



Legal Writing Center

Tips for Presenting Effective Case Comparisons

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Let's face it, professors *love* case comparisons. They show that you've done the research, you know the law, and you know how to apply it. Finding a case that is analogous to your own can be a game-changer in persuasive legal writing. However, it's rare to find a binding, reported appellate decision with the exact same legal issues or facts since the case would not have been granted appeal if otherwise. So what's the solution? Crafting an effective comparison between your case and the case law--even when the facts or issues aren't identical--can be easily done by following a few tips and tricks:

1) Briefly discuss briefly the precedential case by focusing on relevant facts and rules.

Many times, legal writers are tempted to write long paragraphs explaining the facts, holding, rules, reasoning, etc., from a precedential case they think is good for their argument. Unless the case is a total slam-dunk (*i.e.*, the facts are identical), the discussion about the precedential case should be relatively brief. Avoid giving factual details or rules that are not relevant to your case, such as the particular names of the parties, the procedural history, or other intimate details of the case. Focus on the facts and rules that are important and those that you will use in your application because they are analogous to your case (or will be used to distinguish your case). If you concisely describe the facts, rule, and reasoning of the case, you can then quickly and more effectively move to applying the succinct rules and reasoning to your case.

2) Don't forget to *apply* the reasoning of the precedential case to your case.

Your concise explanation about the facts, rules, reasoning gets you nowhere if you fail to take these elements and apply them to your case. Don't assume the reader can put together these pieces for you. Explicitly discuss the similarities (or differences) between the two cases and explain why the same rule(s) should apply (or not apply) in your case. The application of the precedential case to yours is the most important part of your comparison analysis!

E.g., "The Court in *Washington v. State*, 406 Md. 642, 652-53 (2008), held that video evidence cannot be properly authenticated without witness testimony on how the tape was created. Here, the video evidence was not properly authenticated at Smith's trial because the State failed to call such a witness. For this reason, the tape should have been excluded."



3) Remember what court you're in.

Keep in mind that precedential cases that are binding on the court that you are writing for are the most persuasive. Make sure the court knows it is obligated to follow that case. One trick to highlight the binding nature of a case is to explicitly *name the court* that decided it (*e.g.*, The Court of Appeals of Maryland held in *Gupta v. State . . .*). Similarly, if the binding case is from same court you are writing for, you should refer to the case as being decided by “this court” (*e.g.*, This Court held in *Gupta v. State* that . . .). This calls attention to the fact that the case you're relying on is binding precedent!! On the other hand, avoid saying “the court” when your reader will not know which court you are referring to.

If you have found spot-on case law that is not binding or is from a different jurisdiction all together, acknowledge this fact and explain why it should still be persuasive to the court. Is there a trend nationwide that this court should adopt? Do other jurisdictions overwhelming follow this rule? Is there a sound policy rationale for the opinion in a non-binding case that would hold true in your case? Avoid hinging your whole argument on this, but such analysis can be useful as support for your argument.

4) When the facts are spot on, go narrow. When the facts are different, go broad.

When composing a case comparison, the facts from the precedential case will rarely be identical to those of your case. However, the rule from a particular case might be a homerun for your argument. An effective tool for getting around facts that are different is to discuss them in broad terms. On the other hand, if the facts are extremely similar, be as specific and narrow as possible. For example, if the precedential case is about a garbage-collector and your case is about a police commissioner refer to both individuals as a “public employees.” This creates an effective parallel between the two cases while still being truthful. Using this description, a court may be more willing to apply the rule from the precedential case despite the facts not being identical. On the other hand, if both your case and the precedential case are about garbage-collectors, be specific by narrowing the explanation of that position as much as possible. Referring to them too broadly detracts from the similarities between the two cases.

5) Use effectively transitional phrases.

Never underestimate the power of a good transitional phrase. It provides a roadmap for the reader and indicates when you are switching gears. This makes your writing clearer and easier to follow. This form of road mapping is particularly important in the context of case comparisons because your reader can easily become confused when jumping between explanations of the two cases. Use phrases like “in this case,” “here,” or “in the present case” to tell your reader you are switching between talking about the precedential case and your current case. If you are distinguishing a precedential case from your case, use phrases like “however” or “despite this.” When drawing a conclusion, begin the sentence with “for this reason,” “in sum,” or “therefore.” As a general rule of thumb, you really cannot overuse transitional phrases in legal writing (however, don't use the same one over and over!).



6) There is no single way to organize a case comparison or fit it into your analysis.

Case comparisons can be organized in many different ways. Some legal writers prefer to lay out the facts, rule, and reasoning of the precedential case, then compare those elements to the current case. If this structure is used, always be sure to maintain parallel structure. For instance, do not explain the facts, rule, and reasoning from the precedential case, and then the rule, reasoning, and facts of your case. The structure of the two explanations should mirror one another. Others prefer to start out with the unifying rule and reasoning, and then compare the facts of the two cases. Whichever way you decide to structure it, maintain that same structure for each case comparison so the reader can easier follow.

Similarly, there is not a “correct” place to insert case comparisons in your analysis as a whole. Some writers prefer to utilize case comparisons as the bulk of their analysis, while others use them as support for an already laid out argument. Again, there is no wrong way to do it; however, maintaining consistency is important for clear writing.

7) Don't shy away from bad case law.

If there is binding case law that is bad for your case, it is always better to acknowledge it rather than let opposing counsel surprise you with it later. Tackle the problem head on by explaining why that rule shouldn't apply in this case. Perhaps the facts are completely different, and the court should establish a different rule under these circumstances? Perhaps every other jurisdiction goes by a different rule and it's about time the rule be changed in your jurisdiction? Be creative!

