

Legal Reasoning Case Files

Legal Reasoning Case Files

SECOND EDITION

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For Sarah, always...

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Introduction

Becoming a skilled attorney is hard.

There is a massive amount of new and technical material to learn, and there are many advanced skills to master. These skills include all of the legal ones, naturally, plus the wide array of general proficiencies that any successful professional might need and that most law students have not yet fully acquired. And in addition to gaining so much new knowledge and expertise, there is the necessity of gaining enough practical experience to hone the good judgment lawyers need to help clients resolve their problems. All of this simply takes time and a great deal of practice.

Unfortunately, both time and opportunities for frequent practice are usually in short supply in law school. Under pressure to cover so much material, most law school classes spend little if any time reviewing, consolidating, or practicing deploying the material studied. Even the more experience-oriented courses in the law school curriculum have a great deal to cover in a short span of time. Writing classes must teach new genres and techniques, while clinics are often driven by the exigent needs of their actual clients.

But educators know that the best way to learn new things is to repeatedly rehearse skills and to connect new concepts to what has already been learned. Legal reasoning, judgment and firm comprehension of complex legal rules all take time to percolate. It takes—as the cliché goes—a minute to learn yet a lifetime to master. So where can law students refine and consolidate their learning as they prepare to become smart, capable attorneys? There is room, and need, in the law school curriculum for students to practice and reinforce the fundamentals of legal thinking. This text provides the foundation for that hands-on learning.

This Text Hones Legal Reasoning

Much has been written about what it means to “think like a lawyer.” Is it thinking carefully? Of course, but that can’t possibly be enough. Critically? Definitely, but law cannot claim to be the only profession that demands critical thinking. Unemotionally? No. Rationality is important in law, but then so are empathy and humanity. Using laws? Yes of course, but not entirely: no attorney can ever know all of the law even within a very narrow specialty, and non-lawyers are plenty capable of reading and understanding many legal materials.

So, what is it, then, that is uniquely “lawyerly” about what we do?

I believe that what most distinguishes lawyers' thinking is our consistent underlying legal method. Lawyers 1) understand **legal rules** in a deeply meaningful and contextualized way, and we then 2) carefully **apply** those rules to specific **facts** to reach conclusions or build arguments, having 3) thoughtfully considered all possible interpretations and **counterarguments**. Moreover we 4) meticulously **explain and support** every step in our analysis so that others can follow and evaluate our reasoning. We follow these steps over and over again, and we become more adept at them as we grow in our field.

If you truly understand how legal reasoning operates you may recognize these steps as in some ways a distillation of the IRAC¹ method of analysis you have probably been taught at some point in your law school career (or CRAC² or CReAC³ if you lead with a conclusion rather than an identification of the issue in question). This makes perfect sense, because the centerpiece of IRAC or any of its acronym analogues is the interaction between legal rules and their application to given facts. That in part explains why the R and the A are consistent across the many ways of describing/distilling legal analysis. It would even be fair to say that having this “legal analysis = rules applied to facts” formula become second nature to you is *the* primary objective of the first year of law school. Once it becomes an automatic part of your thinking and writing you may find that you can deviate from the rigidity that IRAC sometimes suggests. That's perfectly fine—good writing can take many forms when you have the “grammar” of legal thinking down pat.

This text provides an opportunity for you to refine your core legal reasoning skills through a series of short but realistic exercises. Some of the work expected here may seem simple and straightforward (while other parts will probably appear quite challenging). Don't be fooled, though—experienced attorneys know that there is *always* a way to make their work clearer, more thoughtful, more subtle, or more effectively presented. In fact, never being fully satisfied with our own efforts and seeking always to find a way to work more strategically may *itself* be a hallmark of the way lawyers think. As you work your way through this course and this text, please always aim to strengthen your analytical skills while continuing following the basic steps fundamental to all lawyerly reasoning.

How the Text Is Structured

You will work through a series of legal problems

This text consists of case file exercises grounded in basic subjects taught in nearly every law school in the country. The problems here are meant to seem realistic. Ideally, you will also find them compelling.

If you are past your first semester of law school much of the legal doctrine at issue in these problems should be familiar to you. That is by design. First, repetition and review are good. Repetition breeds retention. (Who among us has not completed a class and come across its material later, only to discover to our dismay how much of it we have forgotten?) Repetition also reinforces what you already know while adding nuance to your understanding. And finally, repetition of common legal

1. Issue, Rule, Application, Conclusion.

2. Conclusion, Rule, Application, Conclusion. Practicing lawyers frequently begin legal arguments from the premise they want the court to reach, which is why this may be the most common form of analysis they use. But law students are often encouraged not to do so for a couple of reasons. Professors may want students to fully state the legal question at hand, which the Issue approach requires. Equally importantly, much of “thinking like a lawyer” involves seeing a question from multiple perspectives, and law professors may be concerned that beginning with a particular conclusion can lead to overly one-sided analysis.

3. Conclusion, Rule, rule Explanation, Application, Conclusion. The explanation of the rule is particularly important when it is not a standard and universally agreed-upon part of black letter law.

principles means that you should be able to spend less time absorbing the law itself, and consequently place more emphasis in these exercises on how you read, write, and think about the law.

The problems apply unambiguous legal rules

One of the most exciting things about the law is that it cannot possibly be comprehensive enough to cover every circumstance in human experience. And law professors just *love* doubt and ambiguity—we like to create exams, exercises, and assignments that exploit uncertainty, and then we expect law students to consider all angles to approach every issue. If at its most central core legal analysis can be reduced to applying legal rules to facts, then there are really only a few ways for law professors to introduce the ambiguity we want our students to explore:

1. We can take advantage of a lack of clarity in the applicable legal rules themselves (by introducing alternative and inconsistent rules either over time or in differing jurisdictions, or by situating the issue in an area that the rules arguably might or might not apply to);
2. We can create facts that could go either way;
3. We can do both at the same time.

From what you have seen so far in law school, is it a big surprise that we tend to spend a lot of time having fun with that third option? For good reason, type 3 questions are sometimes the most challenging and central ones on law school essay exams. They require students to grapple in complicated ways with the most vexing questions of what the law means, why it is the way it is, how it should (or should not) be extended, and to whom it applies. Put that way, it is a pretty efficient way to see how deeply students really grasp what they have learned.

Similarly, legal writing or lawyering skills classes tend to situate their most important assignments in areas where the applicable rule of law is not fully established. Often that means, for example, that an assigned memorandum or brief will have students work on a topic to which no single black letter rule unequivocally applies. This forces students to learn rule synthesis: that is, how to construct a “rule” (sometimes a sub-rule or potential exception to a more general rule) out of inferences drawn from multiple sources and then providing a persuasive explanation showing why it is, or ought to be, understood as a correct statement of law. Learning to synthesize rules is an incredibly important skill for lawyers to develop. And it is one that can take the course of a career to fully cultivate. Working on such projects is demanding, and takes a great deal of time.

But it is certainly *not* true that every legal question is a novel one. Established legal rules exist, and it is frequently true that the questions lawyers encounter fall squarely within well-settled black letter law. Attention to preparing law students to handle *ambiguity* in law—the hallmark of so many profound legal questions—is a centerpiece of many law school classes and examinations. Thus, the traditional law school curriculum may not provide enough opportunity for you to get better at the more routine process of understanding legal rules, applying them to facts (while considering alternatives) and carefully explaining your logic.⁴ This text is intended to help fill in that gap. The exercises here will give you repeated opportunities to carefully apply established legal rules (ones that you encounter in foundational law classes) while you continue to develop the necessary legal analytical skills that your classes, and the practice of law, will require.

4. Hopefully this list of steps already sounds familiar: it is simply a rephrased version of the fundamental steps of legal reasoning articulated in the section “Legal reasoning is legal method” above. This will certainly not be the last time that those steps are repeated in this text. They are crucial in all legal analysis. Thus, they worth repeating, restating, and reinforcing until they become automatic. Unconsciously always following this process to address legal questions is in effect what people *mean* when they say “thinking like a lawyer.”

The problems ask you to do things that new attorneys typically do

Most people learn better by doing things rather than by simply being told about them. And the only way to gain experience in something is, well, to do it. Therefore, one important goal of the problems in this book is to give you projects to work on that look and feel like the kinds of things beginning lawyers are often asked to produce.

In courses that teach vital legal research and writing skills, law students are often introduced to some of the most common and formal tasks given to junior lawyers, *i.e.*, drafting legal memos or briefs. These are important tools in practice, and they are also excellent educational assignments. But they are not the only, or in many instances primary, kinds of writing that most lawyers do. Furthermore, they tend to be complex and time-consuming to produce, which limits the number of projects any student can reasonably work on in any singleclass.⁵

The problems here, then, are shorter and somewhat different in focus from those usually encountered in an introductory legal writing course. These assignments ask you to take the same principles of legal reasoning that you might use in those kinds of writing projects, but to apply them to shorter and sometimes more unceremonious types of legal writing like affidavits, professional letters, emails, or informal memos. You should find that your central analytical steps remain constant even while you adapt your tone or approach to the specific genre of writing in which you are engaged.

The problems rely on the kinds of materials and documents lawyers actually use

The case files in this text consist of exactly the kinds of records and other materials that you would be likely to encounter in practice. They are entirely fictional, but are made to look and work exactly like ones you might see in real life. In a sense, reviewing and preparing documents is what most lawyers *do*, or at least it is what we spend a lot of our time doing. Other than what we gather from personal conversations with our clients or witnesses, virtually all of the facts of every lawyer's case are gleaned from documents that we gather and examine. It simply makes sense as you learn law to gather information the same way that you will once you enter practice.

The exercises connect what lawyers do to what law students learn

Despite the fact that most law schools spend a lot of time orienting new law students by explaining that law school is quite different from other types of educational endeavors, it still feels a lot like *school*. You mostly read, attend lectures, and ultimately you take tests on what you have studied. Notwithstanding oft-repeated warnings that the legal educational experience is very different, this familiar structure can make the day-to-day experience of taking law classes feel a lot like college. As a result, beginning law students typically struggle to relate the work that they do in casebook classes, legal writing and simulation or clinical courses, and internships or summer jobs.

But once you face law school examinations it becomes apparent how important it will be to effectively use what you learn in all law classes. Law school essay exams test you not just on your knowledge of what you have studied, but also your proficiency in how you might *use* a course's material in practice. Essentially, most tests in law school replicate the experience of a new client walking into an actual law office—it just so happens, of course, that the client presents a myriad of problems that conveniently overlap with topics studied in that course. In fact, this is at least part of what law professors mean when we try to explain why law school is different. Law practice requires actively using

5. This also explains why the case file assignments in this text do not ask you to do outside research. Any responsible attorney handling these problems in real life would probably devote time to finding out more about both the applicable law and the facts of the cases than are included here. But in an effort to make your workload manageable, this text tries to provide enough material for effective analysis without the added responsibilities of conducting your own legal research or fact development.

the law to address problems presented by our clients, and law school exams try as best they can to require the same skills.

The exercises help you transfer what you learn in each of your law classes to all of the others

Law professors frequently tell students that the analytical skills they develop in one area will be transferrable to all of them. But in saying so we sometimes leave out one key point; the core legal reasoning skills are indeed transferrable, *but they require thoughtful adaptation to the differing demands of each kind of work that you will do.*

This text is intended to help you improve your ability to transfer skills. One way we do that is by moving among different subjects. Each chapter sets its problem within in a different topic drawn from a core law school subject. This helps you refresh your understanding of the specific material covered, of course, but is intended also to encourage you to develop a richer understanding of the subject matter itself. Many law students presume that any differences they see among the classes they take must be due to the individual approaches of their professors. Some probably are, but focusing on that obscures the fact there are genuine variances in how legal disciplines operate. When you understand those distinctions you can go about learning and using the law more skillfully within each subject.

For your purposes though, perhaps the most important way we help you transfer your growing lawyering skills is by alternating between typical lawyer-like law practice assignments and typical law-student-like tests that rely upon the same body of legal rules. First you will learn (or review) the law in question while working through a document case file, and preparing the assigned practice document. Next, you will switch up by seeing how the same rules can be used in a more academic context. Thus, at the conclusion of each chapter you will be given a new set of facts. You can use the same legal rules presented in the case file to analyze the new problem. Or to put it more directly in terms that matter to you, you will be given new questions that looks an awful lot like a single-topic examination questions. Can you take what you have learned in working through the case file assignment and immediately apply it to this new problem?

Each chapter includes and analyzes a sample student response to an essay “exam” question followed by a similar analysis of a multiple-choice question. Review them carefully so that you can get a better idea of what law professors are usually looking for. (You would be well advised to write out your own response to each question before reading the sample answers given. Remember: practice may not always make perfect, but it leads you a lot further along the way. And we learn from our own experience far more deeply than from just reading about other peoples’ experiences!) Your professor may decide to assign additional essay or quiz assignments based on the case file materials to further support your understanding of the legal rules or to give you additional opportunities to practice applying them.

The exercises connect to skills you will need to pass the bar

One of the significant shifts law graduates encounter when they begin to prepare for the bar exam is that the law school world of glorious uncertainty has suddenly been set aside. The bar exam tests candidates on areas of well-settled law, and it uses questions for which there should be only one clearly right answer. But even on the bar exam, identifying the correct legal rule is no guarantee of giving the correct response or of garnering full credit. That’s because in addition to testing rules of law, the bar exam is still also testing legal analysis. Improving those analytical skills while you are in law school will give you an enormous leg up when you go to take the bar exam.

And while the materials in this book are not intended to precisely replicate the ones you will encounter on the bar exam, they do significantly echo them. The case file assignments might look

similar to those you might come across on the Multistate Performance Test (MPT) or an analogous performance test developed specifically for your state. There, too, you will be expected to review a series of documents to gather the facts of the case, apply fundamental legal rules to the assigned problem, and draft whatever practice-style document the particular question demands. Similarly, the exam-like assignments in this book resemble the short one- to two- issue questions that are more typical of the Multistate Essay Examination (MEE) than the more intricate and ambiguous issue-spotter questions usually found in law school. And the sample multiple-choice problems in each chapter do not precisely replicate the style of those found on the Multistate Bar Examination (MBE). But they do echo both the precision in rule comprehension, careful reading, and basic legal reasoning skills those questions require. If you think about it, even though these are not bar materials per se, and the class you are taking is not geared explicitly toward bar preparation, it nonetheless makes sense to preview some bar-adjacent work earlier on in your law studies. Neither law school nor the bar exam are intended to fully complete your professional training, but they are each supposed to be vital steps in that direction. Law school is meant to prepare you to begin and learn from the practice of law, and the bar exam is supposed to be an assessment of your readiness to begin professional practice. Thus, the more we can use practice-like and bar-like exercises in your legal education the more prepared you will be for what is to come.

Commentary in the text draws from current learning science

There is actually rather a lot of research about what it takes for students to learn in law school.⁶ As a quick summary of what we know about complex skills mastery, it would probably be accurate to say simply that the more active the learning is, the better. The more intentional it is (meaning, the more concretely you articulate to yourself what you are doing and why), the better. And the more opportunities you have to practice and get feedback, and then to incorporate that feedback into subsequent work, the better. That's precisely what this text and the course you are using it for are intended to provide.

The comments and structure of this text are carefully grounded in what we know to be the best practices for law school learning. Your objective is to become an excellent lawyer rather than a scholar of adult learning theory, so I have tried to avoid education jargon wherever possible. But knowing how to learn and improve in law school is an important part of producing stronger work, which will sometimes require making the theory underlying what we are doing explicit.

The assignments are straightforward, but that does not mean they are easy

In law, straightforward does not equate to simple. Expert legal reasoning is richly layered, and small details can mean the difference between whether something is spectacularly persuasive or fails to effectively serve its intended purpose. That is precisely why it is worth improving your legal reasoning with practice.

Moreover, different lawyers can and will approach problems differently. There is room in each of the problems and exercises included within this text for variations in approach. No one solution can ever be the only right one. But this does not mean that all approaches will be equivalently successful, which is part of what makes legal work so challenging.

6. For an excellent summation of some of the best practices in learning law, see Louis N. Schulze, Jr., *Using Science to Build Better Learners: One School's Successful Efforts to Raise its Bar Passage Rates in an Era of Decline*, 68 J. LEGAL EDUC. 230 (2019). For an empirical analysis of the long-reaching effects of practice and feedback in law school coursework see Daniel Schwarcz & Dion Farganis, *The Effect of Individualized Feedback on Law School Performance*, 67 J. LEGAL EDUC. 1 (2017).

Skills You Will Strengthen

One advantage of a course intended to reinforce your analytical and critical reasoning skills is that it can consolidate the skills you acquire from all other law school classes. Most of what you will do as you proceed through this text should not be entirely new to you. At its best, your work with these materials should serve to pull together what you have learned and are continuing to learn in all of your law school classes.

It may help to consider the discrete skills of legal reasoning in the form of a list:

- ✓ Understand the problem to be solved
- ✓ Utilize legal and non-legal documents
- ✓ Extract material facts
- ✓ Use legal authority
 - filter sources of law for weight and relevance
 - read cases critically
 - comprehend and make use of statutes
- ✓ State rules of law accurately and precisely
- ✓ Apply rules to facts
- ✓ Methodically explain every step in your analysis
- ✓ Evaluate counterarguments
- ✓ Articulate policy considerations
- ✓ Present analysis effectively, with thoughtful attention to the intended audience
- ✓ Demonstrate sound and reliable legal judgment

Just as will be true when you actually start to practice law, every problem in this text will draw upon *all* of these skills. But that does not mean that each skill is equally accentuated with every task, and it would be overwhelming to try to tackle each and every one of these skills equally with every project. Therefore, different chapters will focus more attention on different aspects of these analytical skills, though naturally the most central—thoughtfully applying correct rules of law to facts—will always receive attention. If you put together what you learn over the course of several of these assignments you should improve your analytical skills considerably.

The skills we are especially focusing on in the unit will be listed at the beginning of each chapter. There will also be commentary and side notes as we proceed through the case files. In part these notes are intended to draw your attention to the sophisticated ways that lawyers think, read, and question the material they encounter. Ideally, these notes may help you to identify explicitly the skills you may be drawing from without even being aware of them. That's important, because the more conscious you are about your own thought processes the more likely you are to sharpen them. The notes and comments therefore anticipate that you will bring increasingly greater sophistication to your work with the materials as the text progresses.

Learning from Your Own Work

Your legal education is your own. It helps very much to approach law school as not the end of school, but as the beginning of a professional career. One in which you will aim over the course of a lifetime to continually become more proficient.

Everything researchers have discovered about learning and skills acquisition shows the most effective learners are those who are self-directed. Students who look critically at all of their work and

aim to decide for themselves what was successful in it, and how to make it better, are apt to show the most progress over the duration of a course or a curriculum. Or to put differently, no matter where you start or what kinds of assistance you get from your teachers or other resources, you will be most likely to end up an excellent student and lawyer if you are proactive in reviewing your own work and in carefully evaluating every choice made along the way.

As you work through each case file you should aim to become a better reader of the cases and materials, more efficient in crafting your responses, and more creative in organizing your thoughts. Use each problem as an opportunity to read your own writing the way your audience (or your professor!) would receive it, and see if you can anticipate what would be needed to improve it. Try to consider what is common (and therefore fundamental) about all of the most successful answers to both the case file assignment and the essay question, and what changes with each different assignment. This will help you decide what is core to legal reasoning and what is specific to each of the types of document or text you have worked on.

We are going to give you a good workout. Embrace it and watch your analytical muscles strengthen.