial was held), etc.]

• **What are the issues (or what is the issue) before the court?**

[NOTE: Statements of issues can range from quite general (broad) to quite specific (narrow). The following three statements of the same issue (from another case we will be studying) will help illustrate:

1. Whether evidence of custom and practice in an industry may be relevant and admissible in a negligence action?

2. Whether evidence of custom and practice in an industry may be relevant and admissible as evidence of the applicable standard of care in a negligence action?

3. Whether evidence of custom and practice in the construction industry concerning the covering of openings in the floor of buildings under construction in the areas where workers are walking is admissible to show that a contractor’s failure to protect such an opening was a breach of the applicable standard of care and therefore unreasonable?

As an advocate, you will find it useful to be able to articulate issues at all different levels of generality. For purposes of our class discussions, however, you will usually (although not always) be best served by aiming for a level of generality that, using the example above, would fit somewhere between (2) and (3) – yielding something along the lines of this:

Whether evidence of custom and practice in an industry is admissible to show that the conduct at issue in a given case breached the applicable standard of care and was therefore unreasonable?

• **What are each party’s arguments on the issues?**

• **What does the case hold?**

[For guidance on what to aim for here, see the “Holding” discussion in the “Case Briefing Guidelines” on page xiii of the casebook. Note in particular the point about being able to frame holdings at multiple levels of generality, which should sound familiar (see the discussion of the issues question above).]

• **What rationale(s) does the court give and what source(s) of authority does it draw on?**

• **If there are any concurring or dissenting opinions, what position(s) do those judges take and why?**
• How would you evaluate the court’s decision? (This is obviously more open-ended than the other questions, but might include mention of things like what policies or goals you think are furthered/thwarted by the decision, your view as to the soundness of the court’s reasoning, and whether you think the decision was correct and why.)