

LEGAL ANALYSIS
AND REASONING FROM PRECEDENT

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LEGAL REASONING: ANALYZING CASES AND STATUTES

I. What is analysis: Rules applied to facts

A. The application of a rule and any applicable policies to a set of relevant facts.

1. A rule of law is an enforceable statement that establishes a standard of conduct. It can be a constitutional provision, a statute, or originate from a rule established by a court in an opinion.
2. "A rule is a formula for making a decision. . . Every rule has three separate components: (1) a set of elements, collectively called a test; (2) a result that occurs when all the elements are present (and the test is thus satisfied); and (3) . . . a causal term that determines whether the result is mandatory [shall], prohibitory [shall not] or discretionary [may]. . . Additionally, many rules have one or more exceptions that, if present, would defeat the result, even if all the elements are present." Richard K. Neumann, *Legal Reasoning and Legal Writing*, Section 2.1 at 15-16 (3rd ed. 1998).

B. Deductive reasoning illustrates the way legal rules sometimes apply to a set of facts.

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|----|------------------------------|-------------------|
| 1. | All men are mortal; | RULE |
| 2. | Socrates is a man; therefore | FACT |
| 3. | Socrates is mortal. | CONCLUSION |

C. Legal rules treat elements in three different ways, and each way determines whether the conclusion is required or merely permitted if the elements are satisfied.

1. **All Required Elements:** All the elements must be satisfied to reach the conclusion called for by the rule. Watch for the use of **and** because that indicates a required element.
2. **Alternative Elements:** Either element can be satisfied to reach the conclusion called for by the rule. Watch for the use of **or** because that indicates an alternative element.
3. **Factor Test:** Requires the court to balance and weigh competing interests from a list of several factors in determining whether to reach the conclusion called for by the rule.

- D. Legal analysis requires proving each element or component of a rule to be true or false.
- E. Lawyers argue about which rule applies to a given set of facts and may argue about the facts.

II. The Relationship Between Case Law and Statutes

- A. A **statute** is a formal, written enactment passed by a legislative body, whether federal, state, city or county, with the constitutional power to exercise the legislative function in its jurisdiction.
 - 1. Certain administrative bodies have legislative abilities to enact regulations. This power must be granted to the administrative agency by a legislative "enabling statute."
 - a. "A **regulation** implements the policy adopted in a statute." "A rule or order having force of law issued by executive authority of government." Black's Law Dictionary 228 (7th ed. 2004).
 - 2. Since statutes are written to proscribe or prohibit future conduct, the statute is written in very general and often times vague language.
 - 3. There is a hierarchy of statutory law, and the United States Constitution sits at the apex.
- B. A **case** is "a civil or criminal proceeding, action, suit, or controversy at law or equity" decided by a court. Black's Law Dictionary 1286 (8th ed. 2004).
 - 1. Judges make law by applying and interpreting the law, whether common law or a statute, on a case by case basis. Case law goes from a specific application to a general application.
 - 2. There is also a hierarchy of case law, and the United States Constitution sits at the apex.
- C. A legislature has the power to change the common law or enact a common law rule into law by passing legislation. The court has no power to overrule or refuse to follow that statute unless it is invalidated as unconstitutional.
 - 1.. However, since the federal and state constitutions are more authoritative than a statute, the legislature cannot exceed its constitutional power.

2. A court has the power to review a statute's validity. A statute may be challenged on the ground that the legislature exceeded its constitutional powers. The court will then determine whether the statute is unconstitutional and invalid.
 3. The constitutionality of a statute will usually arise in litigation when the government attempts to enforce the statute against someone.
- D. Courts also must decide how to apply and enforce the statute in a specific situation by interpreting the meaning of the statutory language.
1. Once the court interprets and applies the meaning of the statutory language, the case becomes precedent.

II. **Five Types of Legal Argument** (See, Wilson Huhn, *5 Types of Legal Argument*, 13, (2002)¹)

1. **Text Arguments:** The rules are found in the legal text
 - a. The lawyers focus on the text of constitutions, statutes and codes as opposed to judicial opinions or the common law.
2. **Legislative History and Drafter's Intent Arguments**
 - a. Lawyers argue that the text of a rule means what the people who wrote it meant.
 - b. The controlling legal text is usually a constitution, statute or code. When there is a question about the meaning of the text, lawyers sometimes look to evidence of what the legislators meant when the constitution, statute or code was enacted.
3. **Precedent Arguments:** The argument is that the text of a rule means what the courts in their precedents have said it means.
4. **Tradition Arguments:** The argument is that the rules have a meaning that is the traditional way members of a community have acted in the past.
5. **Policy Arguments:** The argument is that the meaning of the rule should conform to the underlying values and interests that the rule is designed to serve.

¹ Much of the following discussion is based on Mr. Huhn's book, *The 5 Types of Legal Argument*.

III. Methods of Analysis

A. There are five types of legal analysis: 1) rule based analysis; 2) Analogic reasoning; 3) textual analysis; 4) Policy based reasoning; and, 5) Tradition based analysis.

B. Rule Based Analysis & Arguments

1. "Rule-based reasoning reaches an answer by establishing and applying a rule of law. It asserts, 'X is the answer because the principle of law articulated by the governing authorities mandates it.'" Linda Holdeman Edwards, *Legal Writing: Process, Analysis, and Organization*, at 5, (1996).
2. Rule based analysis can **originate from a case or a statute.**
3. Break the rule into the separate elements to be established and then match the facts and circumstances of your problem with each element of the rule to see if the element is proven.
 - a. Ask yourself does this fact prove or disprove an element of the rule?
 - b. Ask yourself does this particular circumstance prove or disprove an element of the rule?
 - c. Do the facts suggest a counter argument?
4. If **court precedent uses or the statute requires a balancing test** to solve a controversy, balance or weigh the different interests or factors to achieve a fair result or to determine whether the element is satisfied.
 - a. In this type of "test" the court or statute generally identifies the factors to be weighed.
 - b. In this type of test, no one factor is usually outcome determinative.

C. Reasoning by Analogy: Precedent Analysis & Arguments:

5. "Analogical reasoning reaches an answer by showing direct factual similarities between governing case law the client's facts. It asserts, 'X is the answer because the facts of this case are just like the facts

of A v. B and X was the result there.” Edwards, at 5.

6. When you reason by analogy, you draw parallels between your factual situation and cases that have already been decided.
7. Cases are made by their facts, so you have to compare and contrast the facts and circumstances of your case with the decided cases. If the key facts are similar, you can draw the analogy. If the key facts are different, then you may have to apply a different rule.
8. Reasoning by Analogy is **most often used in case analysis**.
 - a. The role of the court is to resolve disputes by interpreting rules and law and applying them to the facts of a dispute in order to reach a conclusion of law.
 - b. A conclusion of law is the determination of whether or in what manner a specific rule of law applies to a specific set of facts.
 - c. The conclusion of law reached by a court in a given dispute depends primarily on two factors:
 - i. The facts of the dispute;
 - ii. The rules of law that are applicable to those facts.
 - d. Case analysis is a method used to predict the applicability of prior opinions to a present controversy.
 - e. One purpose of case analysis is to determine whether a court will apply the same holding in a particular opinion to the facts of the present controversy.
 - i. To determine this, you must conduct an analysis.
 - ii. You must compare the important facts in the opinion with the new set of facts in the present controversy to identify similarities and differences.
 - iii. If there are similarities between the facts and the rule of law in the opinion and the present controversy, you can make a prediction regarding the outcome of the controversy.
 - f. **Weight of the Authority:** You must take into account whether the case constitutes mandatory authority or persuasive

authority. Mandatory authority must be followed.

D. Statutory Language: Textual Reasoning & Legislative Intent

1. Read and reread the statute and focus on its exact language. Don't paraphrase a statute. Note the title of the statute, any preamble or statement of statutory purpose.
2. Read through other sections of the chapter that contains the statute and note any statutory exceptions. Also note when the statute became law.
3. As in rule based reasoning, break the statute into the separate elements to be established and then match the facts and circumstances of your problem with each element of the statute to see if the element is proven.
4. Once the statute has been broken into elements, the statutory words or text must be understood and interpreted.
 - a. First, review the statute to determine whether there is a definition section.
 - b. Note any words of authority contained in the statute, i.e., is the statute mandatory, prohibitory, discretionary, or declaratory? The use of "shall" indicates a mandate, while the use of the word "may" indicates discretion. The use of the word "is" indicates the statute is stating a rule.
5. **Interpreting Statutes**
 - a. Lawsuits and criminal cases sometimes center on the meaning of a statute. Courts are then called upon to interpret the meaning of the statute because the statutory language is vague, very general or ambiguous.
 - b. **How courts interpret statutes**
 1. **The Plain Meaning Rule:** The text of the statute is so clear and unambiguous that it does not require resort to any other method of interpretation. If a statute "appears to be unambiguous on its face, its meaning must be determined from the [statute] itself without resort to any" outside evidence. Black's Law Dictionary 1188 (8th ed.

2004).

- ii. **Extrinsic Evidence—Legislative Intent & History:** If the meaning of the statutory language is not plain or the language used is ambiguous, the litigants can introduce other evidence to establish what the legislature intended.
 - a. Lawyer's arguments are based on the statute's legislative history, which is the most favored type of outside evidence. Legislative history is the path of information created by the statute's passage through the legislative process, including statements made during the bill's introduction, committee consideration and vote and the floor debate. and an official commentary that was published with the statute.
 - b. Sometimes an "official commentary" is published with the statute that aids in its interpretation.
 - c. Sometimes lawyers will compare earlier versions of the statute with later amendments and argue that the language differences establish legislative intent.
- iii. **Canons of Statutory Construction:** Canons are rules or guides used by lawyers and courts to interpret a statute when the legislative intent of the statute cannot be determined.
 - a. **Textual Canons** are used to infer the meaning of a statute from its textual structure. For instance: *expressio unius est exclusio alterius* (to express on thing—as in a statute—is to exclude other things not mentioned. Another, *eiusdem generis*— means of the same class or genus and applies to all catch words after a list. Finally, *in pari materia*, requires that statutes having a common purpose or common subject matter should be construed together.
 - b. **Substantive Canons** are principles that are derived from the legal effect of a rule. For

example: that the same rules used to construe and interpret statutes apply when construing regulations; that when statutes conflict, the more specific statute controls over the general one, and statutes enacted later control over earlier ones; and courts should broadly construe remedial statutes.

E. Policy Based Reasoning & Arguments

1. "Policy based reasoning reaches an answer by analyzing which answer would be the best for the society at large. It asserts, 'X is the answer because that answer will encourage desirable results for our society and discourage undesirable results.'" Edwards, at 5.
2. "A rule's policy is the rule's reason for being. . . The law does not create rules at random. Each rule is designed to accomplish something (usually, preventing a particular type of harm.)" Neumann, Section 10.1, at 90.
3. Policy arguments appeal to future consequences that follow from adopting a certain rule.
 - a. "The court first predicts the consequences that will flow from giving the law one interpretation or another," and then
 - b. "Decides which set of consequences is more consistent with the underlying values of law." Wilson Huhn, *5 Types of Legal Argument*, 60, (2002).
4. Policy arguments are found in both statutes and case law but have few parameters.

F. Tradition Reasoning & Arguments

1. Tradition reasoning reaches an answer by telling a story that calls forth that result. It asserts, 'X is the answer because that is the way things have always been done.
2. "The common law was originally understood to be the customary law, the 'law of the land.' The common law did not purport to incorporate the wisest or most enlightened social policies. Instead, it reflected the customs of the people in the traditions of the community." Huhn, at 45.

- a. The U.S. Supreme Court has identified "tradition" as a principal test for determining our fundamental rights. Constitutional rights are those rights that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).
- b. Justice Scalia has authored "at least 53 opinions that relied expressly on tradition to resolve constitutional issues." Rebecca L Brown, *Tradition and Insight*, 103 Yale L.J. 177, 179-180 (1993).
- c. Tradition also provides meaning to some statutory words and phrases. For example, under the Uniform Commercial Code, trade usages supplement the meaning of contracts. UCC 1-205(3).

IV. Outline the Rule

- A. After identifying the type of reasoning or argument used, and the rule of law applicable to the case or statute, outline the rule.
- B. By outlining the rule of law, you are outlining your legal analysis of that rule and the application that will follow it.
- C. Then simply match your facts to the rule outline.