

EXERCISE

ARGUMENT SECTION OF A BRIEF

Background

You're on a litigation team defending a bank against a lawsuit brought by a large financial institution. The plaintiff claims that the bank sold it a fraudulent investment product. Your team is filing for summary judgment based on several defenses, including one that the plaintiff had actual knowledge of the alleged fraud. You're drafting that section of the argument in the brief. You believe it's a strong argument because the plaintiff worked in the same industry and with similar investment products.

You've found a number of cases in your jurisdiction that support your argument. However, there are two recent summary judgment decisions involving the same fraud claim that are tricky and that you need to address. They're both in your jurisdiction.

- One case was brought by a class of elderly plaintiffs against a financial advisor who sold them the same investment product that's at issue in your case. But unlike in your case, those plaintiffs were unsophisticated. Summary judgment was denied.
- The other case was brought by a large financial institution against another bank, so the parties were similar to the ones in your case. The court granted summary judgment, but it relied on the fact that the plaintiff had sold the investment product to its own customers (whereas your plaintiff did not).

The senior associate wants a draft of that section this week.

Instructions

Come prepared to discuss the following questions.

- In general, when you're relying on a case in your argument, what information about the case should you always try to include in the brief?
- In your draft, how will you reframe the rule in the two recent cases to use each of them to your benefit?