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Practice for Every Law Student

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LEGAL ANALYSIS: 100 EXERCISES FOR MASTERY

Practice for Every Law Student

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DEDICATION

The authors dedicate this book to their late fathers,

Joshua Hill, Sr., who always displayed a passion for family, education, teaching, and community and who continues to inspire his children to be true visionaries and always to aim for excellence,

and

Alan Traverse, whose example taught excellence, whose intellect encouraged careful logic at the kitchen table and beyond, and whose confidence in his daughters inspires us still.

ABOUT THE AUTHORS

Cassandra L. Hill is the Director of Legal Writing and an Assistant Professor of Law at Texas Southern University Thurgood Marshall School of Law (TMSL), where she teaches legal analysis and writing. Professor Hill began her teaching career at UCLA School of Law and practiced in the areas of tax and employee benefits law at Baker Botts LLP. She also served as a federal law clerk for the Honorable Vanessa D. Gilmore, United States District Court Judge. As a law professor, Professor Hill provides students with an engaging and dynamic academic environment that serves the needs of students with different learning styles. She teaches students practice-oriented lawyering skills using a variety of subject matters and a process-based approach to skill development.

Professor Hill's research interests include legal education and assessment, legal writing pedagogy, learning theory, and employment law matters. Her article, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, was published in the *Nevada Law Journal* (Spring 2011). In addition, her article (co-authored with Katherine Vukadin), *Now I See: Redefining the Post-Grade Conference as Process and Substance Assessment*, was the lead article in volume 45 of the *Howard Law Journal*. Professor Hill also has written several essays on law school and legal writing pedagogy.

Professor Hill is a member of the Legal Writing Institute (LWI) and the Association of Legal Writing Directors. In addition, Professor Hill is the Managing Editor for the *LWI Monograph Series*. She has served on the Program Committee for the AALS Section on Legal Writing, Reasoning, and Research and the AALS Section on Teaching Methods. She is the Secretary for the Diversity Committee of the AALS Section on Legal Writing, Reasoning, and Research. Professor Hill is the founder of Prep for Law, a law school preparation consulting company.

Katherine T. Vukadin is an Assistant Professor of Law at Thurgood Marshall School of Law, where she teaches legal analysis and writing. She began her legal career as an associate in the trial department at Baker Botts L.L.P.

Professor Vukadin first taught legal writing as a third-year law student at The University of Texas School of Law, later teaching at the University of Houston Law Center and now at Thurgood Marshall School of Law. Her research interests include legal education, legal writing pedagogy, and healthcare regulation.

Her article (co-authored with Professor Hill), *Now I See: Redefining the Post-Grade Conference as Process and Substance Assessment*, was the lead article in volume 45 of the *Howard Law Journal*, and her article on healthcare regulation, *Delayed and Denied: Toward an Effective Remedy for the Improper Processing of Healthcare Claims,* appeared in the Yale Journal of Health Policy, Law & Ethics in the summer of 2011.

Professor Vukadin specializes in using innovative teaching techniques to make legal writing compelling and accessible to all law students. Through her work with foreign law students seeking an American L.LM degree as well as remedial legal writing students and mainstream first-year students, Professor Vukadin has learned that with commitment, practice, and patience, all law students can master the essentials of legal writing.

To contact the authors, access additional helpful information about this book, or read helpful tips about legal analysis and writing, visit their blog site at www.legalwritinginbrief.com.

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PREFACE

Each year, over 45,000 students enter law school. In the first year, students are introduced to the skill of legal analysis—the identification of relevant legal issues and law and the application of law to fact that forms the foundation of legal reasoning. At the end of their first year, law students should be proficient in the process of legal analysis. A fortunate few do accomplish this goal, but many do not. For the latter group, legal analysis remains a code they never quite crack. These students' law school days become frustrating, they fail to thrive in their development of key lawyering skills, and their bar passage is in doubt.

Legal employers agree that law school graduates' analysis skills need work. A "Special Report on Law Schools" (dated April 2009 in the *New York Law Journal*[1]) reported law firm attorneys' frustrations over new lawyers' inability to organize facts and principles in a crisp and logical way—essentially, their poor legal analysis and argument structure skills. Likewise, the American Bar Association's (ABA) 1992 MacCrate report[2] on narrowing the gap between law school and practice mandates that law graduates should have mastered two skills that are the conceptual foundations for virtually all aspects of legal practice: problem-solving and legal analysis.

The premise of this book is that all law students could master the process of legal analysis, if only they had more practice. Now practice is available. This book provides a variety of practice exercises and fills the legal analysis gap between mystery and mastery. By beginning with critical thinking exercises, moving on to rule-based and analogical reasoning problems, and finishing with statutory interpretation drills, students will deepen their understanding of the legal reasoning process. Our purpose is to provide a practical, easy-to-use workbook rather than to teach any particular subject matter or substantive law. For pedagogical reasons, some exercises may use edited case opinions; others may require students to apply rules of law adapted from several jurisdictions. Given that the law is ever-changing, students should not use this workbook to learn and memorize substantive law, but they should expect each completed exercise to transform them from novice legal thinkers to expert problem-solvers.

Furthermore, this book encourages students to organize their written answers in a widely-accepted and familiar legal writing structure but does not set out to teach another format or paradigm for legal writing. Students can use the 100 distinct exercise opportunities in this book to practice the specific paradigm they have learned in law school. Thus, this book is perfect for first-year legal writing students and complements any legal writing textbook. The book equally benefits

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[1] *What Law Firms Want in New Recruits,* THE NEW YORK LAW JOURNAL, Apr. 27, 2009.

[2] American Bar Association, Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools & Profession: Narrowing the Gap (1992) (hereinafter the "MacCrate Report").

students in any other course that teaches legal reasoning and writing. Law students can find the extra help they need, using the alternately-answered exercises to check their own progress. Pre-law students and remedial writing students can find a paced and reassuring introduction to legal reasoning and analysis.

GOALS OF THIS BOOK

This book benefits both students and professors by providing an array of legal analysis drills designed to achieve key learning outcomes and objectives and to offer multiple assessment opportunities.

Student Learning Outcomes and Objectives

This book first aims to provide pre-law students and law students varied practice with legal analysis, argument structure, and written analysis. By completing the exercises in this book, students will learn and practice a number of key lawyering skills. In particular, students will be able to develop and achieve the following proficiencies[3]:

Critical Reading and Thinking

- Read, understand, and evaluate cases by:
    - Dissecting a case and identifying key components of the opinion; and
    - Synthesizing related cases; and
- Read, understand, and evaluate statutes and regulations.

Legal Problem Solving

- Identify legal issues presented by the facts;
- Determine the relevant controlling authority for the issue;
- Use interpretation of pertinent authority to predict outcomes;
- Describe possible solutions to reach a client's objective; and
- Outline unanswered legal questions and incomplete fact issues.

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[3] These Student Learning Outcomes were developed using the following resources: MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD HESS, TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 37-85, 135-163, 191-205, 247-255 (2009); GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS (Inst. for L. Sch. Teaching 2000); Lisa G. Lerman, *Teaching Legal Analysis: An Inventory of Skills, in* GERALD F. HESS & STEVEN I. FRIEDLAND, TECHNIQUES FOR TEACHING LAW 32-37 (Carolina Academic Press 1999); Nelson P. Miller, *Mapping Lawyer Competencies onto the Law School Curriculum to Confirm that the Curriculum Prepares Graduates for Practice*, http://law.du.edu/documents/assessment-conference/Miller-Curriculum-Mapping.pdf; MacCrate Report, *supra* note 2, at 138-221; National Conference of Bar Examiners, *Skills Tested by the MPT*, http://www.ncbex.org/multistate-tests/mpt/mpt-faqs/skills-tested/ (September 27, 2011); ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (Clinical Legal Education Association 2007); B.S. BLOOM, ET. AL, ED., TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS (1956).

Legal Analysis

- Identify the legal issues presented by the facts;
- Identify the relevant facts and applicable authority (cases, statutes, and/or regulations);
- Develop and assess legal theories relevant to a client's situation;
- Accurately derive rules and apply authority to a client's situation;
- Strengthen a client's position by analogizing to similar or favorable facts, reasoning, and policy in authority;
- Overcome weaknesses in a client's situation by distinguishing dissimilar or unfavorable facts, reasoning, and policy in authority;
- Articulate clear inferences for factual support; and
- Identify components of statutory interpretation and analysis (legislative history and canons of interpretation) relevant to the client's position.

Legal Drafting

- Communicate their analysis and position effectively and appropriately in writing to intended audience (colleagues, clients, opposing counsel, or court); and
- Organize and explain ideas clearly using appropriate conventions.

Formative and Summative Assessment

In addition to achieving these student learning outcomes and objectives, this book aims to provide professors with a wide selection of formative and summative assessment opportunities for use in class or as homework. As the American Bar Association shifts its focus from input measures to outcome assessment,[4] many law professors will need not only to develop clear learning outcomes for their courses but also to identify whether the teaching strategies being used in their courses help them achieve the desired outcomes. Further, many law professors will also need to add new teaching strategies and skills and writing exercises to their courses to monitor their students' development effectively throughout the course. By utilizing the exercises in this book, professors will be able to integrate multiple faculty-, peer-, and self-assessment opportunities that allow them to track their students' proficiencies in legal analysis, argument structure, and legal writing.

[4] Donald J. Polden, Chair, *Statement of Principles of Accreditation and Fundamental Goals of a Sound Program of Legal Education*, Standards Review Committee, Am. Bar. Ass'n (May 6, 2009) (on file with authors), available at http://www.abanet.org/legaled/committees/Standards%20Review%20documents/Principles%20and%20Goals%20Accreditation%205%206%2009.pdf; Steve Bahls, Chair, *Key Issues Considered by the Student learning Outcomes Subcommittee*, Student Learning Outcomes Subcommittee of the Standards Review Committee, Am. Bar Ass'n (Dec. 15, 2009) (on file with authors), available at www.abanet.org/legaled/ (follow "Discussion of Key Issues" hyperlink).

The exercises in this book can be modified to fulfill the particular learning outcomes and assessment goals of any course and make ongoing assessment both possible and manageable for professors. Professors now have ready-made legal analysis exercises with annotated sample answers they can use to incorporate multiple assessment opportunities covering an array of legal topics. Professors may use any of the exercises to track students' performance and provide faculty feedback, and the even-numbered exercises to encourage collaborative group work and peer-assessment and develop students' self-assessment skills. Professors may rely on the annotated sample answers to provide students with guidance on the applicable legal rules, relevant precedent cases, possible arguments, and organization for their written analysis.

HOW INTENDED AUDIENCES CAN USE THIS BOOK

This book is suitable for a number of audiences—each can use the exercises for different purposes.

For the Pre-Law Student

Even before law school begins, pre-law students can use this book to gain familiarity and practice with the analytical building blocks that they will soon be expected to master. Soon-to-be law students can start to work on legal analysis as part of a law school preparatory course or at their leisure, before law school starts.

To begin work with the book, pre-law students can start with the basic concept that underlies legal reasoning. Pre-law students can do this by working through the Orientation to Critical Thinking chapter and checking their responses against the sample answers. This chapter is an appropriate beginning, because the exercises are drawn from everyday life, devoid of all overtly legal concepts. The sample answers are just that—samples of how the questions could be answered. Students' answers may differ from the samples, but students' answers should follow the structure that makes up legal reasoning.

Next, pre-law students can try their hand at rule-based reasoning exercises. These exercises provide a rule of law and a fact pattern. Students can apply the rule to the facts and again compare their answers to the sample answers. Pre-law students who feel confident with rule-based reasoning can proceed to the basic analogical reasoning cases and then to exercises with statutes.

Once they start law school, students who have already worked through a number of the 100 exercises will approach law school assignments with greater competence and confidence.

For the Law Student

Law students must use legal analysis skills immediately upon starting law school. Legal analysis remains at the core of law students' work throughout law school and beyond: in their legal writing classes, on law school exams, on the bar exam, on the multi-state performance test, and in practice. This book provides 100 opportunities to develop and hone those important skills without first learning new substantive law—all information students need to work the exercises will be at their fingertips.

New law students can examine and work through straightforward examples of analogical reasoning in the Introduction to Legal Reasoning chapter. Law students can then practice with the simplest form of legal reasoning—rule-based reasoning that takes a legal rule and applies it to a set of facts. Law students can progress through rule-based reasoning exercises, starting with simple rules and

facts and progressing through multi-part rules and more extensive facts patterns. Once students see how rule-based reasoning works, they can expand their repertoire with analogical reasoning.

Statutes too are a key component of legal reasoning, so two chapters are devoted exclusively to this important source of law: Chapter V, Statutory Analysis for Success, and Chapter VI, Statutes with Legislative History. In these chapters, students can see how statutes and cases interact, and how legislative history plays a role in legal analysis.

Students need not wonder whether their performance is up to par—they can immediately check their work against the sample answers. Through the exercises, students can develop a keen understanding of rule-based and analogical reasoning with these 100 unique opportunities to practice.

For the Law Professor

Law professors often note that students need more legal analysis practice. But professors are already hard-pressed to complete bar exam and other topics in available class time, leaving little time for legal analysis practice. Law professors can, however, refer students to this book, to supplement students' analysis skills while keeping class time for bar exam and other topics. Through the exercises, professors can increase the depth of students' analysis through the paced exercises, adaptable to any analysis paradigm. Significantly, students can self-assess with the sample answers provided within the book for even-numbered exercises. If a graded assignment would better fit the class's needs, the professor can assign an odd-numbered exercise—answers to these exercises appear only in the teacher's manual.

Legal writing professors in particular can turn to this book as a source of exercises and supplemental work. The problems can be assigned at any point in the semester either as written or adapted to particular needs. Exercises can also be expanded to include a research component beyond the sources included here. The exercises are grouped by form of legal reasoning, with additional exercises covering statutes with cases and statutes with legislative history.

For the Academic Support Professional

As employers and the American Bar Association increasingly emphasize the need for practice-ready law school graduates, more law schools are expanding their academic support offerings and adding supplementary writing courses such as Remedial Legal Writing. Students seeking academic support may at first be perplexed by legal analysis. These students would benefit from practicing their legal analysis skills by working through selected exercises in the book.

Any one of the exercises can serve as an assessment tool to determine the student's strengths and weaknesses. After the diagnostic exercise, an academic support professional may select additional exercises for the student to try. The student can then self-assess with the even-numbered exercises.

GENERAL STRUCTURE OF THE BOOK

This book contains five separate categories of exercises: Orientation to Critical Thinking, Rule-Based Reasoning, Analogical Reasoning, Statutes with Cases, and Statutes with Legislative History. Each category represents a distinct area of legal reasoning and analysis that law students must master. Within each category, the exercises start at a Beginning level, with basic concepts and fact patterns. The exercises increase in difficulty and sophistication, progressing through exercises at an Intermediate level, and ending with exercises at a Skilled level. The Intermediate and Skilled exercises use more complicated fact patterns, increased numbers of cases and statutes, and more extensive answers.

Chapter I: Orientation to Critical Thinking

This section eases students into legal analysis with exercises based on everyday examples drawn from non-legal scenarios. The exercises are lively and user-friendly, to draw students into legal analysis without intimidation. Through these exercises, students can see that they already instinctively use rule-based and analogical reasoning, and that legal reasoning is an extension of their existing skills. (Contains Exercises 1 through 9).

Chapter II: Introduction to Legal Analysis

Here, students learn that no matter which legal analysis paradigm their school uses, for example, IRAC, CRAC, CRRPAC, or others, the paradigms contain the same foundation and can be used to practice their analysis with this book. This chapter contains an equivalency chart that shows how the different paradigms are in fact close cousins to one another, with common elements. Students can be confident that their school's particular form of analysis is compatible with the exercises.

Chapter III: Rule-Based Reasoning for Mastery

In this chapter, students start practicing legal analysis. Paced exercises give students a legal rule to apply to a factual scenario. Students need not have any background on the particular legal issue—each exercise is free-standing, ready for students to try. Additionally, students need not worry about citation to authority for these exercises. These exercises are designed to simulate the legal reasoning process most widely used on law school essay examinations, where students apply the relevant rule(s) to the facts to construct arguments and predict the likely outcome and focus less on citation to authority.

The Beginning-level exercises contain fewer facts and less complicated law. Once students have gained confidence with exercises in the Beginning and

Intermediate levels, they are ready to take on the more challenging scenarios and law contained in the Skilled exercises. After completing all the exercises, students will be able to work confidently with the application of legal rules to fact patterns. (Contains Exercises 10 through 34).

Chapter IV: Analogical Reasoning with Depth

Once students are comfortable applying rules to facts, they are ready to practice with the basic building blocks of common law: cases. In this chapter, students start with simpler exercises using one or two cases as precedent to analyze a factual scenario. Exercises increase in complexity until students are using multiple cases to analyze a complex factual scenario. Students seeking additional confidence as they prepare for exams can work through all the exercises until they are fully at ease with the important skill of legal analysis. (Contains Exercises 35 through 64).

Chapter V: Statutory Analysis for Success

Legal analysis inevitably involves statutory analysis, but the interaction of statutes and cases is not always easy to understand. In this chapter, students can see how cases, and at times, regulations, influence the interpretation of statutes. Students can begin with the early exercises, which contain simpler statutory provisions and fewer cases. After gaining confidence with the Basic-level exercises, students can practice with exercises at the Intermediate and Skilled level. (Contains Exercises 65 through 89).

Chapter VI: Statutes with Legislative History

First-year legal writing courses and other first-year law school courses often touch on statutory analysis using legislative history. The generally cursory treatment of these topics often leaves students confused and needing practice. Only practice can put students at ease with these numerous and arcane principles. Students can see how various aspects of legislative history might be used by trying the exercises themselves and checking their answers against the samples. (Contains Exercise 90 through 100).

Chapter VII: Written Sample Answers

This chapter contains complete and thoughtful answers to all the book's even-numbered exercises. Each answer thoroughly and completely analyzes the exercise, demonstrating how students can answer that exercise. In addition, the answers are annotated so that students can see features that their answers should contain.

For students, the sample answers permit independent study and self-checking, until the student is producing answers that contain the same key points as the samples. For professors, the sample exercises free up valuable time that would

otherwise be spent crafting a complete sample answer. (The accompanying *Teacher's Manual* contains the same complete sample answers but for all 100 exercises.)

The sample answers reflect a number of different writing style choices, any of which is widely accepted. The answers all, however, follow the organization most widely used in predictive memo documents: law and case illustrations are set out before the application of law to fact, and arguments are identified for all parties involved.

To Access a Case, Statute, or Regulation for an Exercise

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