



## **International Law**

How to Brief a Case

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Each case brief assigned should follow the following format. Stick to it closely. Use these section titles, fonts, sizes, etc. Make sure you *single space* the brief. The length should be approximately two pages.

### **Case Title**

Court Name

*Case Citation*

### **Facts**

*Material Facts:* State the material facts of your case, giving a well-phrased overview of what actually happened. Do include information you consider vital to the case and make sure you include historical information which demonstrates your knowledge of what was going on in the world at the time your case came about.

*Legal Facts:* State the path the case took through the court system to get where it is at the point of the current case.

### **Issues**

*Particular Issues:* What issues are at stake for the claimant and respondent in this case? Will a ship and its contents be granted to one party? Will the people be extradited? Will a state be forced to withdraw from occupied territory?

*General Issues:* What underlying issues are at stake? These transcend the particulars of the case. These are issues that are important to more than just the claimant and respondent in the case. Will states have to give up their right to decide certain levels of cases? Will the ownership of cargo taken on the high seas be within the domain of the state nearest the capture point? Will extradition between states become the purview of an independent third-party?

### **Decision**

Give the answer(s) the court found.

## **Reasoning**

*Controlling Legal Principles/Authorities:* Examine the precedents used by the courts. What underlying legal principles were used? What doctrines? Was anything overturned?

*Reasoning Employed in Application to This Case:* Now, taking the above controlling legal principles and authorities, what was the legal reasoning used by the court to get from the material facts to the decision?

## **Comments**

This is the place where you comments on the findings of the court. You should delve deep into the fundamental issues of the case. Comment on the effects of this case to the general issues you mentioned earlier.

**The Schooner Exchange v. McFaddon**  
Supreme Court of the United States  
*11 U.S. 116 (1812)*

**Facts**

*Material Facts:* The schooner *Balaou* was allegedly seized on the high seas in 1810 by military forces acting on the behalf of the French government. A libel suit was subsequently brought against the Exchange by two American citizens (including McFaddon) who claimed that they owned and were entitled to possession of the ship. In response to this, the French ship now named *Balaou*, having been forced to enter the port of Philadelphia due to bad weather, was prevented from leaving by the process of the court. The US Attorney for Pennsylvania appeared on behalf of the US government to argue for the release of the *Balaou* on the grounds that since the United States and France were at peace, the property of the Schooner Exchange, however wrongfully acquired, had passed to Napoleon, the emperor of France. The US Attorney thus requested that the libel be dismissed with costs and the vessel released.

*Legal Facts:* The District Court for the District of Pennsylvania dismissed the libel. The Circuit Court reversed this decision. The US Attorney appealed the decision to the US Supreme Court.

**Issues**

*Particular Issues:* At stake in this particular case is the issue of entitlement of ownership and compensation for seized property. Should the owners of the Schooner Exchange get their schooner back or receive compensation for their loss, or does France get to keep its stolen treasure? Should the case before the Supreme Court be dismissed and the *Balaou* released from the Philadelphia port?

*General Issues:* At stake in general in this case is the issue of whether or not the French government is subject to the jurisdiction of a United States court. The Exchange was a public ship, and therefore “constitutes a part of the military force of her nation; [and] acts under the immediate and direct command of the sovereign (145). The question then is whether or not the Schooner Exchange can claim immunity from judicial jurisdiction in this case.

**Decision**

The Supreme Court decided that the Exchange was indeed exempt from the jurisdiction of the Pennsylvania courts. It ordered that the judgment of the Circuit Court be reversed and the judgment of the District Court, dismissing the libel, be affirmed.

## **Reasoning**

*Controlling legal principles/authorities:* The controlling legal principle upheld in this case was the ‘absolute theory of sovereign immunity.’ This doctrine is premised on the notion that a state’s immunity is the natural consequence of its sovereignty, and that no state can exert its authority over another. This “perfect equality and absolute independence of sovereigns” (138) has created over time the need for states to ‘waive’ a portion of their territorial jurisdiction in order to satisfy the greater good inherent in sovereign immunity. States thus have a mutual interest and obligation under international law to respect this status of foreign sovereigns. The desire for reciprocity demands that this concept be obeyed by *all* states. Stemming from this absolute theory of sovereign immunity are international norms that prevent, among other things, states and sovereign agents of states from being sued in foreign courts.

*Reasoning employed in application to this case:* The basic reasoning employed in this case centers around the international legal status of the Exchange itself. The Court makes a clear distinction between public ships and private ships. It argues that public ships are in a legal sense international ‘agents’ or ‘extensions’ of a sovereign government, and must receive the same immunity that is granted to the government itself. It goes on to describe how public vessels are granted an ‘implied license’ when they enter a friendly port of a foreign state, and that this license contains an “exemption from the jurisdiction of the sovereign,” in this case the United States Government. During peacetime, the ports of friendly nations “are considered open to the public ships of all powers” (142), and thus the Exchange entered the port of Philadelphia believing that this ‘implied promise’ would be upheld. Making reference to customary international law, the Court notes that: “certainly in practice, nations have not yet asserted their jurisdiction over the public armed ships of a foreign sovereign” (145). Therefore, there is no reason to believe that the Exchange is any different in this respect.

## **Comments**

This case exemplifies the problems associated with taking an extreme or absolute position on a legal concept. Surely one has to objectively see that the owners of the Exchange were swindled out of their property by an abstract legality that had nothing directly to do with them. From a purely ‘right or wrong’ perspective, it does seem unfair that their property could be taken with impunity. Should the ‘greater good’ of sovereign immunity overshadow their claims? Sovereign immunity does indeed have a necessary and important function in international law, but as a legal concept it should not be adhered to dogmatically or absolutely. The ‘restrictive’ or ‘relative’ interpretations of the doctrine applied in latter years are a good step toward achieving a broader sense of fairness in its usage.

## **Submitted by:**

*Dan Peters*