

*Hamline University School of Law
Orientation 2009*

**CASE BRIEFING:
AN INTRODUCTION TO LEGAL
ANALYSIS**



IMPORTANT:

Review this case briefing booklet carefully, and use the materials to guide the creation of your own briefs for the Case Briefing and Case Synthesis sessions during Orientation!

Case Briefing: An Introduction to Legal Analysis*

I. Your Adventure Begins

Welcome to Hamline Law School and the beginning of your adventure in legal education. In many respects, law school is all about the development and refinement of analytical skills. Since case law provides the foundation for much of our legal system, you will spend considerable time in (and after) law school reading court opinions. Each case presents a story, and your ability to understand and analyze those stories will directly bear on your success in law school and in the profession.

Case briefing is a fundamental tool for developing your analytical skills. In essence, a case brief is a written summary presenting your analysis of the decision's significant aspects. There are different formats for briefing cases, and the format will likely vary depending on the context. In general, case briefs often reflect the following organizational structure:

1. Case name, court, and date
2. Procedural posture (some like to include this in "Facts")
3. Facts
4. Issue(s)
5. Holding(s)
6. Reasoning
7. Rule(s)

The appropriate format and content will vary depending upon the underlying purposes and context for the case brief.

Keep in mind that different professors may have different expectations and personal styles regarding case briefing; indeed, most will never explicitly require a written brief. Nonetheless, the case briefing process is a challenging exercise that will force you to break out the relevant components of each decision so that you will understand what the court did and why. This fundamental understanding is key to your well-prepared participation in class, your ability to apply the resulting standards to other cases and exam scenarios, and ultimately to your effective representation of clients as an attorney.

Read the following case closely. The *Peterson* opinion involves a ski accident between a fiendishly fast 11-year-old boy and a slow-moving, middle-aged target, and possible liability for negligence (roughly speaking, the failure to exercise reasonable care). Decided in summer 2007, this tort case introduces you to the primary assumption-of-risk doctrine.

*Professor Carol B. Swanson

II. The *Peterson* Case

STATE OF MINNESOTA
COURT OF APPEALS
A06-1824

**Neal Peterson, a minor, by and through his parent
and natural guardian, Wanda Peterson, et al.,
Appellants,
vs.
David Donahue,
Respondent.
Filed June 26, 2007**

HARTEN*, Judge

Appellant brought this action in district court for injuries he sustained when he collided with respondent on a ski slope. Respondent moved successfully for summary judgment on the grounds of primary assumption of the risk. Because we see no error in the district court's award of summary judgment dismissing appellant's action, we affirm.

FACTS

In February 2000, respondent David Donahue, then 43, was crossing a ski slope when appellant Neal Peterson, then 11, collided with him. In August 2005, appellant brought this action. Depositions, taken in February 2006, indicated that both parties were experienced skiers at the time of the accident.

Appellant answered, "Yes" when asked, "And even though you were 11 at the time you were good?" and "You were very good?" He testified that he had been skiing since the age of two, that his whole family skied, that he was in his fourth year as a member of a ski race team at the time of the accident, and that he had raced the morning of the day of the accident, but he did not remember how well he did in the race. He also testified that he remembered nothing at all about the accident itself, that he had been told where it happened but would not otherwise have known, and that "nobody has really told me how the accident happened because nobody really saw it."

Respondent testified that he would classify his level of skiing at the time as advanced, that he was on his way to the parking lot, that he saw appellant when he turned his head to the right and had "split seconds" to observe him before the impact, that he was "skating" on his skis (a movement much slower than skiing), and that appellant was skiing fast, that appellant's head and body struck his right shoulder, that the impact knocked him downhill and out of his skis, that he was thrown ten or twelve feet and landed on his back and side, and that he saw appellant lying motionless and immediately sought attention.

Respondent's wife was the only witness to testify about the accident. She testified that, as she was taking her daughter from the parking lot to the chalet, she saw a boy "slam [] right into" a

man, that the boy came from above the man, that the boy was skiing very fast and his skis were not touching the ground, that the man was gliding or skiing very slowly, that in the chalet she learned

that other people had seen the aftermath of the accident but no one appeared to have witnessed the actual collision, and that she learned her husband was the man involved in the accident only after she returned to the parking lot from the chalet.

ISSUE

Does appellant's assumption of the risk preclude his negligence claim?

ANALYSIS

The district court granted respondent's motion for summary judgment on the ground that, as a matter of law, appellant's primary assumption of the risk precluded his negligence claim. "Generally a question for the jury, the applicability of primary assumption of the risk may be decided by the court as a matter of law when reasonable people can draw only one conclusion from undisputed facts." *Snilsberg v. Lake Washington Club*, 614 N.W.2d 738, 744 (Minn. App. 2000), *review denied* (Minn. 17 Oct. 2000) (quotations omitted). An appellate court reviews that decision *de novo*. *See, id.* at 746.

Primary assumption of the risk arises when parties have voluntarily entered a relationship in which plaintiff assumes well-known, incidental risks. The defendant has no duty to protect the plaintiff from the well-known, incidental risks assumed, and the defendant is not negligent if any injury to the plaintiff arises from an incidental risk

In primary assumption of the risk, by voluntarily entering into a situation where the defendant's negligence is obvious, by his conduct, the plaintiff consents to the defendant's negligence and agrees to undertake to look out for himself and relieve the defendant of the duty.

Id. at 743-44 (quotations and citations omitted). The application of primary assumption of the risk requires that a person who voluntarily takes the risk (1) knows of the risk, (2) appreciates the risk, and (3) has a chance to avoid the risk. *Andren v. White-Rodgers Co.*, 465 N.W.2d 102, 104-05 (Minn. App. 1991), *review denied* (Minn. 27 Mar. 1991).

Appellant does not argue that he did not know of the risk of colliding with another skier, appreciate that risk, or have a chance to avoid the risk. He had been skiing for years and was a member of a ski racing team at the time of the accident. During his deposition, he was asked, "[I]t's a known risk that you can collide with another skier?" and answered, "Yes." He also answered, "Yes" when asked if he "knew before this day [of the accident] that falls or collisions and accidents and injuries are something that can happen with skiing[.]" Appellant relies on *Seidl v. Trollhaugen, Inc.*, 305 Minn. 506, 232 N.W.2d 236 (1975), but that case is readily distinguishable: it declined to

apply assumption of the risk between skiers because the defendant did not “introduce evidence as to plaintiff’s knowledge of the specific risk of being hit on the slopes by other skiers.” *Id.* at 509, 232 N.W.2d at 240-41. Here, the record provides ample evidence of appellant’s knowledge of that specific risk.

Appellant argues that Minnesota law has not recognized primary assumption of the risk between skiers. But although no Minnesota appellate court has addressed this precise issue in a published opinion, other cases support the inference that recognition of primary assumption of the risk between skiers would be consistent with existing law.^[1]

Minnesota courts have accepted primary assumption of the risk as a bar to recovery in actions related to various sports. *See, e.g., Grisim v. TapeMark Charity Pro-Am Golf Tournament*, 415 N.W.2d 874, 876 (Minn. 1987) (golf); *Moe v. Steenberg*, 275 Minn. 448, 450-51, 147 N.W.2d 587, 589 (1966) (ice skating); *Schneider v. Erickson*, 654 N.W.2d 144, 151 (Minn. App. 2002) (paintball); *Swagger v. City of Crystal*, 379 N.W.2d 183, 184-85 (Minn. App. 1985) (softball), *review denied* (Minn. 19 Feb. 1986); *Snilsberg*, 614 N.W.2d at 746-47; *Jussila v. U.S. Snowmobile Ass’n*, 556 N.W.2d 234, 237 (Minn. App. 1996) (snowmobiling), *review denied* (Minn. 29 Jan. 1997).

More specifically, the courts have applied primary assumption of the risk to actions between sporting participants. *See, e.g., Moe*, 275 Minn. at 450-51, 147 N.W.2d at 589 (ice skater who fell and was injured by another skater who fell over her could have assumed risk); *Schneider*, 654 N.W.2d at 151 (in paintball game, “[b]ecause participants in sports enter into relationships in which they assume well-known, inherent risks, they consent to relieve other participants of their duty of care with regard to those risks.”).

In light of these cases applying primary assumption of the risk to several sports and to actions between participants in those sports and given the decision in *Seidl*, 305 Minn. at 509, 232 N.W.2d at 240, which declined to apply primary assumption of the risk to an action between skiers in the absence of evidence that the plaintiff knew of the risk of being hit by other skiers, we hold that primary assumption of the risk applies to actions between skiers who knew and appreciated the risk of collision.

Appellant also argues that respondent increased the risk inherent in skiing because he did not look up the hill for other skiers when he began to cross it. *See Jussila*, 555 N.W.2d at 237 (when defendant’s conduct increased plaintiff’s risk, defendant may not argue that plaintiff assumed the risk). But it is undisputed that appellant was above respondent on the hill and that he skied into respondent. Both parties testified to a skier’s responsibility to be in control, and appellant does not assert that respondent was not in control or that he did not have the right to be on the hill. None of appellant’s allegations, even if true, would support the conclusion that respondent’s conduct increased the risk inherent in skiing.

DECISION

Collision with another skier is a risk inherent in skiing. Primary assumption of the risk precludes liability for collisions between skiers who know and appreciate the well-known and inherent risk of such collisions. The district court lawfully concluded that summary judgment in favor of respondent was warranted, having found as a matter of law that appellant assumed the risk of the skiing collision.

Affirmed.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

¹¹¹ We note that this court has addressed very similar issues in unpublished decisions. *See, e.g., Manns v. Alps*, No. A06-752 (Minn. App. 15 May 2007) (affirming summary judgment on the ground that ski patrol volunteer riding on a snowmobile had primarily assumed the inherent risk of collision with snowboarder); *Cooper v. Powder Ridge Ski Corp.*, No. C7-91-2436 (Minn. App. 14 July 1992) (affirming jury finding that skier who fell while skiing over unusual terrain had primarily assumed risk of falling inherent in skiing), *review denied* (Minn. 4 August 1992); *see also Verberkmoes v. Lutsen Mountains Corp.*, 844 F. Supp. 1356, 1359-60 (D. Minn. 1994) (citing *Cooper* as unpublished Minnesota opinion on applicability of primary assumption of the risk to skiing but declining to apply it because an ATV parked on or near a ski trail is not among the inherent risks of skiing).

III. Looking at Case Briefing in the *Peterson* Context

Now let's break down the *Peterson* decision into a case brief. First, we will consider how each of the seven briefing categories operates. Then, to illustrate each category's operation in more detail, the materials will present a sample case brief section for *Peterson*.

A. Case Name, Court, and Date

This first category is the easy stuff. The case name, court, and date should all readily appear in the case caption at the head of the opinion. Naturally, the name will help you identify the decision and, to some extent, the litigating parties. In law school, you will read hundreds of cases, and recalling case names will help you sort through those decisions. Often, the party bringing the lawsuit and/or raising the appeal will be named first. Thus, if the case caption reads "Swanson v. Garon," then Swanson is the plaintiff bringing suit against defendant Garon, or Swanson is the appellant raising the appeal, or both.

As for the applicable court, simply abbreviate the relevant identifiers in your brief. Keep in mind the court's place in the overall judicial hierarchy; some courts are more influential than others. The Supreme Court of the United States, for example, carries more weight than a federal district court. You will learn more about the relative pecking order of state and federal courts in Legal Methods.

The case date most often just means knowing the year of decision, although in some contexts the full date may be significant (for example, if the case is extremely recent like *Peterson*, or if there are competing decisions with differing results in the same year). Naturally, since legal rules and court rulings change over time, the date has some bearing on the continued vitality of the stated authority. It is usually safer to cite cases from 2007 than from 1807. On the other hand, very old decisions can still be good law.

Finally, you will learn in your Legal Research & Writing class that you must follow certain rigid form requirements when citing a case in an appellate brief or legal memorandum. While those requirements are important, they do not apply to the case briefs you create when evaluating case authority for your own purposes when preparing for class or a court appearance. In other words, pick case name conventions that work for you—the sample section below does NOT reflect technically accurate citation style.

SAMPLE CASE BRIEF SECTION: Case name, court and date

Peterson v. Donahue (Minn. App. June 26, 2007)

B. Procedural Posture

This briefing segment presents a procedural overview of the decision. You should include the basics regarding the parties and their underlying claims, the relevant resolution before the trial court, the alleged errors bringing this matter up on appeal, and the ultimate result. Most of your cases will be appellate decisions setting forth the relevant litigation milestones early in the opinion.

It is crucial to understand precisely what brought this matter to the instant court. After all, the procedural posture can dictate the outcome in the appellate arena. This is because the procedural disposition below will affect the applicable standard of review, and this in turn will control how much deference to accord the lower court's determination. Pay close attention to why the case is up on appeal.

Finally, you need to know the case's ultimate disposition. It is surprising how often a student will read a case and not understand which party prevailed. What relief was granted? Did the appellate court affirm, reverse, remand, or something else? This description differs from the holding, which is discussed in more detail below.

SAMPLE CASE BRIEF SECTION: Procedural posture

Appellant Peterson (a minor) sued respondent Donahue for negligence. Donahue successfully moved for summary judgment on the grounds of primary assumption of risk, and the district court dismissed the action. Here, the Minnesota Court of Appeals affirmed.

C. Facts

This section is harder than it may seem. This category should include all legally relevant facts. The primary difficulty is discerning the difference between what's relevant and what's not. Many students err by restating all the case facts and cluttering their brief with extraneous stuff. With practice, you will learn how to present a concise narrative that focuses on the determinative information, the facts upon which the court bases its holding. Do not attempt to draft your "facts" section before you have closely evaluated the court's analysis, which should highlight the facts supporting the rationale. You want to present every fact essential to the decision.

Of course, reasonable people may disagree as to what facts are actually essential. This determination may well color the scope of the court's holding. Generally, courts attempt just to reach a fair resolution of the particular controversy before them. Depending on what facts are deemed crucial, the court's holding will or will not extend to future litigation controversies.

Finally, some cases present complex stories, while others are relatively straightforward. Methodically crafting a "facts" section will help you dissect exactly what's happening, even in cases involving the most convoluted circumstances!

SAMPLE CASE BRIEF SECTION: Facts

Appellant Peterson was injured when he skied into respondent Donahue. Peterson (a minor, age 11) was an experienced skier who knew and appreciated the risk of collisions with others, and had a chance to avoid the risk.

NOTE: Why is this factual statement so short? Under what circumstances would you pull in considerably more facts?

D. Issue(s)

This section defines the dispute. The issues are the legal questions that the court must determine to resolve the controversy. If properly constructed, the issue statement should be answerable by “yes” or “no.” Cases frequently involve more than one issue. When framing the relevant issues, you must identify the applicable legal rules in light of the central facts.

The issues can be framed broadly or narrowly. With respect to *Peterson*, for example, the opinion itself explicitly presents the “issue” as follows: “Does appellant’s assumption of the risk preclude his negligence claim?” Although this somewhat generic statement is accurate, it is not terribly helpful. This broad articulation omits important context that would explain how assumption of risk might operate in related cases. In other words, a correctly worded statement will give enough information to make the issue concrete, and this will provide meaningful content to the applicable legal rules in future controversies.

A different problem arises if the issue is framed too narrowly. If your issue incorporates facts not relevant to the court’s resolution, then you are confining the instant controversy to the unimportant specifics of the *Peterson* matter. This would improperly undercut the precedential value of the opinion.

SAMPLE CASE BRIEF SECTION: Issue(s)

Does the primary assumption of risk doctrine preclude negligence liability for a skiing collision when the plaintiff skier knew and appreciated the well-known and inherent risk of such collisions and had a chance to avoid the risk?

E. Holding(s)

The case holding answers the question posed by the issue. Thus, the holding can often involve simply restating the issue so that it includes the answer.

SAMPLE CASE BRIEF SECTION: Holding(s)

Primary assumption of risk does preclude negligence liability for a skiing collision when the plaintiff skier knew and appreciated the well-known and inherent risk of such collisions and had a chance to avoid the risk.

F. Reasoning

The section presents the court's justification for its holdings. The court's reasons may be explicit or implicit. In order to construct the reasoning section, take another look at the court's holding and summarize the thinking supporting that decision. You want to craft a logical step-by-step explanation for how the court reached its result.

SAMPLE CASE BRIEF SECTION: Reasoning

Primary assumption of risk arises when parties have voluntarily entered a relationship in which the plaintiff assumes well-known, incidental risks. When the plaintiff knows of the risk, appreciates the risk, and has a chance to avoid the risk, the defendant has no duty to protect the plaintiff from the risk and incurs no attendant liability to plaintiff. (citing *Snilsberg & Andren* cases)

Although the determination of primary assumption of risk is usually a jury question, the court can decide this issue as a matter of law when reasonable people can draw only one conclusion from undisputed facts. The undisputed record here demonstrates that Peterson was an experienced skier, knew and appreciated the specific risk of colliding with another skier, and had a chance to avoid the collision.

Although Minnesota has not previously recognized primary assumption of the risk between skiers, its courts have accepted the doctrine as barring recovery in other sports contexts (golf, ice skating, paintball, snowmobiling).

If the defendant's conduct increased the risk inherent in skiing, defendant cannot argue that plaintiff assumed the risk; here, however, Donahue's conduct did not increase the risk. Both parties agree that Donahue was in control and had a right to be on the hill, and that Peterson was above Donahue on the hill before skiing into him. Even if Donahue did fail to look up the hill before beginning to "skate" slowly across the hill, that conduct did not increase Peterson's risk.

G. Rule(s)

The legal rule section states the overall principles arising from the decision. These rules should naturally flow from the issue, holding, and reasoning segments. Here, you identify the legal propositions that will serve as precedent, applying to analogous contexts in future cases.

Often, the legal rules will not be “new”, but will simply restate a principle articulated by a prior court. Unless you have read several cases on a particular issue, you may have difficulty discerning the rule or appreciating its significance.

SAMPLE CASE BRIEF SECTION: Rule(s)

When the plaintiff voluntarily enters into a situation involving well-known, incidental risks, primary assumption of risk bars plaintiff’s negligence recovery if the plaintiff knows and appreciates the risk, and has a chance to avoid the risk. If the defendant’s conduct increases the inherent risk, defendant cannot argue that plaintiff assumed the risk.

Minnesota now recognizes primary assumption of risk between skiers. The risk of collisions between skiers is a well-known and incidental risk of the sport.

The jury usually determines primary assumption of risk, but the court can decide this issue as a matter of law when reasonable people can draw only one conclusion from undisputed facts.

IV. Putting Together the Big Picture

Remember that case analysis is far from easy—that’s why you spend years in law school learning how to think analytically. You are certainly not always expected to produce the “right answer” when you evaluate case authority, and reasonable people can disagree as what that “right answer” might be. So when you come to class and are stunned to discover that your analysis has missed the mark, do not be discouraged. Over time, you will be amazed at how the components of case analysis begin to fall into place.

Keep in mind, too, that some judicial opinions are not well-written, logical, internally consistent, or even coherent. The case you read may not have been “correctly decided,” and you need to retain a critical eye as you review your casebook materials.

In the end, your ability to brief one case in isolation means far less than understanding that opinion’s relationship to other case authority. Case synthesis is the process of distilling a series of decisions into meaningful standards that you can apply to comparable factual and legal contexts. If you are evaluating primary assumption of risk in another case, the *Peterson* decision is just one piece of the puzzle. What if young Peterson had been roller skating, not skiing, or had been less experienced? What if Donahue had suddenly stopped on the hill to admire the view moments before the

accident? The possible factual twists and legal variations are endless, and your task will be to assess these twists and variations by thinking abstractly and pulling meaningful legal doctrines from a group of similar decisions.

Congratulations! You have completed your first small step towards understanding case briefing as a legal analysis mechanism. At orientation, you will hear much more, and you will see the benefits of briefing firsthand. At your upcoming case briefing sessions, it will be assumed that you have read and understood the materials presented here. Using what you have learned, you will be expected to craft your own case briefs for the court opinions (provided online). Then, in your Case Briefing and Case Synthesis sessions, faculty members will help you explore and dissect the underlying stories. If you have done thoughtful case briefs, the time will be especially well spent. Be ready to think on your feet!