



Legal Analysis |

SKILLS
SESSION

WHAT IS LEGAL ANALYSIS?

1. It is the analysis of a legal problem aimed at proposing a legal solution, using existing law, including precedent, statutes, and regulations.
2. It is a style of breaking down a problem into logical, persuasive steps.
3. It is “thinking like a lawyer.”

WHEN WILL I USE LEGAL ANALYSIS?

- ❖ Analyzing and understanding judicial opinions
- ❖ Answering hypos in class
- ❖ Exams
- ❖ Writing assignments
- ❖ Summer legal work
- ❖ Obviously: when you are a lawyer

LEGAL ANALYSIS TOOLS

Lawyers have 3 primary tools of legal analysis:

- Arguing from a rule whether
 - statutory; or
 - common law
 - Arguing from a rule is the most common type of legal analysis you'll do on exams.
- Reasoning by analogy
- Arguing from policy

ARGUING FROM A RULE

Basic approach: “IRAC”

STEP ONE: **Issue**. What is the legal problem that needs to be solved?

STEP TWO: **Rule**. Which rule (or sub-rule) controls the resolution of the problem?

- Rules are frameworks, not answers.

STEP THREE: **Analysis**. How does the rule apply to the facts of the legal problem?

- Don't stray away from the facts of your case.

STEP FOUR: **Conclusion**. What is the result of applying the rule to facts given?

IRAC EXAMPLE

Michelle has been renting a house in Tarrytown while the owner, Jose, tries to sell it. Michelle has a month to month lease, and the rent is due on the first. On February 2, Jose left Michelle a note to let her know that the house has been sold and that she must move out before March 1. Does Michelle have to move out before March 1?

IRAC EXAMPLE

Michelle has been renting a house in Tarrytown while the owner, Jose, tries to sell it. She doesn't have a lease, but the rent is due each month on the first. On February 2, Jose told her that the house has been sold and that Michelle must move out before March 1. Does Susan have to move out before March 1?

Issue: What is the legal issue?

- Was there proper notice of termination of the tenancy?

Rule: What is the applicable rule?

- In month to month tenancies, an **express notice** of termination must give a termination date that is **at least one month** after the date of the notice.

IRAC EXAMPLE

Analysis: How does the rule apply to our facts?

- Rule has two elements: **express notice** and **timing**
- Express Notice: Because Jose left a clear note with a termination date, Jose did give express notice.
- Timing: Jose's notice was delivered on Feb 2 for a March 1 vacate date, and therefore does not give Michelle notice equal to one full month, which is required under the statute. The notice is at least one day short of a month and thus not proper notice.

Conclusion: What is the result of applying the rule to facts given?

- Because Jose did not give Michelle proper notice of termination, the notice is ineffective and the tenancy does NOT terminate on March 1. Michelle does not have to move out.

IRAC EXAMPLE 2

Dean Bangs and Professor Chesney are attending a faculty meeting, listening intently and drinking coffee. Dean Farnsworth, who is leading the meeting, mentions that the George's opening will be delayed again because he has requested a seltzer tap be installed (he loves his seltzer). Dean Bangs really wants the café to open, as she is tired of brown bag turkey sandwiches, so she, in frustration, throws her coffee at Dean Farnsworth. The agile Farnsworth ducks, and the coffee hits Professor Chesney, scalding him. Can Dean Bangs be charged with assault of Professor Chesney?

IRAC EXAMPLE 2

What is the legal issue? Did Dean Bangs assault Professor Chesney?

What is the rule? The Texas Law Penal Code defines “assault” as “intentionally causing bodily injury to another.”

How is Abel’s liability analyzed? Criminal Law “Elemental” Analysis (IRAC each element)

1. Identify the elements of the offense:

- ✓ Conduct: Any
- ✓ Mental State: **Intent** to cause bodily injury [to another]
- ✓ Result: Bodily injury [to another]

2. Are those elements present?

- ✓ Conduct : Dean Bangs hurled hot coffee
- ✓ Mental State: Dean Bangs **intended** to cause injury to Dean Farnsworth
- ✓ Result: Dean Bangs caused bodily injury – but only to Professor Chesney

IRAC EXAMPLE 2

Criminal Law “Elemental” Analysis

Conduct – Dean Bangs hurled hot coffee

Intent – Dean Bangs intended to injure Dean Farnsworth

Result – Dean Bangs caused injury – but only to Prof. Chesney

IRAC Level II

Issue:

- Does the mismatch between the object of Dean Bangs’ intent and the result achieved defeat liability?

Rule:

- Transferred intent – When an unintended victim is struck down as a result of an unlawful act intentionally directed at another, the original intent “transfers” from the intended victim to the actual victim.

Application of rule to facts?

- Because Dean Bangs had intent to injure Dean Farnsworth, but the result of her conduct in connection with that intent was to injure Professor Chesney, Dean Bangs’ intent toward Dean Farnsworth “transfers” to Prof. Chesney. Therefore, the intent element of assault is fulfilled.

What’s our conclusion?

- Dean Bangs assaulted Prof. Chesney.

REASONING BY ANALOGY / FROM POLICY

Analogy:

- Judges and lawyers cannot always merely apply a rule because sometimes the rule does not quite answer the question.
- This is when we may turn to reasoning by analogy or policy.
- To reason by analogy, we first look for precedential cases that have facts and a legal issue similar to the one before us.
 - We ascertain which facts in the precedent determine the outcome in that case.
 - Precedent can help you define elements of the rule.
 - Then we ask, are the determinative facts in my case more like Precedent A or more like Precedent B?

Policy: Why do we have this law? Which types of behavior are we trying to encourage/discourage?

DWI

A state trooper sees a car pulled over on to the shoulder of 183, which she is patrolling. The trooper stops and exits her vehicle and approaches the car, which is not running. When she arrives at the car, Lola Smith is slumped on the wheel, with the keys in the ignition, and her right hand on the keys. Smith turns her head, opens her eyes, and slurs, “Is something wrong, officer”? The trooper asks Smith to exit the car, conducts an on-scene breathalyzer test (which results in a .08 BAL reading), and arrests Smith for driving while intoxicated.

DWI

A state trooper sees a car pulled over on to the shoulder of the highway which she is patrolling. The trooper stops and exits her vehicle and approaches the car, which is not running. When she arrives at the car, Lola Louche is slumped on the wheel, with the keys in the ignition, and her right hand on the keys. Louche turns her head, opens her eyes, and slurs, "Is something wrong, officer"? The trooper asks Louche to exit the car, conducts an on-scene breathalyzer test (which results in a .08 BAL reading), and arrests Louche for driving while intoxicated.

IRAC

▪ Issue

- Is Smith guilty of driving while intoxicated?

▪ Rule

- The relevant statute prohibits "driving or operating a vehicle while under the influence of alcohol."

▪ Elemental Analysis:

- ✓ Conduct – driving or operating/while under the influence of alcohol – *Smith is under the influence and in the car but not driving. Is she operating?*
- ✓ State of mind – none appears
- ✓ Result – none
- ✓ Attendant circumstances – vehicle – *The car is certainly a vehicle*

DWI

IRAC Level II: Elemental Analysis

▪ Issue

- What does “operate” mean?

▪ Rule

- The relevant statute does not define it. Precedent?

Precedent # 1: *Lewis v. State*

Lewis arrested for driving while intoxicated. He was found in the driver’s seat of his car in the left shoulder of I-35, with the vehicle off and the keys in the ignition, appearing intoxicated. Court held 1) “operate” requires that the vehicle be capable of being moved by the defendant, 2) being intoxicated and at the wheel of a parked motor vehicle with the motor off are not themselves sufficient facts to constitute “operating,” but 3) proof of imminent driving would constitute “operation.” Arrest was not proper.

DWI

IRAC Level II

- **Issue:** What does “operate” mean?
- **Rule:** The relevant statute does not define it. Precedent?

Precedent # 2: *Jones v. State*

Jones arrested for driving while intoxicated. Found *slumped over the steering wheel* of his truck *sitting in the middle of Mopac* at night, with engine *running* and *headlights off*. Jones appeared intoxicated. Held that a person who is sitting behind the steering wheel of an automobile, in full control of the automobile, where the engine is running and the vehicle is situated on a public roadway, albeit not under way at the time, is “operating” the motor vehicle. Therefore, arrest was lawful.

DWI

Compare the facts in the problem to the facts in the precedents:

Lewis v. State-not DWI	Jones v. State-DWI	State v. Smith?
<ul style="list-style-type: none">•Car was in left shoulder.•Lewis in driver's seat.•Car was off, keys were in ignition.•To “operate” the car must be capable of being moved by defendant.•Being in driver's seat with car off and keys in ignition not alone sufficient to establish operation.•Must show “imminent” driving.	<ul style="list-style-type: none">•Car was in middle of the road.• Jones was in driver's seat, slumped over steering wheel.•Car running, headlights off.• Person behind the steering wheel of an automobile, in full control of the automobile, where the engine is running and the vehicle is situated on a public roadway, is “operating” the motor vehicle.	<ul style="list-style-type: none">•Car was on shoulder.•Smith was in driver's seat, slumped over steering wheel.•Car was off, keys were in ignition, hand was on keys.•RESULT?

Now, go back and finish your analysis.

DWI

- **Analysis: Which case is more like *Smith* and why?**
 - As in Lewis, Smith's car was off with keys in the ignition.
 - But unlike Lewis, Smith had her hand on the keys, **therefore driving arguably more "imminent."**
 - As in Jones, Smith was slumped on the steering wheel, but **this fact did not prevent Jones court from finding "operation."**

DWI

- **Begin to draw conclusions:**
 - Smith's case is **more like** Lewis than Jones because:
 - Car was off.
 - Car was removed from roadway.
- **But precedent has not completely solved the problem!**
 - Does Smith's hand on the keys constitute imminent operation, even if the car was on the shoulder?

DWI

What if the precedent doesn't solve the problem?

Raise policy considerations:

- **Possible considerations of the legislature in State v. Smith:**
 - Social harm: Prevent drunks from driving.
 - Legislative intent: We can't always catch drunk drivers in the act, and therefore want to permit enforcement before actual driving.
 - Further utilitarian consideration: We want to encourage drunk drivers to pull off the road.
- **Which policy considerations you choose will vary with the area of law.**

DWI

- **Conclusion**

- Holding that Smith *did* “operate” her vehicle based on her hand being on the keys is consistent with legislative intent to permit enforcement in advance of driving; evidence supports finding that driving was imminent.

OR

- Holding that Smith *did not* “operate” her vehicle based on the vehicle being located on the shoulder rather than the road furthers interest of encouraging impaired drivers to pull over rather than continue on journey.

In these answers, we use the rule, precedent AND policy.

WHEW, THAT WASN'T EASY

- **Why did it take so long to answer the question?**
 - Because we went step-by-step.
 - We analyzed the legal issue,
 - And identified the correct rules.
 - When we turned to the facts, we found that they were more complicated than our precedent cases.
 - So we had to reason by analogy and introduce policy considerations.
 - Then we concluded by moving the law forward to a new permutation of the rule.
 - **We did not simply make conclusory statements.**
 - **We showed our work and persuaded using law.**
 - **WE CAME TO A FINAL ANSWER.**

WORKING SMART

Studying:

- Read cases with an eye to analyzing them, not memorizing them.
 - What was the issue? How did the judge apply the rule? Was the judge correct?
Talk about cases and work problems with a study group or partner.

What is class for?

- Learning to use rules from cases, to solve hypos, to talk about and think about the law and how it applies to specific sets of facts.

Outlining Preview:

- An outline is really a map for solving problems. I have a first degree homicide hypo – what are elements of homicide? How are the elements defined? How can I apply these elements to my facts?
- We'll talk more about Outlining on October 11.

EXAMPLES?

Where can you see more examples of legal analysis?

- **EVERY CASE YOU READ**
 - Some judges do it better than others, but the reasoning of the case is legal analysis.
 - It is the heart of what you are learning to do.

RESOURCES

Slides from this and all Skills Sessions (and Orientation) are available at:

<https://law.utexas.edu/student-affairs/student-services/academic-skills/>

Professor Emily Kadens wrote/presented the first versions of this presentation.