# INTRODUCTION TO READING AND BRIEFING A CASE

## Reading a Case

The ability to read, understand and brief a case (also referred to as a *decision* or *judgment*, and in Anglo-American law, as a judicial *opinion*) is one of a lawyer's most important skills. Since you may not have encountered a **case report** before now, it is a skill that must be developed over time. What follows is an introductory guide through a simple case report, *Jarvis v. Swans Tours*, a judgment of the English Court of Appeal in 1973. As an aid to understanding conventions of legal writing and analysis, comments have been added in the right-hand margin. Please read the case and accompanying notes and the following text, **Briefing a Case**.

**[1973] Q.B. 233**

**Jarvis v. Swans Tours Ltd.**

[Plaint No. 7051904]

Case reports begin with certain specific information. The **style of cause** (*Jarvis v. Swans Tours Ltd.*) is a short form of the case name. In civil cases, the case name is generally composed of the surnames of the **plaintiff** and **defendant**. The name *Jarvis v. Swans Tours Ltd.* is spoken as "*Jarvis and Swans Tours*." In criminal cases, the case name is generally in the form of *Regina* or *Rex v. Smith*. This is spoken as "*The Queen against Smith*" or simply "*Smith*." The Queen's representatives are also referred to as "the Crown."

The long form of the case name lists the plaintiffs and defendants in full. Here there is only one plaintiff and one defendant.

The **case citation**—[1973] Q.B. 233—facilitates access by those wishing to find the case in a reporter or online database. Here, the citation tells you that the case is at page 233 of the 1973 volume of the Queen's Bench Reports. Citations also summarize some key properties of a decision, such as date, and court level. Registry numbers—i.e., *Plaint No. 7051904*—are for court administration.

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| [COURT OF APPEAL]<br><br>Lord Denning M.R., Edmund Davies and Stephenson L.JJ.<br><br>Judgment: filed 1972 Oct. 17, 18 | This information tells you the level of court, judge, and date judgment was issued. Judges' titles follow their surname and reflect their level of authority. Most judges generally follow the form [Surname] J. These titles are spoken as "Judge [Surname]" or "Justice [Surname]:. Court of Appeal judges' surnames are followed by J.A., Chief Justices' by C.J. The plural of J. is JJ. The abbreviation "M.R." stands for "Master of the Rolls." |
| *Damages - Contract - Breach - Mental distress - Breach of holiday contract - Whether damages for disappointment at loss of promised facilities for enjoyment recoverable* | Case report editors often provide a list of **keywords** or **catchwords** – topics the case touches on. They are used to index the case in subject-matter indices. This list of topics acts like a summary of the case, but is not by any means conclusive. |
| In August 1969 the plaintiff, a solicitor aged about 35, booked a 15-day Christmas winter sports holiday with the defendants for his annual fortnight's holiday. He did so on the faith of the defendants' brochure which described the named "house party centre" in very attractive terms. He paid the defendants' charges of £63.45. The holiday was a great disappointment to the plaintiff who claimed damages including general damages for inconvenience and loss of benefit. The county court judge found that for the first week he got a holiday which was to some extent inferior and, for the second week, a holiday which was very largely inferior to what he had been led to expect and awarded him £31.72 in damages. | A case report often begins with a **headnote—**a paragraph or so describing the cause of the action and the Court's judgment, decision or opinion. Here, the editor of this law report outlines the events leading up to the alleged breach of contract. |
| On the plaintiff's appeal against the amount of damages: *Held,* allowing the appeal, that the plaintiff was entitled to be compensated for his dis-appointment and distress at the loss of the entertainment and facilities for enjoyment which he had been promised in the defendants' brochure and his damages should be increased to £125.<br><br>*Per curiam.* In a proper case, including a contract for a holiday, damages can be recovered for mental distress and vexation. | The editor briefly describes the **decision** and its legal rationale, also called *ratio decidendum* (plural—*decidendi*) or *ratio* for short. The reasons for the decision are set out in full in the judgment, below. Headnotes are not considered as legal authority in themselves, but give an outline of the argument to come. |
| *Dicta* of Pollock C.B. in *Hamlin v. Great Northern Railway Co.* (1856), 1 H. & N. 408, 411 and Mellor J. in *Hobbs v. London & South Western Railway Co.* (1875), L.R. 10 Q.B. 111, 122 not followed.<br><br>The following cases are referred to in the judgments:<br><br>*Bailey v. Bullock*, [1950] 2 All E.R. 1167. | Conventionally, editors list all **authorities** referred to in the decision, including cases and statutes (sometimes called "primary authorities"), and textbooks and articles |

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*Bruen v. Bruce (Practice Note)*, [1959] 1 W.L.R. 684; [1959] 2 All E.R. 375, C.A.
*Feldman v. Allways Travel Service*, [1957] C.L.Y. 934.
*Griffiths v. Evans*, [1953] 1 W.L.R. 1424; [1953] 2 All E.R. 1364, C.A.
*Hamlin v. Great Northern Railway Co.* (1856), 1 H. & N. 408.
*Hobbs v. London & South Western Railway Co.* (1875), L.R. 10 Q.B. 111.
*Stedman v. Swan's Tours* (1951), 95 S.J. 727, C.A.

The following additional case was referred to in argument:

*Farnworth Finance Facilities Ltd. v. Attryde*, [1970] 1 W.L.R. 1053; [1970] 2 All E.R. 774, C.A.
*Pearce v. Lunn-Poly* [1968] C.L.Y. 528.
*Polk (W. & S.) & Co. v. Macrae,* 1922 S.C. (H.L.) 192, H.L.(Sc.)

("secondary authorities"). Often, the case report will reproduce in full relevant legislation within the text. The index of authorities can be an invaluable resource for further research. At first, the diversity of citations can seem daunting. Don't worry: you'll get the hang of it eventually!

Here, the editors also signal that certain *dicta* (short for *obiter dicta*) of judges in other cases wasn't followed. *Dicta* (singular—*dictum*) are comments by judges that are not strictly necessary to the decision reached.

APPEAL from Judge Corley at Ilford County Court.

In most cases, especially appellate cases (like this one), the procedural history of a case is described at the beginning of the decision. This generally involves a discussion of the treatment of the case in courts below, including a summary of the judicial opinion as it relates to the **grounds for appeal**.

By his particulars of claim the plaintiff, James Walter John Jarvis, claimed against the defendants, Swans Tours Ltd., that on or about August 10, 1969, he entered into a contract with the defendants by which he promised to pay them £63.45 and the defendants in consideration thereof granted him the right to partake of package holiday facilities (called "Swans house party in Morlialp") described in their brochure and in the form upon which they confirmed the reservation of the facilities. The plaintiff claimed the breach by the defendants of a fundamental term of the contract that they should arrange "a Swans Houseparty at the Hotel Krone at Giswil, Switzerland" in that there was no house party at all during the second week of his holiday and breaches of express and implied terms of the contract. He claimed that the £63.45 had been paid for a consideration which had wholly failed and that in cones-quence of the defendants' breach of contract he had lost the benefit of his two weeks' paid leave of absence with the benefit of a winter holiday. Special damages of £63.45 (the cost of holiday) and £93.25 (salary for two weeks) with general damages for inconvenience and loss of benefit were claimed.

On March 2, 1972, in the Ilford County Court Judge Corley awarded the plaintiff £31.72 damages.

The plaintiff appealed on the ground, *inter alia*, that the judge had failed to give compensation or adequate compensation for inconvenience and for loss of benefit which the plaintiff reasonably expected to derive from the contract had it been properly performed by the defendants.

The facts are stated in the judgment of Lord Denning M.R.

The greatest part of most case reports is given to the judgment. Judges are required to give reasons for the judgment. Judgments generally are comprised of several elements, though they may not be neatly

**Lord Denning M.R.** Mr. Jarvis is a solicitor, employed by a local authority at Barking. In 1969 he was minded to go for Christmas to Switzerland. He was looking forward to a skiing holiday. It is his one fortnight's holiday in the year. He prefers it in the winter rather than in the summer.

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Mr. Jarvis read a brochure issued by Swans Tours Ltd. He was much attracted by the description of Mörlialp, Giswil, Central Switzerland. I will not read the whole of it, but just pick out some of the principal attractions:

"House Party Centre with special resident host.... Morlialp is a most wonderful little resort on a sunny plateau... Up there you will find yourself in the midst of beautiful alpine scenery, which in winter becomes a wonderland of sun, snow and ice, with a wide variety of fine ski-runs, a skating rink and exhilarating toboggan run ... Why did we choose the Hotel Krone... mainly and most of all because of the 'Gemütlichkeit' and friendly welcome you will receive from Herr and Frau Weibel.... The Hotel Krone has its own Alphütte Bar which will be open several evenings a week.... No doubt you will be in for a great time, when you book this houseparty holiday... Mr. Weibel, the charming owner, speaks English."

On the same page, in a special yellow box, it was said:

"Swans House Party in Morlialp. All these House Party arrangements are included in the price of your holiday. Welcome party on arrival. Afternoon tea and cake for 7 days. Swiss dinner by candlelight. Fondue party. Yodeler evening. Farewell party in the 'Alphütte Bar.' Service of representative." Alongside on the same page there was a special note about ski-packs. "Hire of Skis, Sticks and Boots.... Ski Tuition.... 12 days £11.10."

In August 1969, on the faith of that brochure, Mr. Jarvis booked a 15-day holiday, with ski-pack. The total charge was £63.45, including Christmas supplement. He was to fly from Gatwick to Zurich on December 20, 1969, and return on January 3, 1970.

The plaintiff went on the holiday, but he was very disappointed. He was a man of about 35 and he expected to be one of a house party of some 30 or so people. Instead, he found there were only 13 during the first week. In the second week there was no house party at all. He was the only person there. Mr. Weibel could not speak English. So there was Mr. Jarvis, in the second week, in this hotel with no house party at all, and no one could speak English, except himself. He was very disappointed, too, with the skiing. It was some distance away at Giswil. There were no ordinary length skis. There were only mini-skis, about 3 ft. long. So he did not get his skiing as he wanted to. In the second week he did get some longer skis for a couple of days, but then, because of the boots, his feet got rubbed and he could not continue even with the long skis. So his skiing holiday, from his point of view, was pretty well ruined.

There were many other matters, too. They appear trivial when they are set down in writing, but I have no doubt they loomed large in Mr. Jarvis's mind, when coupled with the other disappointments. He did not have the nice Swiss cakes which he was hoping for. The only cakes for tea were potato crisps and little dry nut cakes. The yodeler evening consisted of one man from the locality who came in his working clothes for a little while, and sang four or five songs very quickly. The "lphütte Bar" was an unoccupied annex which was only open one evening. There was a representative, Mrs. Storr, there during the first week, but she was not there during the second week.

labelled as such. These elements include procedural history, factual summary, statement of issues, relevant law, legal analysis, and disposition of the case.

In most appellate cases, at least three judges hear the case. In the Supreme Court of Canada, all nine judges of that Court may hear particularly important cases. Cases on which several judges sit can give rise to differences of opinion. Where a judge agrees with the result reached by another judge, but wishes to provide additional reasons or explanation (as here), that judge may give a separate **concurring opinion**. Judges may also disagree with the majority and give a **dissenting opinion**. Others may concur with a judge's dissenting opinion. Sometimes it can get a bit confusing! In all appellate cases, benches are comprised of an odd number of judges, and the majority rules as to the outcome, regardless of the particular reasoning behind the decisions. The **majority opinion** is the only one with **binding authority**, though the others might have **persuasive authority**—it is not unusual for today's dissent to become tomorrow's majority opinion.

A case is a story, and judges have much latitude in how they tell the story. Lord Denning was well known for his particular narrative style, honed over many years. He would often use short, staccato-like sentences for effect and weave into them particularly colourful facts from the case. We like to think of facts as objectively neutral, but can they ever be so? For example, does anything in the opening depiction of the facts signal to you how Lord Denning might decide the case?

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The matter was summed up by the judge:

"During the first week he got a holiday in Switzerland which was to some extent inferior ... and, as to the second week, he got a holiday which was very largely inferior to what he was led to expect."

What is the legal position? I think that the statements in the brochure were representations or warranties. The breaches of them give Mr. Jarvis a right to damages. It is not necessary to decide whether they were representations or warranties: because since the *Misrepresentation Act 1967*, there is a remedy in damages for misrepresentation as well as for breach of warranty.

The one question in the case is: What is the amount of damages? The judge seems to have taken the difference in value between what he paid for and what he got. He said that he intended to give "the difference between the two values and no other damages" under any other head. He thought that Mr. Jarvis had got half of what he paid for. So the judge gave him half the amount which he had paid, namely, £31.72. Mr. Jarvis appeals to this court. He says that the damages ought to have been much more.

One method of legal reasoning is summarized by the acronym IRAC: issue; rule; application of the rule; conclusion. But the simplicity of the acronym is beguiling: you will quickly find that there is a great deal of fluidity in all of this.

Here, the issue may be defined as "can damages for mental distress be recovered in contract"? Considering the "rule" in *Hamlin v. Great Northern Railway Co.* and *Hobbs v. London & South Western Railway Co.* to be "out of date," Lord Denning reformulates it as follows:

"In a proper case damages for mental distress can be recovered in contract, just as damages for shock can be recovered in tort. One such case is a contract for a holiday, or any other contract to provide entertainment and enjoyment."

There is one point I must mention first. Counsel together made a very good note of the judge's judgment. They agreed to it. It is very clear and intelligible. It shows plainly enough the ground of the judge's decision: but, by an oversight, it was not submitted to the judge, as it should have been: see *Bruen v. Bruce* (Practice Note) [1959] 1 W.L.R. 684. In some circumstances we should send it back to the judge for his comments. But I do not think we need do so here. The judge received the notice of appeal and made notes for our consideration. I do not think he would have wished to add to them. We will, therefore, decide the case on the material before us.

What is the right way of assessing damages? It has often been said that on a breach of contract damages cannot be given for mental distress. Thus in *Hamlin v. Great Northern Railway Co.* (1856) 1 H. & N. 408, 411 Pollock C.B. said that damages cannot be given "for the disappointment of mind occasioned by the breach of contract." And in *Hobbs v. London & South Western Railway Co.* (1875) L.R. 10 Q.B. 111, 122, Mellor J. said that "for the mere inconvenience, such as annoyance and loss of temper, or vexation, or for being disappointed in a particular thing which you have set your mind upon, without real physical inconvenience resulting, you cannot recover damages."

The courts in those days only allowed the plaintiff to recover damages if he suffered physical inconvenience, such as having to walk five miles home, as in *Hobbs'* case; or to live in an over-crowded house, *Bailey v. Bullock* [1950] 2 All E.R. 1167.

I think that those limitations are out of date. In a proper case damages for mental distress can be recovered in contract, just as damages for shock can be recovered in tort. One such case is a contract for a holiday, or any other contract to provide entertainment and enjoyment. If the contracting party breaks his contract, damages can be given for the disappointment, the

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distress, the upset and frustration caused by the breach. I know that it is difficult to assess in terms of money, but it is no more difficult than the assessment which the courts have to make every day in personal injury cases for loss of amenities. Take the present case. Mr. Jarvis has only a fortnight's holiday in the year. He books it far ahead, and looks forward to it all that time. He ought to be compensated for the loss of it.

A good illustration was given by Edmund Davies L.J. in the course of the argument. He put the case of a man who has taken a ticket for Glyndbourne. It is the only night on which he can get there. He hires a car to take him. The car does not turn up. His damages are not limited to the mere cost of the ticket. He is entitled to general damages for the disappointment he has suffered and the loss of the entertainment which he should have had. Here, Mr. Jarvis's fortnight's winter holiday has been a grave disappointment. It is true that he was conveyed to Switzerland and back and had meals and bed in the hotel. But that is not what he went for. He went to enjoy himself with all the facilities which the defendants said he would have. He is entitled to damages for the lack of those facilities, and for his loss of enjoyment.

A similar case occurred in 1951. It was *Stedman v. Swan's Tours* (1951) 95 S.J. 727. A holiday-maker was awarded damages because he did not get the bedroom and the accommodation which he was promised. The county court judge awarded him £13.15. This court increased it to £50.
I think the judge was in error in taking the sum paid for the holiday £63.45 and halving it. The right measure of damages is to compensate him for the loss of entertainment and enjoyment which he was promised, and which he did not get.

Looking at the matter quite broadly, I think the damages in this case should be the sum of £125. I would allow the appeal, accordingly.

The reformulated "rule" answers the question posed by the "issue" and is supported by *Stedman v. Swan's Tours*. It is applied to the facts in this case as follows: "Here, Mr. Jarvis's fortnight's winter holiday has been a grave disappointment. It is true that he was conveyed to Switzerland and back and had meals and bed in the hotel. But that is not what he went for. He went to enjoy himself with all the facilities which the defendants said he would have." Lord Denning's conclusion: "He is entitled to damages for the lack of those facilities, and for his loss of enjoyment."

Lord Denning here gives his decision. Where more than one judicial opinion is given, the opinions are given consecutively, typically in order of judicial seniority. Immediately following this judgment is the judgment of Lord Justice Edmund Davies.

**Edmund Davies L.J.** Some of the observations of Mellor J. in the hundred-year-old case of *Hobbs v. London & South Western Railway Co.,*L.R. 10 Q.B. 111, 122-124 call today for reconsideration. I must not be taken to accept that, under modern conditions and having regard to the developments which have taken place in the law of contract since that decision was given, it is right to say, as Mellor J. did at p. 122 that:

"for the mere inconvenience, such as annoyance and loss of temper, or vexation, or for being disappointed in a particular thing which you have set your mind upon, without real physical inconvenience resulting, you cannot recover damages. That is purely sentimental, and not a case where the word inconvenience, as I here use it, would apply."

On the contrary, there is authority for saying that even inconvenience that is not straightly physical may be a proper element in the assessment of damages. In *Griffiths v. Evans* [1953] 1 W.L.R. 1424, in the course of a dissenting judgment where a solicitor was being sued for negligence in wrongly advising a plaintiff as to his right to sue his employers at common law, Denning L.J.

Lord Justice Edmund Davies finds, in *Griffiths v. Evans*, authority for the proposition that "even inconvenience that is not straightly physical may be a proper element in the assessment of damages." In this case, the travel agents explicitly undertook to provide a holiday "of a certain quality," which they failed to provide.

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said at p. 1432 that the damages should be assessed "by taking into account the inconvenience and expense to which the plaintiff will be put in suing the employers, and the risk of failure."

Be that as it may, Mellor J. was dealing with a contract of carriage and the undertaking of the railway company was entirely different from that of the defendants in the present case. These travel agents made clear by their lavishly illustrated brochure with its ecstatic text that what they were contracting to provide was not merely air travel, hotel accommodation and meals of a certain standard. To quote the assurance they gave regarding the Morlialp House Party Centre, "No doubt you will be in for a great time, when you book this House Party Holiday." The result was that they did *not* limit themselves to the obligation to ensure that an air passage was booked, that hotel accommodation was reserved, that food was provided and that these items would measure up to the standards they themselves set up. They went further than that. They assured and undertook to provide a holiday of a certain quality, with "Gemütlichkeit" (that is to say, geniality, comfort and cosiness) as its overall characteristics, and "a great time," the enjoyable outcome which would surely result to all but the most determined misanthrope.

Not only does Edmund Davies L.J. call for a modernization of the rule, he also **distinguishes** *Hobbs* on the facts. A large part of what lawyers and judges do is look for meaningful analogies and distinctions between cases to justify a conclusion. How meaningful do you think the distinction is here?

If in such circumstances travel agents fail to provide a holiday of the contracted quality, they are liable in damages. In assessing those damages the court is not, in my judgment, restricted by the £63.45 paid by the client for his holiday. Nor is it confined to matters of physical inconvenience and discomfort, or even to quantifying the difference between such items as the expected delicious Swiss cakes and the depressingly desiccated biscuits and crisps provided for tea, between the ski-pack ordered and the miniature skis supplied, nor between the "very good ... house party arrangements" assured and the lone wolf second week of the unfortunate plaintiff's stay. The court is entitled, and indeed bound, to contrast the overall quality of the holiday so enticingly promised with that which the defendants in fact provided.

In determining what would be proper compensation for the defendants' marked failure to fulfill their undertaking I am of the opinion that, again to use Mellor J.'s terms [L.R. 10 Q.B. 111, 122], "vexation" and "being disappointed in a particular thing you have set your mind upon" are relevant considerations which afford the court a guide in arriving at a proper figure.

When a man has paid for and properly expects an invigorating and amusing holiday and, through no fault of his, returns home dejected because his expectations have been largely unfulfilled, in my judgment it would be quite wrong to say that his disappointment must find no reflection in the damages to be awarded. And it is right to add that, in the course of his helpful submissions, Mr. Thompson did not go so far as to submit anything of the kind. Judge Alan Pugh took that view in *Feldman v. Allways Travel Service* [1957] C.L.Y. 934. That, too, was a holiday case. The highly experienced senior county court judge there held that the correct measure of damages was the difference between the price paid and the value of the holiday in fact furnished, "taking into account the plaintiff's feelings of annoyance and frustration." The trial judge clearly failed to approach his task in this way,

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which in my judgment is the proper way to be adopted in the present case. He said: "There is no evidence of inconvenience or discomfort, other than that arising out of the breach of contract and covered by my award. There was no evidence of physical discomfort, e.g., bedroom not up to standard."

His failure is manifested, not only by these words, but also by the extremely small damages he awarded, calculated, be it noted, as one half of the cost of the holiday. Instead of "a great time," the plaintiff's reasonable and proper hopes were largely and lamentably unfulfilled. To arrive at a proper compensation for the defendants' failure is no easy matter. But in my judgment we should not be compensating the plaintiff excessively were we to award him the £125 damages proposed by Lord Denning M.R. I therefore concur in allowing this appeal.

**Stephenson L.J.** I agree. What damage has the plaintiff suffered for the loss to him which has resulted from the defendants' breaches of this winter sports holiday contract and was within the reasonable contemplation of the parties to this contract as a likely result of its being so broken? This seems to me to be the question raised by this interesting case.

The judge has, as I understand his judgment, held that the value of the plaintiff's loss was what he paid under the contract for his holiday; that as a result of the defendants' breaches of contract he has lost not the whole of what he has paid for, but broadly speaking a half of it; and what he has lost and what reduces its value by about one half includes such inconvenience as the plaintiff suffered from the holiday he got not being, by reason of the defendants' breaches, as valuable as the holiday he paid for.

I approach the judge's judgment bearing in mind the unfortunate fact that counsel's note of it has not been submitted to him for his approval in accordance with what has been said by this court about the rule which is now R.S.C., Ord. 59, r. 19 (4). I agree with the judge that the breaches were not fundamental, that the consideration for the plaintiff's payment to the defendants did not wholly fail and that, although the plaintiff was frustrated, the contract was not. In my judgment, however, the judge seems to have undervalued the loss to the plaintiff from the breaches which he found: no welcome party; no suitable cakes for afternoon tea; no yodler evening in the true sense of the words; the Alphütte Bar not open several evenings of the week; no service of the representative in the second week and no house party arrangements for the second week; no English spoken by Mr. Weibel, the owner; no full length skis until the second week; not much fun at night and no tobogganing or bowling by day or by night.

The judge in assessing the loss also underestimated the inconvenience to the plaintiff, perhaps because he followed the distinction drawn by Mellor J. in *Hobbs'* case, L.R. 10 Q.B. 111, 122-123, and disallowed any inconvenience or discomfort that was not physical, in so far as that can be defined. I agree that, as suggested in McGregor on Damages, 13th ed. (1972), p. 45, para. 68, there may be contracts in which the parties contemplate inconvenience on breach which may be described as mental: frustration, annoyance, disappointment; and, as Mr. Thompson concedes that this is such a contract, the damages for breach of it should take such wider inconvenience or discomfort into

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account.

I further agree with my Lords that the judge was wrong in taking, as I think he must have taken, the amount the plaintiff paid the defendants for his holiday as the value of the holiday which they agreed to provide. They ought to have contemplated, and no doubt did contemplate, that he was accepting their offer of this holiday as an offer of something which would benefit him and which he would enjoy, and that if they broke their contract and provided him with a holiday lacking in some of the things which they contracted to include in it, they would thereby reduce his enjoyment of the holiday and the benefit he would derive from it.

These considerations lead me to agree with my Lords that the judge was wrong in applying to this contract to provide a winter sports holiday the method of measuring damages for breach of warranty set out in section 53 (3) of the *Sale of Goods Act 1893*, as it was applied in *Feldman's* case [1957] C.L.Y. 934, and that rather than try to put a value on the subject matter of this contract, first as promised and then as performed and to include the inconvenience to the plaintiff in the process, we should award the plaintiff a sum of general damages for all the breaches of contract at the figure suggested by Lord Denning M.R.

I would add that I think the judge was right in rejecting the plaintiff's ingenious claim, however it is put, for a fortnight's salary. I agree that the appeal should be allowed and the plaintiff be awarded £125 damages.

*Appeal allowed.*

*Damages of £125 awarded with costs in the Court of Appeal and in the county court.*

The report ends with the holding of the case, either allowing or dismissing the claims and counterclaims. In this case, the Court allowed the appeal and awarded damages. Note also that the Court awarded "costs" to the appellant in both courts. "Costs" are an attempt to reimburse a litigant for some of the legal expense incurred in advancing a case. They are typically set according to a tariff and reimburse only a small portion of actual out-of-pocket costs of litigation, though in some cases, they may still amount to a large sum. Hence William Camden's admonition: "Agree, for the law is costly."

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**Briefing a Case**

A case brief is a structured set of notes built around a case report. It is a study aid used by virtually all law students to summarize, record, identify, and distil important legal issues from cases that can be complex, long, and (occasionally) disorganized. Case briefs can also be thought of as precursors to headnotes or statements of fact and law that get included in memoranda, opinion letters or factums. Though not all lawyers use case briefs throughout their careers, developing your own note-taking style begins with case briefing. The study of law has a steep learning curve, and the ability to read, understand, and distil a case into a brief is an invaluable skill for your first year.

There are as many different styles of case brief as there are law students. Much depends upon personal taste and learning style. Moreover, how you write a brief will depend upon the purpose of your brief. If you were preparing materials to advise a client being sued for breach of contract, you might give your brief of *Jarvis v. Swans Tours* a rather broad treatment. If your client were Swans Tours, you might focus on a defence. As a law student, though, your task is to try to understand how lawyers and judges reason: in particular, how judges formulate or reformulate rules and apply them to a given set of facts, and how they draw analogies and distinctions between cases. Your briefs should reflect that objective. In most subject areas, you will be asked to brief leading cases, outlining the broad strokes of the law. Illustrative or teaching cases generally refine or draw exceptions to the rule, and are thus more fact-dependent. Make sure your briefs reflect that structure, by asking yourself, "Why is this case on the list of readings?"

Nevertheless, all good briefs contain several key elements. Your brief should, for the most part, resemble a skeleton of the case report itself. It should be free of all extraneous information, but remain complete and comprehensible, should you be called on to explain your understanding of the case. As soon after the discussion of the case in class as possible, supplement and edit your case brief with class notes. A case brief will typically contain the following:

- case name ("style of cause")
- level of court, jurisdiction
- date of decision and/or date of report
- procedural history
- parties to the action (plaintiff and defendant or appellant and respondent)
- cause of action
- essential facts
- discussion of the reasoning and analysis
- holding
- miscellaneous (noteworthy issues, questions and comments)

The following is one example of a case brief of *Jarvis v Swans Tours* Again, the brief is written on the left, while the commentary is given on the right.

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***Jarvis v. Swans Tours Ltd.***
[1973] Queen's Bench Court of Appeal

The essential information remains, but in a skeletal form. The point of a brief is accessibility, simplicity, and ease of use.

**Procedural History:**

- Appeal from Judge Corley at Ilford County Court
- Damages of £31.72 awarded to plaintiff, who was claiming special damages of £63.45 (cost of the holiday) and £93.25 (salary for two weeks), with general damages for inconvenience and loss of benefit.
- The plaintiff appealed on the ground that the judge had failed to give adequate compensation.

A brief summary of the decision(s) of the courts below are generally included for appellate cases. Appeals hinge upon statements and decisions of the lower court.

**Parties:**

- Appellant: James Walter John Jarvis
- Respondent: Swans Tours Ltd.

It is useful to identify the parties, especially where multiple parties are involved. You can use a shorthand to save time (e.g. "P" and "D" or the classical Greek "π" and "Δ" for a trial decision; in a brief of an appellate decision, "A" for appellant, "R" for respondent). It is not generally necessary to include names of counsel or witnesses in your brief.

**Cause of Action:**

- A alleges a fundamental breach of contract by R (Swans Tours) going to the root of the contract.
- A claims damages for the price paid for the ticket and for feelings of "annoyance and frustration"
- A appeals on the ground that the judge failed to give adequate compensation for inconvenience and for loss of benefit which the plaintiff reasonably expected to derive from the contract with the defendants.

It is generally helpful to state the claims (and counter-claims, if any) of the litigants.

**Facts:**

- A planned to go to Switzerland for Christmas. He had one holiday in the year and was looking forward to a skiing holiday. He read a brochure issued by Swans Tours Ltd. that included details such as:
  - wide variety of fine ski-runs, a skating rink and toboggan run
  - bar open several evenings a week
  - welcome party on arrival
  - afternoon tea and cake for 7 days

The relevant facts are not always apparent, especially on a first reading. For this reason, it is important to read the case through before attempting to brief it. Note that many facts have been eliminated. Detailed information about each of Mr. Jarvis' disappointments does not need to be included here.

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- Swiss dinner by candlelight
- fondue party, yodeler evening
- farewell party in the bar

- A booked 15-day holiday for a total of £63.45
- A went on the holiday, but was very disappointed; items above not provided as expected.

It is advisable to keep some record of what page or paragraph your notes come from, so that you can consult the text if you need to. You needn't cite for every note.

**Issue:** "can damages for mental distress be recovered in contract"?

Note: There is only one central issue in this case (many cases involve several issues, and your brief should reflect that).

An "issue" is a question of fact, law or mixed fact and law that is in dispute in the proceeding. Counsel each address the issue, and the judge [or jury as "trier of fact"] rule upon it. It is generally helpful to phrase the issue as a question—the purpose of the judgment being to answer that question.

**Argument:**

- A appealed on the amount of damages awarded at trial, claiming that the damages should compensate him for the loss of enjoyment which he was promised.

The court may or may not detail counsel's argument. Where possible, note the nature of the arguments made, and watch for the way the court deals with these arguments.

**Legal Rules:**

- "Even inconvenience that is not straightly physical may be a proper element in the assessment of damages." *Griffiths v. Evans* [1953] 1 W.L.R. 1424.
- Damages can be awarded for loss of enjoyment (holiday-maker did not get the bedroom and accommodation promised – was awarded damages); *Steadman v. Swan's Tours* (1951) 95 S.J. 727.
- The correct measure of damages should be the difference between the price paid and the value of the holiday in fact furnished "taking into account the plaintiff's feelings of annoyance and frustration." *Feldman v. Allways Travel Service* [1957] C.L.Y. 934.

Legal precedents make up a significant part of almost every legal analysis, and provide solutions to nearly every issue. Make sure to note the controlling legal authority properly, including the level of court, the date, and jurisdiction. Note, however, that some cases (such as *Jarvis*) mark a turning point or new direction; this is especially likely to be true of the cases discussed in law school.

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**Reasoning/Analysis:**

- Damages for breach of contract should, where appropriate, be assessed taking into account loss of enjoyment, inconvenience, and feelings of annoyance and frustration
- Lord Denning: Damages for mental distress can be recovered in contract, just as damages for shock can be recovered in tort. One such case is a contract for a holiday, or any other contract to provide entertainment and enjoyment. The damages should compensate the plaintiff for loss of entertainment and enjoyment he was promised and didn't get.
- Edmund L.J.: The defendants assured and undertook to provide a holiday of a certain quality. The plaintiff's reasonable and proper hopes were largely unfulfilled and he should be compensated for this inconvenience.
- Stephenson L.J.: The trial judge seems to have undervalued the loss to the plaintiff from the breaches.

The judge's analysis is perhaps the most critical part of the case to understand. It is based on facts, arguments, and legal rules.

You will become more comfortable with judicial reasoning as you read more cases.

If the case you are briefing is an appellate case, be sure to include any dissenting or concurring opinions. They very often illuminate the problem and provide the basis for an appeal. Take note of the reasons for every issue you identify.

**Decision/Finding:**

- Mr. Jarvis should be awarded general damages for the inconvenience and lack of enjoyment of his holiday in the amount of £125.

**Ratio:**

- Damages for mental distress can be recovered for breach of contract, where the contract provides for entertainment and enjoyment.

The *ratio* of a case is reasoning or legal "rule" that can be extracted from a case. It will be considered, applied and perhaps reformulated in future cases. Can you imagine a situation that might cause the rule as stated here to be reworded in the future?

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