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CASE BRIEFS IN LEGAL ENGLISH CLASSES

Abstract. A case brief can be described as a succinct summary of a case which specifies the facts, procedural history, legal issue(s), court decision and legal reasoning supporting the judgment, even though exact formats may vary. Case briefing is a demanding activity which is required from students during their law studies. The goal is to teach students to focus on the essential parts of the case and to obtain a thorough understanding of the case and the reasoning, which means the students need to employ their analytical and critical thinking skills.

The course of English for academic legal purposes (as part of English for specific purposes) can also benefit from implementing case briefs. Students are exposed to useful legal vocabulary while the cases themselves bring real life examples of the law, which can increase students' interest and motivation.

The paper briefly introduces the literature on the methodology of teaching case briefing and on case briefs within the linguistics research and then describes a sample activity on case briefs from legal English classes. My experience shows that it is important to provide students with sufficient scaffolding for completing the task successfully. Even though the students feel they are easily and quickly acquainted with the format and the language used, they encounter problems when preparing particular cases. The activity combines both individual and collaborative work, oral and written outputs and peer reviewing.

Case briefing is a valuable learning activity; nevertheless, some students may find it difficult as they need not only language skills, but also general critical thinking skills. The teacher should therefore facilitate their work, help them practice the ability to find relevant information, identify the issue, and comprehend the reasoning behind.

Keywords: legal English, ESP, case briefs, methodology

Case brief a written document which outlines and condenses a legal case, or a legal opinion. The case brief is sometimes described as a way to take notes, but the brief has a more formal format. Primarily, the case brief is utilized in the classroom setting by law students, but the format can be also carried over into real-world practice by lawyers and judges.¹

The quote above shows we can find more formats and applications for case briefs (or case notes, if the British term is used); however, it points

out their typical place in law studies. This paper moves from case briefing in native speakers' classrooms to a non-native speakers' setting. The main focus is on teaching legal English to undergraduates. The term legal English is understood in the sense of Northcott who describes legal English as English language education which enables L2 law students and professionals to operate in academic and professional contexts requiring the use of English (Northcott, 2009: 166).

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Case briefing can be demanding even for native speakers since students need to employ their analytical and critical thinking skills which may not be developed sufficiently when starting their university studies. It is then the role of their teacher to provide scaffolding or guidance for the students. It would be impossible to implement case briefing in the native speakers' way into the classes where English is taught as a second language, especially when the students are not advanced learners of English. Nevertheless, it would mean a big loss if case briefs were not included in legal English classes as they represent one of the most typical genres of legal language.

At the beginning the paper presents the literature on the methodology of teaching case briefing and on case briefs within the linguistic research. The main part of the paper then describes and evaluates a sample activity from the classes of legal English (as part of English for Specific Purposes, i.e. ESP).

Case briefs in law studies

Case briefing belongs to one of the long-used methods of studying law. Students are asked to brief cases from the beginning of their studies and many law schools include guidelines and practical time-saving tips on case briefing on their websites and/or students are provided with the list of references on how to brief cases effectively and professionally. Moreover, busy students can also find a lot of Internet resources with ready-made case briefs.

Despite all the external help from the Internet and literature if students are to brief the cases thoroughly, they themselves need to learn how to develop their analytical skills to understand the nature of court rulings. It

is the teacher who can step into the process of comprehending case briefing and showing the importance of critical thinking. Morgan-Thomas finds case brief tasks to be an effective tool for “fostering students’ critical reading and critical thinking abilities, while concurrently teaching course content” (Morgan-Thomas, 2012: 75).

There are several papers which deal directly with effective methodologies of teaching case briefing, e.g. Asfour (2009), Christensen (2006) and Morgan-Thomas (2012) and all these authors agree that mastering case briefing is a challenging task, not only for students, but also for teachers instructing the students. They point out that reading case decisions is not easy particularly for new readers; Morgan-Thomas (2012) states that “the case decisions are confusing, difficult to read, not written in ‘English’, and hard to understand” and “instructors should therefore aim to guide students through the reading of cases” (2012: 79).

Some students may feel that the only time they case brief is at law school, nevertheless, they should realize that well-mastered briefing is beneficial in the whole lawyer’s career even though they might not hear the word “case brief” again. This fact is nicely summarized by Clinton “... most lawyers rarely actually brief cases in practice... it is because reading cases encouraged by case briefing techniques has for them already become second nature.” (Clinton, 1996: 5)

Case Briefs in Linguistics

Although the case brief activity described in this paper does not concern writing primarily, the author considers appropriate to mention case briefs as one of the writing genres analyzed within the field of linguistics.

Since the 1980s linguistic research has been directed into a variety of academic and professional genres and as genre analysis developed, the domain of law gained considerable attention. For more details on literature review on the analysis of the legal genre, see e.g. Tessuto (2012: 13–14) and for the list and description of the legal writing genres, see e.g. Candlin, Bhatia, and Jensen (2002: 304–306).

Case briefs, as a typical example of the legal writing genre, are dealt with in the work of several linguists. Bhatia (1993) includes legal cases in one of the chapters on analyzing genres in professional settings, Iedema (1993) identifies the generic structure and conventions of legal case studies and Tessuto calls case notes (he uses the British term) “one of the most prominent legal genres” (Tessuto, 2012: 8), and devotes the majority of his book

to them providing a corpus-based, comprehensive linguistic description and interpretation. The language of court briefs is investigated in several works, see e.g. Coleman and Phung (2010) or Zinkevičiute (2014).

As this paper focuses on the use of case briefs in ESP classes, it is important to recall the authors who investigated the implications of the linguistic research for ESP and EAP (English for Academic Purposes). The most prominent linguist who is genuinely interested in practical applications of his research in the area of English for Legal Academic Purposes is Bhatia as indicated e.g. by the concepts of *simplification v. easification* first introduced in Bhatia (1983). The authors Candlin et al (2002) review legal writing books in terms of their suitability for non-native law students and, among other, argue for the usefulness of the case brief genre in the context of English for Legal Academic Purposes and present a sample genre-based activity which could be used in such a class (Candlin et al, 2002: 304, 312).

Case briefs in teaching Legal English

Cases summaries, reports, notes or briefs appear in various ways in any textbook dealing with legal English, also the most commonly used textbooks Krois-Lindner and Firth (2008) and Krois-Lindner (2011) make use of them. The former encompasses case notes into the unit on Torts (Krois-Lindner & Firth, 2008: 30–32) and suggests relating them to the language practice: structures describing cause and effect and speaking about the unreal past (Day, 2008: 44–47). The latter combines case briefs as a written genre with oral presentations (Krois-Lindner, 2011: 129, ex. 7.1 and 7.2; Day, 2011: 161), which opens the door for utilizing case briefs for a complex activity involving not only all language skills: speaking, listening, reading, writing, but also presentation skills.

A sample activity from the legal English class

The following part of the paper describes an activity designed for law undergraduates who are neither native speakers nor linguists. As stated above, learning case briefing is a complex and difficult process, we, therefore, cannot expect our students to prepare case briefs in a similar way to native law students, nevertheless, it is desirable for the students to get a gist of what case briefing is like.

To paraphrase Morgan-Thomas' quotation from the second part of the paper (Morgan-Thomas, 2012: 75) the described activity shows that case brief tasks to be an effective tool for fostering students' language skills and critical thinking abilities, while concurrently teaching legal English language.

The very basis of the activity stems from Krois-Lindner (2011) and Day (2011), Unit 9; however, the methodology is expanded and adapted to our teaching situation, while implementing the technology in the last step. After outlining the steps of the activity, the paper points out interesting moments from the students' performance and finally analyze the teacher's role in designing individual tasks and monitoring the work of the class.

Description of the activity

Teaching context. Our students are the second year law undergraduates, attending the third semester of a compulsory 4-semester course of Legal English. The syllabus is topic based, the students' level of English is mixed, ranging from B1 to C1 according to the CEFR.²

The classes take 90-minute sessions a week for the period of 12 weeks. Students are asked to perform some out-of-class activities, but not regularly. The lessons tend to be interactive with students practicing all language skills and the basics of professional skills within the legal context. The number of students in the class is usually 18 to 20.

The Case Brief Activity is part of the lesson on Sale of Goods. Before Step 1 the students were introduced to the basic issues connected to the sale of goods such as consumer protection, business-to-business trade, implied v. express terms, conditions v. warranties. The whole activity without the last out-of-class follow-up (Step 8) takes approximately 120 minutes, an appropriate breaking point between two sessions could be after Step 2, and the preparation for the presentation (Step 4) might be set as homework.

Step 1 – listening and identifying case brief structure. The listening used is from Krois-Lindner (2011: 127, Unit 9, Listening B); the task is, however, different from the book: the students are asked to identify parts of case brief and make notes concerning this particular case. They are given a handout with the following text:

Name of the case: *ProCD, Inc. v. Matthew Zeidenberg and Silken Mountain Web Sites*

Facts:

Legal issue(s):

Holdings:

Reasoning of the court:

The points about Facts, Legal issue(s), Holdings and Reasoning of the court are to be filled in by the students while listening to the recording.

After checking the answers and making sure the students understand the nature of the case, the class can get involved in discussing case briefs in general and mainly in investigating their structure in more details.

Step 2 – vocabulary consolidation. The consolidation is twofold: to point out useful phrases and to concentrate on accuracy (appropriate verbs and nouns). The students practise useful phrases and collocations, they can use Exercise 6.3 in Krois-Lindner (2011: 127–128), or any similar. The accuracy practice can be achieved e.g. a gap-fill summarizing the case. The teacher motivates the class to work on these tasks carefully as the students will need to use the vocabulary actively in the following parts.

Step 3 – recalling presentation skills. As suggested in the ILEC textbook (Krois-Lindner, 2011: 127, ex. 6.1 and 6.2, or Day, 2011: 160) the recording provides tips for phrases and devices used in presentations: introducing the talk and signposting by rhetorical questions. This point is not the first time that our students present in legal English classes, the class can also recall some other features of successful presentations.

Step 4 – case briefing: an individual task leading to teamwork. The teacher divides the class (so far virtually) into team of three or four (six teams in our case); however, at this moment, the students are going to work individually and they do not know their future team. Each team is going to work on one case, every student is, therefore, assigned one case out of six in such a way that three or four students have the same case.

To make the class management easier, the teacher can print out copies of cases on coloured paper: each case in a different colour with three to four copies of the same colour. Then the copies are distributed to students to work individually. After they have finished with their work, the students quickly identify other members of their group by looking for the same colour of the case.

The individual task is to read the case and write down notes for the brief. To facilitate the work, the students are given a handout with the case brief structure (the same as for the previous listening task: Name of the case, Facts, Legal issue(s), Holdings and Reasoning of the court) and they fill in the details.

As the text is short and all necessary information is easy to find, the task seems very easy, nevertheless, it is important for the students to realize that they should write down their notes carefully in order to know the case well – they are going to explain the case to the whole class later on. At this

stage, the teacher monitors the students' work very carefully, helping where necessary, especially when they are formulating the legal issue and preparing the reasoning.

Step 5 – preparing team mini-presentations of the case briefs.

The students gather to their teams according to the case (i.e. the colour), they compare their notes and negotiate the best wording of the details. Then they divide the labour to present as a team. They are given the rules: everyone in the group must speak, the presentation is brief (three minutes are sufficient) but of a high quality, it includes an introduction, the main body and a conclusion, the presentation will be peer evaluated and, if the teacher decides, the best presentation might be awarded. The students can use any visual they like, e.g. the whiteboard, posters, or ppt. slides.

Step 6 – presenting the case briefs. The students are given a hand-out for evaluating the presentations – they give scores from 1 to 10 assessing the content to each team (do we know what the case is about?), the structure (is the case brief structured in a logical way?) and the language (do the presenters use appropriate legal expressions?). We do not attempt to evaluate the presentations in detail, it is a preparation for more profound future presentation training.

Each team presents, the students in the audience are advised not only to evaluate the performance by score, but also to make notes about strengths and about any points which could be improved, since they will be asked to choose the best presentation afterwards. The teacher monitors and prepares feedback.

After the last presentation, each team decides which presentation was the best (excluding their own). The team members should negotiate, compare and prepare arguments why the chosen presentation was the best. The presentation with the highest number of “votes” from the other teams is the winner. After the peers' assessment, the class is given the teacher's feedback.

Step 7 – Vocabulary reinforcement. The texts for case briefing include nice chunks of legal language which can be reinforced in various language exercises following the presentations, such as matching, gap-fills or prepositions practice.

Step 8 – Out-of class follow-up: peer reviewed audio presentations. In our situation, the following part is optional homework which is evaluated by extra points to the credit test.

The students are asked to prepare an individual case brief presentation, upload it as an audio file (or as a commented slide show) and review (orally or in a written form) two case brief presentations of their classmates.

The detailed instructions follow the line from the in-class session:

TASK 1: Prepare an audio case brief:

- a) Prepare a case brief related to the sale of goods (it can be either a case from our lesson or from anywhere else).
- b) Record an oral presentation of the brief in the length 2–3 minutes (you can record it either with a smart phone or another device, or you can use various online tools e.g. <http://vocaroo.com/>).
- c) Upload your audio file by the given deadline.

TASK 2: Review two presentations of your classmates’:

- a) Download two files from the links sent by email.
- b) Listen to the presentations and review them in a written or an oral way assessing the following criteria:
 - content (e.g. do you understand what the case is about?, is there all the information you would expect in a case brief?)
 - language (e.g. is the vocabulary and grammar correct?, are there appropriate legal phrases?, is the pronunciation correct?)
 - structure and delivery (e.g. is the structure logical?, is the delivery natural and clear?, is the presentation easy to follow? is it an oral presentation or the reading of a written text?).

Please be specific in your reviews: write down/say what exactly you appreciate in the presentations and give tips what could be improved.

- c) Upload the reviews by the given deadline.

As far as the administration of peer review process is concerned, there are various software tools which make the procedure fast and simple. The author uses their university software³: the teacher sets up the group (the students’ names and email addresses), the task (the instructions to follow, how many pieces are to be reviewed by each student) and the deadlines (for uploading the files with the presentations and for uploading the reviews) and then the software administers the peer-review procedure: the students receive an email with the instructions, the deadlines and the links for uploading the recordings; after the first deadline, the software shuffles the presentations files and each student who uploaded their presentation will receive another email with the link to the presentations to review. After the reviews are uploaded, the software sends them to the original authors. The teacher can view the whole process, monitors the uploaded files and prepares feedback for the class.

Students’ performance

The experience from the classroom shows that the activity works well. Students have sufficient preparation in Steps 1 and 2 where they acquire

appropriate language and strategies and then they are able to perform successfully in the presentations, both as a group and individuals.

Steps 1 to 3 remind students of usual class activities; however, students easily become aware that Steps 4 and 5 are crucial as they are expected to become “experts” on their cases. Generally, students are quite happy to see the assistance of their teacher, some of them want to be assured that they understood the text well. Other students prefer discussing the case with their team members.

The biggest challenge consists of formulating the issue, which is also the case for native speakers (Clinton, 1996: 3). This is the point when, in Step 5, the best students could help weaker ones in their team. Comparing the briefs in a team shows that even though the source text was short, the notes of the students in the same group could vary a lot: some students, usually weaker, tend to use the same language as in the text and are in danger of omitting logical conjunctions, some students tend to use their own words, and are, therefore, better prepared for presenting.

When presenting in a team (Step 6), weaker or shy students are not stressed by having to produce long speeches. If they are assured that one minute of clear delivery is sufficient, they feel confident, as they have enough time to prepare for that.

Some students had difficulties with keeping their presentation short. It is essential to stress in the classroom that being able to express yourself concisely and directly to the point is very important although difficult. This is also the case with briefing. As Burkhart and Stein write: “To be most effective, case briefs must be brief.” (1996: 104) Needless to say that even though the students are advised to be succinct, in our case most teams far exceeded three minutes when presenting.

The element of choosing the best presentation can elicit interesting discussions – if there are more candidates for the best presentation, the students need to use arguments and compare various aspects of presentation. After the best presentation is negotiated, each team writes their “vote” on a piece of paper, not to be influenced by arguments of other groups, which might happen when saying their choice orally.

As far as the individual audio presentations (Step 8) are concerned, most of the students choose the cases from the lesson for their audio homework, only some searched for their own. What might be interesting is the fact that some students opted for another case than the one that their group had presented. The students present in a rather good way, some students clearly read the prepared written text, which is always commented on by the reviewers; however, most students show considerable efforts to present

the cases carefully. There may appear problems concerning the quality of the recordings, so the students need to be warned that the quality is the responsibility of the speaker and bad quality of the recording is not an excuse.

The greatest benefit of the activity can be seen in the engagement of students in the cases. The real cases increase the motivations: the students are keen to understand their case and are interested in following all presentations. They are also surprisingly eager to show the legal language they newly acquired. Even weaker students found it easy to use the phrases and collocations in the correct and expected way.

By being engaged in the explanation of the cases, either actively as presenters, or passively as the audience, the students had to read/listen and think critically, even though on a smaller scale compared to real case briefs in Anglo-American law schools.

Teacher's preparation and role

The teacher's talking time is rather limited during the whole activity, the teacher should concentrate mainly on giving clear and precise instructions and careful monitoring and helping where necessary. The most difficult part is to prepare the texts for case briefs (Step 4). It is desirable to design language consolidation exercises (Step 2, Step 7) tailored to our students' needs and their level of English.

Monitoring and classroom management. Steps 1 to 3 do not differ from usual class work; however, Step 4 requires special care. As mentioned above, it is formulating the legal issue that causes difficulties. When monitoring the individual work in Step 4, the teacher can easily identify by a single look into the handouts which students have problems, and can guide them in the right direction.

When monitoring Step 5, the teacher has one more chance to check that all teams understand their case. The teacher should also ensure that the groups divide the roles to use the time effectively. Fifteen minutes is usually sufficient for the preparation (the team needs to agree on the brief, divide the labour, prepare the visual and each part of the presentation) as each student is already familiar with the case and will speak only for a short time.

When the teams are presenting (Step 6), the teacher is making notes for feedback. It is suggested that the teacher gives feedback only after the students' assessment (i.e. choosing the best presentation) not to influence their choice.

Preparing the texts for case briefing. The most demanding part is searching for the cases and adapting them for the class activity. It is impossible to find suitable ready-to-use sets of, in our case, six cases in one place. There are many Internet resources dealing with case rulings: full-text court decisions, abstracts, commentaries to court rulings, blogs dealing with court rulings. What the teacher needs for the described activity is a short text giving the essentials of the case from which case brief information could be retrieved. Abstracts appeared the most suitable, however, these are not always available and they are of various length. In some cases the teacher has to combine and adapt more sources dealing with the same case to create a desirable text.

Useful links for Case Rulings include:

<http://curia.europa.eu/> – Court of Justice of the EU

<http://www.bailii.org/> – British and Irish Legal Information Institute

<http://cases.iclr.co.uk/> – UK law reports

<http://law.justia.com/cases/> – US Case Law

<http://www.unhttp://cases.iclr.co.uk/Subscr/Search.aspxhttp://cases.iclr.co.uk/ilex.info/> – International Case Law

<http://cisgw3.law.pace.edu/> – CISG database

<http://www.uncitral.org/clout/index.jsp> – UNCITRAL texts

<http://conflictoflaws.net/> – News and Views in Private International Law

<http://europeanlawblog.eu/> – News and Comments on EU Law

<http://www.lexology.com/> – Articles on courts decisions (US and related)

Most of our texts for team presentations are, therefore, adapted authentic materials. The level of adaptation depends on the particular class; advanced students could work with really authentic texts.

In our case we adapted the texts, mainly by leaving out some details and sometimes simplifying the language. The simplification was, however, different from *simplification* as introduced by Bhatia (1983). In his paper Bhatia uses *simplification* as a tool used in ESP classes “the purpose of which is to make a given text simpler in terms of its content and/or form” (p. 44), which usually results in expansion of the text by adding explanations and examples. In our case we need to make the original text shorter. It is true that the simplifications may leave us with several drawbacks as suggested by Bhatia (1983), such as reducing the information load and omitting some parts; however, we need the modification for the text to ensure smooth class work.

The aim of our simplification is to obtain six texts of the same or very similar length (300–350 words) and difficulty of language, which the students must be able to understand rather quickly. The methodology for the

simplification included leaving out details (often, facts – precise dates, details of the statute) which are not crucial for the reasoning and substituting technical words from the facts by more general synonyms, but keeping the target language (e.g. collocations in court rulings). In fact, what the teacher does is partial case briefing, or pre-briefing, which is later finalized by the students.

The choice of cases was motivated by collecting a set of cases which included an international element (the ruling must be available in English, and, thus, meaningful for the authentic use of English) and involved the variety of jurisdictions: some cases concerned the students' *realia*, i.e. their country or the EU, some cases dealt with English or US reality. Moreover, the cases should not be too complicated and, ideally, they should include an attractive element, which is usually satisfied by an interesting issue. The last limitation was set by the syllabus: the cases were all related to the current topic: the Sale of Goods.

Conclusion

The presented case brief activity showed a lot of involvement of the students. If Steps 1 and 2 are done thoroughly, students become confident with using appropriate legal language later and they feel happy becoming “experts” on their case. Real cases increase interest and motivation to work. The students have a lot of language practice (including all language skills) with active use of legal vocabulary, and they develop critical thinking and practice presentation skills.

The aim of the activity is to introduce students to case briefing and related language, which means that the task cannot be compared to the real case briefing in English law studies where the focus is mainly on legal understanding of the case. Still, the ESP students comprehend the principles and process of case briefing and by presenting a case they need to show a quite a high level of legal language and understanding. The experience from the classroom shows that students are able to learn and use the target language actively and correctly when performing the tasks.

N O T E S

¹ What Is a Case Brief? – Definition, Format & Examples available at <http://study.com/academy/lesson/what-is-a-case-brief-definition-format-examples.html>

² Common European Framework of Reference for Languages, see e.g. <http://www.coe.int/t/dg4/linguistic/cadre1.en.asp>

³ Peer Review Software, Masaryk University Language Centre, www.cjv.muni.cz

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