

Case Theory In A Nutshell¹

A critical skill of an effective advocate is to organize a case around a theme, theory or focal point. Several focal points are possible; it's up to you to find a compelling one and to organize your case around it.

A case theory is a detailed, coherent, accurate story of what occurred. It must demonstrate that the client is entitled to relief. Case theory involves legal theories and factual theories. Legal theories are the legal arguments for why each party should prevail -- claims/causes of action or affirmative defenses. The factual theory is an explanation of how a particular course of events could have happened.

A good case theory is:

- Based on strong facts and inferences that can be fairly drawn from these facts;
- Built on facts not subject to much, if any, dispute;
- Consistent with any incontestable fact;
- Takes into account and explains away as many unfavorable facts as possible;
- Accepted by the trier of fact without having to stretch the imagination;
- Not based on wishful thinking about any aspect of the case.

To develop a case theory:

1. Construct a factual chronology of the case;
2. Analyze the case from a common sense perspective by asking:
 - a) What's the essential wrong or unfairness to the client?
 - b) Does this unfairness suggest any causes of action or defenses that are not obvious to you?
 - c) Identify any facts that make the case special or more appealing.
 - d) Identify any theme or unifying principle that these facts suggest.
 - e) Identify the legal theories (causes of action/defenses).
 - f) Identify the elements you must prove to prevail on each cause of action or defense.
 - g) Identify the facts that support the elements, opponent's rebuttal to these facts.
 - h) Identify the theory of the case
3. Repeat the process to anticipate your opponent's theory of the case.

¹ For a more detailed explanation, read Mauet on case theory. Graduates of Benchmark's College of Advocacy can review *Legal Services Practice Manual*, Chapter 7, Case Planning.