Primer #2: Legal Analysis*

I. What is Legal Analysis?

A. Legal analysis is a form of analysis intended to answer legal questions, make legal judgments, or provide legal advice.

B. Legal analysis is, simply put, the application of existing rules of law to a set of facts. Although simple in concept, the function of applying the law to facts is complicated and can be challenging.

1. A rule of law is a standard of behavior, and imposed as either a restriction on behavior or an affirmative duty to behave in a certain manner.

2. A rule of law is established by one of the following formal sources of law: a constitutional provision, a statute, a judicial opinion, or a formally adopted agency rule or regulation.

3. The application of law to facts can take many forms. For purposes of this course, in which non-law students are exposed to basic concepts of legal analysis, you will be expected to understand and apply only a few basic, rudimentary forms of analysis.

C. Methods and Techniques

1. You will be expected to understand and apply a basic formula for legal analysis I call QFLAC. QFLAC, explained in more detail below, captures the following elements of basic legal analysis in one acronym / abbreviation:

a. Legal **Q**uestion

b. **F**acts

c. **L**aw or Rule of **L**aw

d. **A**pplication of Law to Facts

e. Legal **C**onclusion

2. The fourth element of the formula, the application of law to facts, is both the most important and the most challenging for newcomers to legal analysis. Students are advised to focus on understanding and mastering that element most importantly.

3. You will be expected to understand and master three methods for applying the law to the facts:

a. Reasoning by Analogy and Precedent

b. Judicial Test

c. Factor-Balancing

II. The Legal Question

A. The legal question, or the legal problem, or the legal issue, is the starting place in the legal analysis. This is the question that the entire analysis is designed to solve or answer. In judicial opinions, the legal question is framed by the lower court decisions leading up to the appellate court opinion. In your assignments, the legal question will be framed by you, with help me and the assigned case.

---

* Borrowed heavily from the following sources:
- From *Legal Reasoning: Analyzing Cases and Statutes*, Allison Connelly, Professor, University of Kentucky College of Law, http://www.law.uky.edu/files/docs/clinic/legal_analysis.pdf.
- *Learn the Secrets to Legal Reasoning*, LawNerds.com.

III. The Facts

A. The facts in a particular case are critical in resolving the legal problem. The facts might be supplied to you from an assignment or a judicial opinion. In any event, you must be careful to summarize and present the facts in a manner that balances the competing interests of economy and comprehensiveness. You must be as concise as possible, so as not to spend more space than necessary, but you must also include every fact that is critical and relevant to the analysis.

B. It is good practice to consider a few questions as you write your statement of the facts:

1. Who is involved? Identify the parties, specifically, by name.
2. Who has been injured or has suffered, and who caused the injury or suffering? How was the injury or suffering caused?
3. Who is alleged to have caused the injury? Why was the injury caused? Was it avoidable?
4. What is all the known, relevant information? What information is not known or missing?
5. Include specific details, such as dates, times, monetary figures, etc.

C. After completing your analysis, it is always advisable to re-read the statement of facts to ensure that every fact that has been referenced in the analysis has been included in the statement of facts.

IV. The Law

A. Sources of Law. There are four primary sources of formal law:

1. Constitutions. The state and federal constitutions are the paramount sources of law in their jurisdictions.
2. Statutory Law. Congress and state legislatures, on behalf of their constituents, enact laws through the legislative process. Those laws are organized by subject into a code, which is an important source of law.
3. Judicial Law. As appellate judges review lower court decisions, they interpret and apply the law. In the process, their opinions establish standards and rules of law. We will spend most of our time examining rules of law from this source, although that emphasis should not be confused with a priority of one source over another.
4. Agency Regulation. Executive agencies make law in the form of rules and regulations. Although designed simply to implement existing statutory law, these executive standards are considered a source of law, albeit a source that does not take precedent over any of the other sources.

B. The Legal Holding

1. A legal holding is the one, single rule statement from a judicial opinion that the court relies on to resolve the dispute in the case. The holding is also a legal standard that can be extracted from the opinion, advocated by lawyers, and applied by courts in subsequent opinions to resolve future disputes.
2. As you read each judicial opinion, you should be focused on finding the holding, because it is the most important element to come away from each opinion with.

C. Extracting the Legal Holding

1. Each appellate opinion establishes a legal holding. Students of the law should attempt to extract and restate the holding or the rule of law from each case they read. Your case briefs provide an excellent opportunity in which to do this. This process will capture the holding or the rule in a format that makes your analysis easier.

2. For every case you read, extract the rule of law by breaking it down into its component parts. In other words, ask the question: what elements of the rule must be proven in order for the rule to hold true?

3. Two Steps to Extracting the Legal Holding

   Step 1: Identify the rule
   Step 2: State the rule in your own words, and list each element that must be proven

4. Step One: Identify the Holding

   a. Look for a declarative sentence that addresses the issue the court is trying to resolve.

   b. Sometimes, however, finding a declarative holding or rule statement is challenging. There are two reasons that a holding may be difficult to identify. First, it might be that the opinion doesn't explicitly state the rule. Second, it might be that the opinion identifies so many different rules that it's difficult to discern which rule is the holding in the case.

   c. The solution in either situation is to focus on the one, single rule statement that the court found necessary in resolving the dispute. You will need to focus on both the court's resolution of the case and the facts of the case in identifying the proper holding in the case.

5. Step Two: State the Holding

   a. Some students attempt to state the holding by simply capturing a quote from the opinion or from some other source. The more astute student restates the holding in her own words in order to both capture a general rule that can be applied in subsequent analysis, but also to get a better understanding of the holding itself.

   b. Each time you state the holding from a case you must be very clear and very obvious that you are stating the holding or the rule. If you do not alert the reader, this critical component will be lost in the analysis. You must be so clear and obvious as to say "The court held . . ." each time you provide a statement of the holding.

   c. Anatomy of a Holding

      i. The object of the complaint, claim or argument: the thing, person, or entity causing the harm, such as a government decision, a statute, an act or behavior, an action or inaction

      ii. The alleged harm resulting from the object: the infringed right or freedom, authority or power, or damages

      iii. The legal basis for the holding: a constitutional provision, court precedent, statute or regulation

      iv. The outcome: constitutional or unconstitutional, lawful or unlawful, guilty or not guilty, negligent or not

V. The Application of Law to Fact

A. Introduction. This is the most important element of legal analysis. The application of law to facts is the core of analysis, and it is the step that leads directly to the legal conclusion.

B. Application of the law to the facts is actually a relatively simple process. It's not necessarily easy, but it's simple. Boiled down to its basic form, application of the law involves the examination of the facts through the lens of the law. In other words, the writer must examine the facts in the case and determine whether each element of the rule or test is satisfied by those facts. Another way to

describe the task of application is to place yourself in the shoes of the court and ask the court how it would rule on the facts in your case.

C. The biggest mistake students make in legal analysis is to simply recite the holding or the rule without actually applying it to the facts.

D. Three Methods of Application

The application of law to facts is often not as straightforward as simply matching facts to law. Often, a legal problem is complex, or its resolution is subject to ambiguity or highly subjective reasoning. Courts solve these challenges by creating different methods to handle the complexities of fitting facts into legal rules. There are three primary methods. The method used depends on the rule itself. Think of these methods as the set of tools that you'll use in applying the law to the facts.

1. Reasoning by Analogy

   a. Reasoning by analogy is perhaps the most basic of the three methods. To reason by analogy is to draw parallels between cases that have already been decided and your set of hypothetical facts. Because the facts and circumstances often determine the outcome of a legal problem, this method allows the writer to focus on the facts and simply determine whether the facts of the present case match the facts of the previous case. If the key facts are similar enough, then you can draw an analogy that the legal holding from the previous case should be controlling in the current case as well. On the other hand, if the facts in the present case are different in key respects from the previous cases, then you can argue that the previous case is different enough that it doesn't apply—it is "distinguished".

   b. When reasoning by analogy, it is not necessary that the facts in the two cases are identical. If you do find a case that matches your facts exactly, then we would say that the previous case is "on point" (legalese for a perfect analogy). More likely, however, you will find that key facts are either slightly or substantially different. Thus, although reasoning by analogy can be a very effective tool in making or bolstering an argument, you will often have to use additional means of persuasion in order to apply a rule.

   c. As you read cases, pay close attention to the particular facts that might prove or disprove an element of a rule. Key cases will frequently cite other precedents to show examples of where to draw the line. By building up a list of these examples, you have a database to show you where the line should be drawn.

2. Judicial Test

   a. Courts often articulate a judicial "If-Then" test to apply the law to the facts. The test might ask "if A exists, then B is unconstitutional" or "if A does B, then B is unlawful".

   b. Courts might also identify a list of multiple elements within a test, and each element must be satisfied in order for the test to be satisfied. For instance, in a simple negligence case, the court will require four elements: (a) presence of a duty of care, (b) breach of the duty of care, (c) causation, and (d) damages. This is an example of a fairly broad and general four-part test; most judicial tests are more focused on a narrow legal problem.

3. Factor-Balancing

   a. In some cases, a court will establish a balancing test to apply the law to the facts and solve the legal problem. In these cases, the court literally balances a series of stated factors to achieve the outcome. To conduct a balancing test, the court identifies factors to weigh in making its decision. The factors differ according to the legal issue and the test. Factors might include age, education, experience, wealth, health and intent to do harm.

b. The factors used in these factor-balancing tests are not intended to be a list of necessary elements; that's the role of the judicial "if-then" test. Rather, each factor is just one of several weights that might tip the scale toward satisfaction of the rule. This method allows a court some leeway to adjust the result within a set of subjectively assessed factors.

c. Often the courts will say "no single factor is dispositive," meaning that one fact or set of facts won't decide the case. Also, you can be light in one factor and heavy in another and still apply the rule. Be sure to note whether the cases allow this sort of flexibility in applying factors. Use it only when cases specifically state that alternative weights are allowed.

VI. Your Legal Conclusion

A. The legal conclusion might be the shortest element of the legal analysis. Simply put, the legal conclusion is the answer to the legal question that we asked at the very beginning of the analysis. If the legal question is "Does a statute that requires A, B, and C constitute an unconstitutional classification prohibited by the Fourteenth Amendment?", then the legal conclusion would be either "Yes, a statute requiring A, B and C constitutes an unconstitutional classification prohibited by the Fourteenth Amendment" or "No, a statute requiring A, B and C does not constitution an unconstitutional classification prohibited by the Fourteenth Amendment."

B. Students often make the mistake of completing all steps in the analysis, but stopping short of taking a position and state a legal conclusion. This is one of the rare opportunities in legal analysis that you have to express yourself, so take the opportunity. State your opinion, based on your analysis.

C. Another common mistake is to reach a conclusion without first establishing a basis for the conclusion. In other words, students often skip from the facts and the law to the conclusion, without applying the law to the facts. Make sure that you have shown your work and that your legal conclusion has a firm grounding in the analysis.