Cornell Law Faculty Publications

Faculty Scholarship

Fall 2018

A Structural Approach to Case Synthesis, Fact Application, and Persuasive Framing of the Law

Lara Gelbwasser Freed
Cornell Law School, lgf28@cornell.edu

Joel Atlas
Cornell Law School, joel-atlas@lawschool.cornell.edu

Recommended Citation

A Structural Approach to Case Synthesis, Fact Application, and Persuasive Framing of the Law

By Lara Freed and Joel Atlas

Lara Freed is a Clinical Professor of Law, and Joel Atlas is a Clinical Professor of Law and Director of the Lawyering Program, at Cornell Law School in Ithaca, New York.

> "Among the thorniest of these skills are synthesizing cases, applying facts, and persuasively framing the law."

Introduction

Lawyering-skills courses, although typically writing-focused, address a wide array of topics. Indeed, to prepare an effective legal document, students must not only write well but analyze well. And, although teaching the pure-writing aspects of the course is certainly a challenge, teaching the analysis-related skills is often the most difficult.

Among the thorniest of these skills are synthesizing cases, applying facts, and persuasively framing the law. Professors struggle to teach these skills, and students consistently struggle to understand and implement them. To lighten the burden for both professors and students, we have approached these skills structurally and, in doing so, have identified the fundamental components of the skills and common pitfalls associated with understanding and implementing them. With this foundation, we have created teaching models and examples that provide professors with a systematic, refined method for helping students acquire these skills.

A. Case Synthesis

Case synthesis is the process of determining the rules that govern a particular legal question. These rules serve an educative function and form the "R" component of classic organizational structures known as "IRAC" (issue, rules, application,

conclusion) or "CREAC" (conclusion, rules, explanation, application, conclusion). Underlying the need for case synthesis is the principle of rule-based reasoning—i.e., the principle that, to resolve a legal claim, a rule or set of rules is applied to a set of facts.[1]

Our teaching model is as follows:

> Case synthesis = (1) extracting accurate rules from individual cases + (2) evaluating these extracted rules collectively to create a governing rule or set of rules.

The first step in this case-synthesis model is rule extraction: determining the rule or rules for which an individual case stands. The goal is to ascertain how the case contributes to the law governing the factual scenario.

On occasion, a case may state its rule or rules explicitly. Extraction may then require only selecting and later reporting the relevant statements.

More often, however, considerable analysis of the case is required. Indeed, where cases focus on facts and conclusions rather than reasoning or rules, rule extraction requires reading between the lines to assess the court's latent reasoning and root out the rules that logically follow from the court's resolution.

Most importantly, the extracted rule should be accurate. To be accurate, a rule must not be overly broad or overly narrow. And an overly narrow rule, apart from its potential inaccuracy, is of little (or no) value.

---

1 *See* Richard K. Neumann, Jr., Ellie Margolis & Kathryn M. Stanchi, Legal Reasoning and Legal Writing 9–16 (8th ed. 2017).

Example:

What is the rule to be extracted from the following result in a case?

When more than five witnesses allegedly saw the defendant's car pass through a red light and strike the plaintiff's vehicle, the court precluded testimony as to these facts from more than three witnesses.

Too broad (and thus inaccurate): "No more than three witnesses may testify for one party at a trial."

Too narrow (accurate, but of little future value): "In a vehicle-accident case in which the plaintiff alleges that the defendant's car passed through a red light and struck the plaintiff's vehicle, no more than three witnesses may testify as to these facts."

Accurate, and not too narrow: "Evidence may be inadmissible if it is cumulative and unnecessary."

Accuracy also depends on the proper use of words of authority (such as "may," "must," or "must not") that permit, mandate, or prohibit certain action. A rule or a set of rules that includes such language should specify the goal of the action (or inaction) or the consequence of failing to perform it.

Example (for a stand-alone rule):

Not this: "A non-resident defendant's print advertisements must regularly target the forum state."

But this: "To support general jurisdiction, a non-resident defendant's print advertisements must regularly target the forum state."

Likewise, to maximize value (even aside from persuasive impact), a rule that includes factors should indicate which way the factors cut.

Example:

Less helpful: "To evaluate whether a non-resident defendant's website establishes sufficient forum contacts for general jurisdiction, courts consider the website's level of interactivity and commercial nature."

More helpful: "Courts are more likely to hold that a non-resident defendant's website establishes sufficient forum contacts for general jurisdiction if the website is highly interactive and generates substantial business from forum-state residents."

The second step in our case-synthesis teaching model is to evaluate the rules and the courts' resolutions so as to create a collective rule (or set of rules) governing the factual scenario. This step, which ascertains what the cases stand for when read as a whole, requires identifying similarities and differences among the cases and evaluating why some cases were resolved similarly to or differently from each other.

In some situations, as illustrated below, a limited rule can confidently be extracted from an individual case, but additional cases expand the depth or scope of the rule.

Example:

Research question: At a guilty plea hearing, what type of factual recitation by the defendant is required?

Case #1: At a guilty plea hearing for robbery (i.e., forcible theft), the defendant admitted to the theft but never mentioned the use of force. Held: plea valid.

Extracted rule: "To plead guilty validly, a defendant need not admit to all elements of the crime."

Case #2: At a guilty plea to robbery, the defendant admitted to the theft but denied the use of force. Held: plea invalid.

Extracted rule: "To plead guilty validly, a defendant may not deny committing an element of the crime."

Synthesized rule: "To plead guilty validly, a defendant need not admit to all elements of the crime, but the defendant may not deny committing an element."

> "A rule or a set of rules that includes such language should specify the goal of the action . . . or the consequence of failing to perform it."

"One common weakness of a fact-application section is that it fails to address the specific facts at all . . . ."

In other situations, the rule to be extracted from an individual case can merely be guessed, but a review of additional cases confirms or dispels the guess and thus allows the writer to confidently create a synthesized rule.

Example:

Research question: In a case of monetary theft, when is money possessed by the suspect admissible?

Case #1: A $20 bill is stolen; upon arrest, the suspect possessed a $20 bill. Held: bill inadmissible.

Extracted rule: "In a theft case, a bill possessed by a suspect upon arrest may be inadmissible." (The circumstances in which this is true are speculative, although one might surmise that the denomination of the bill is dispositive.)

Case #2: A $2 bill is stolen; upon arrest, the suspect possessed a $2 bill. Held: bill admissible.

Extracted rule: "In a theft case, a bill possessed by a suspect may be admissible." (As with case #1, the circumstances in which this is true are speculative.)

Synthesized rule: "In a theft case, a bill possessed by a suspect upon arrest is admissible if the denomination of the bill is unusual and it matches the denomination of the stolen bill."

B. Fact Application

An effective fact application (the "A" component of IRAC or CREAC) links the facts with the rules and typically draws legally significant comparisons between the facts of the case and the facts of precedent.

One common weakness of a fact-application section is that it fails to address the specific facts at all but merely states that the facts meet the relevant legal test. Such a fact application would be conclusory.

Example:

Legal rule: "To be valid, a guilty plea must be knowing and intelligent. For a guilty plea to meet these requirements, the defendant must waive the right to a jury trial and understand the nature of the crime to which the defendant is pleading."

Fact application (conclusory): "Here, at the guilty plea, the defendant waived the right to a jury trial and understood the nature of the crime to which he pleaded. Therefore, the guilty plea was knowing and intelligent."

Also common is a fact application that is disembodied from the legal rules, in that the writer merely repeats, rather than analyzes, the facts. Such a fact "application" fails to explain why the facts do or do not satisfy the governing rules and, as a result, mistakenly leaves analytic work to the reader.

Example:

Legal rule: "To be valid, a guilty plea must be knowing and intelligent. For a guilty plea to meet these requirements, the defendant must waive the right to a jury trial and understand the nature of the crime to which the defendant is pleading."

Fact application (disembodied from rules): "Here, at the guilty plea, the defendant replied affirmatively when the court informed him that there would be no jury trial. The defendant also referenced the elements of the crime to which he was pleading. Defense counsel added that she had explained to the defendant the terms of the plea. Therefore, the guilty plea was knowing and intelligent."

A fact application should, therefore, both link the rules and the facts and include the reasoning that purportedly leads to a particular conclusion.

Our teaching model is as follows:

Fact application = (1) referencing the legally relevant facts (without devoting an entire sentence to pure fact) + (2) explaining

why the facts do or do not satisfy the legal rules, using key terms from the rules.

If factually similar precedent exists, step (2) should show why the proposed conclusion is consistent with that precedent. If the required analysis is complex, step (2) should also respond to potential counterarguments and distinguish adverse authority.

> Example:
>
> Legal rule: "To be valid, a guilty plea must be knowing and intelligent. For a guilty plea to meet these requirements, the defendant must waive the right to a jury trial and understand the nature of the crime to which the defendant is pleading."
>
> Fact application: "Here, at the guilty plea, the defendant's affirmative and unequivocal response to the court's statement that there would be no jury trial established a waiver of the right to a jury trial. Moreover, that the defendant accurately recited the crime's elements, which were simple, established his understanding of the nature of the crime. Defense counsel's indication that she had explained to the defendant the terms of the plea likewise confirmed the defendant's understanding of both the waiver and the crime. Therefore, the guilty plea was knowing and intelligent."

The complexity of the necessary fact application depends on the nature of the legal test and the similarities between the current case and precedent. For example, the fact application in a case governed by a number-based threshold test may require merely a statement that the threshold has or has not been exceeded. And, the fact application in a case with facts identical to those of a binding precedent may require merely establishing the factual match. If, though, as is most often the case, the legal test is nuanced or subject to interpretation, and the facts of the current case are not identical to those in a binding precedent, the fact application will require a lengthier explanation of why the

facts do or do not meet the legal test and match or do not match the facts of precedent.

Two sample fact applications follow. The first, a poor fact application, references the relevant facts but fails to link them to the rules or to explain the similarities between the client's case and the facts of precedent. The second, an effective fact application that exemplifies rule-based and analogical reasoning, not only cites relevant facts but also tracks and invokes the rules, explains the reasoning, compares key facts to those in precedent, and responds to potential counterarguments.

> Example:
>
> Research question: Are the defendant's song lyrics relevant evidence at his criminal trial?
>
> <u>Applicable rules and explanation of precedent</u>
>
> "Evidence is relevant if it tends to make a determinative fact 'more or less probable than it would be without the evidence.' Fed. R. Evid. 401. A defendant's song lyrics tend to make the defendant's involvement in a crime more probable if the lyrics are written in first-person tense and describe activity that resembles central aspects of the charged crime. *United States v. Stuckey*, 253 F. App'x 468, 482–83 (6th Cir. 2007). In *Stuckey*, for example, the court held that a defendant's first-person lyrics were relevant because the lyrics described shooting 'snitches,' wrapping them in blankets, and dumping the bodies in ditches, and the prosecution accused the defendant of murdering a government informant in the same manner. *Id*. at 482."
>
> <u>Poor Fact Application</u>
>
> "Here, the defendant's lyrics are likely relevant evidence. The defendant has been charged with the murder of two young men who were discovered dead on a porch and beside a trash can, respectively. In his song lyrics, the defendant recites, 'Smoked him on the porch/Point blank/Youngblood outranked.' Additionally, the reference in *Stuckey*, 253 F. App'x at 482, to shooting

'snitches' is like the defendant's reference to shooting a 'Youngblood.' Thus, the court will likely hold that the lyrics are relevant."

Effective Fact Application

"Here, the defendant's lyrics are likely relevant evidence. First, the lyrics mostly use first-person tense. Although this tense does not appear in one of the stanzas, that stanza contains no actors and therefore fails to distance the defendant from the described conduct. Second, like the lyrics in *Stuckey*, 253 F. App'x at 468, the defendant's lyrics factually correspond to central aspects of the alleged crime by describing the manner and location of the crime—in this case, a close-range shooting on a porch. Moreover, the defendant's reference to a 'Youngblood outranked' could imply a gang rivalry, which corresponds with trial testimony about the rivalry between the defendant and the victim. Although the prosecution charged the defendant with a double murder and the lyrics reference only a single victim, this factual mismatch should not affect the lyrics' relevance because the lyrics deemed admissible in *Stuckey* described multiple shootings even though, there, the defendant had been charged with murdering only a single victim."

C. Persuasive Framing of the Law

Law students are typically exposed to persuasive advocacy in the second semester, and the switch from objectivity to advocacy is challenging for both professor and student. For the most part, students have until that point been exposed to only the mostly objective writing contained in court decisions; and as a result, students are largely unaware that the law can—and, in a litigation context, should—be framed persuasively. Below are models for teaching the persuasive framing of both legal rules and precedent.

1. Persuasive Framing of Legal Rules

Our teaching model is as follows:

Persuasive framing of the law = (1) determining the need for framing + (if necessary) (2) synthesizing rules that are favorable to your position (but still accurate) + (3) ordering the rules strategically.

a. Determining the need for framing

Existing court decisions (including dissents) or statutes may have already framed some of the legal rules persuasively and favorably to your client. If so, persuasive framing may well be unnecessary. If, however, the rules are stated objectively or framed persuasively but unfavorably to your client, framing is necessary for effective advocacy.

b. Synthesizing rules

To frame rules persuasively, one technique is to create defaults: rules synthesized so as to make a favorable result the norm rather than the exception. The key is to identify the end goal. What impression should be created from the rules? For example, is the goal for the reader to believe that a test is difficult to satisfy? Easy to satisfy? To create a default, accurately use limiting words and phrases, such as "unless," "as long as," "only," and "must," that satisfy the goal and thereby create the desired default.[2]

Example:

Consider a New York State statute that defines "possession" as "dominion or control."

A party seeking to secure a finding of possession would want to frame the definition broadly, creating a default in favor of possession.

That party might write the rule as follows: "A person possesses property as long as the person exercises either 'dominion or control.'"

A party seeking to avoid a finding of possession would want to frame the definition narrowly, creating a default against possession.

That party might write the rule as follows: "A person possesses property only if the person exercises 'dominion or control.'"

2 For additional discussion of this technique, *see* BRADLEY J. CHARLES, APPLYING LAW 59 (2011).

Another technique is to use or avoid sympathetic or evocative words and phrases. For example, in a criminal-law context, the defense may choose to avoid framing rules to include the word "victim" (and instead use "complainant") or, to the extent that it would be adequately specific, to characterize property conjuring inflammatory images, such as narcotics or a machine gun, as "contraband."

Unfavorable aspects of the governing rules can be placed strategically to minimize their impact. Specifically, avoid stand-alone assertions of unfavorable law, and minimize unfavorable aspects of the rules by juxtaposing them against favorable aspects.

> Example (in a First Amendment school-speech case):
>
> Defendant-school's brief: "Although school officials cannot restrict student speech based on 'undifferentiated fear,' violent speech that targets an educator at the school supports a reasonable forecast of substantial disruption."
>
> Plaintiff-student's brief: "Although school officials perform discretionary functions, school officials cannot restrict student speech simply because the officials are embarrassed by the speech."

Finally, introducing controlling text, such as a rule or statute, with descriptive language may "prime" the reader to construe the text in a light favorable to the client.[3]

> Example:
>
> Before providing the text of a weapon-possession statute, write as follows: "The relevant statute bans a wide [or limited] range of items." Or, before noting the exceptions to a rule, write as follows: "Exceptions to the rule are numerous and broad" or "Exceptions to the rule are few and narrow."

To be accurate, synthesized rules must not enlarge or omit rule components. And, as noted earlier, rules should not be framed overly broadly or overly narrowly.

> Example:
>
> Consider the following free-speech rules. The overbroad example below inaccurately uses enhancing language ("especially if") instead of a qualifier ("provided that"). The overly narrow example below inaccurately uses a limiting word ("must") and fails to account for other bases upon which school officials can constitutionally regulate student speech.
>
> Plaintiff-employee's brief (too broad): "If the speech is in the public domain, visible to people, it is of public concern, especially if it relates to an issue of public debate."
>
> Plaintiff-student's brief (too narrow): "To regulate student speech, school officials must prove that they reasonably forecasted that the speech could substantially disrupt school activities."

c. Ordering Rules Persuasively

Rule statements should typically flow from the general to the specific. Also helpful is the common advice to begin each sentence with material that ended the previous sentence. But, to the extent that leeway exists, order rules strategically. For example, begin with and thus highlight rules related to factual or analytical strengths in your case, and defer and thus minimize rules related to factual or analytical weaknesses. Further, to the extent consistent with logic, list the factors of a legal test in an order that best shows your strengths.

2. Persuasive Framing of Precedent

An effective presentation of the law should include not only the rules themselves but also an explanation of those rules—i.e., fully educating the reader about the law requires not only citing supporting authority but also providing examples to prove the accuracy of the stated rules and show how a set of facts was resolved under those rules.

"Unfavorable aspects of the governing rules can be placed strategically to minimize their impact."

---

3 *See* Kathryn M. Stanchi, *Teaching Students to Present Law Persuasively Using Techniques from Psychology*, 19 Persp.: Teaching Legal Res. & Writing 142, 144–47 (2011).

> "Generally, begin the explanation of precedent in an affirmative posture . . . ."

Our teaching model is as follows:

Persuasive framing of precedent = (1) phrasing holdings strategically + (2) using emphasis to favor the desired outcome.

a. Phrasing Holdings Strategically

In phrasing a court's holding, either in the text or an illustrative parenthetical, consider the following techniques:

- Choose words to support a narrow or broad interpretation of the case.

- Highlight analogous facts from favorable precedent.

- Neutralize adverse holdings by highlighting distinguishable case facts.

- Use phrases that suggest what the court in the current case should do.

- Emphasize the opponent's burden (if applicable).

b. Using Emphasis

Generally, begin the explanation of precedent in an affirmative posture by showing how courts have held in favor of, rather than against, the outcome sought in your case. Likewise, unless the primary challenge is to distinguish a leading, unfavorable case, provide greater depth and detail about precedent that resolved the issue favorably to your client and consider relegating unfavorable authority to illustrative parentheticals. Finally, use rhetorical tools, such as active voice and juxtaposition, to emphasize favorable facts and reasoning.

What follows is an example of persuasively framing the same precedent for competing sides.

Example (in a Title VII retaliation case):

In the explanation of precedent that follows, the case's holding is favorable for the employee. Accordingly, the employee's brief emphasized the court's rejection of a potential defense and, using juxtaposition, highlighted characteristics of the employment action that aligned with the employee's case.

Plaintiff-employee's brief

"In *Burlington*, 548 U.S. at 71, the United States Supreme Court rejected the defendant-railway company's contention that reassigning an employee from forklift duty to track-laborer tasks could not constitute retaliatory discrimination. Although the former and reassigned duties fell within the same job description, a reasonable jury could conclude that the reassignment was materially adverse because the track-laborer tasks were more arduous and less prestigious."

*   *   *

In the next explanation of precedent, because the *Burlington* holding is adverse for the employer, the employer's brief emphasized the employee's burden of proof, the objective standard, and distinguishing facts such as the co-workers' testimony. The employer also minimized airtime for the adverse case by using an illustrative parenthetical.

Defendant-employer's brief

"See *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 71 (2006) (holding that a jury could decide whether a railway employee's reassignment from forklift duty to track-laborer tasks was actionable where the employee provided 'considerable evidence'—including co-workers' testimony—that the track-laborer tasks were 'by all accounts more arduous and dirtier' and considered objectively worse)."

Conclusion

Our teaching models make these difficult and abstract analytical skills more concrete. Accordingly, the models help professors to show, rather than merely tell, students how to perform the skills effectively.