

2019

Legal Reasoning Case Files

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Recommended Citation

Franklin, Kris, "Legal Reasoning Case Files" (2019). *Books*. 95.
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Legal Reasoning Case Files

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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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Library of Congress Cataloging-in-Publication Data

Names: Franklin, Kris, 1967– author.
Title: Legal reasoning case files / by Kris Franklin.
Description: Durham, North Carolina : Carolina Academic
Press, LLC, [2019] | Includes bibliographical references and index.
Identifiers: LCCN 2018059294 | ISBN 9781531006488 (alk. paper)
Subjects: LCSH: Law—United States—Problems, exercises, etc. |
Law—United States—Case studies. | Law—United States—
Methodology.
Classification: LCC KF386 .F67 2019 | DDC 349.73—dc23
LC record available at <https://lccn.loc.gov/2018059294>

e-ISBN 978-1-5310-0649-5

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

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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 to deploy 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 and to connect new concepts and skills 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.” Does it mean 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 context-

alized 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 **counter-arguments**. 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 to follow 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 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.

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.

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 possible 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 possible 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 probably 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.”