

Mastering Legal Analysis: Achieving the Best by Understanding the Bad

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I. The Importance of Legal Analysis

Most first-year law students suffer from what I call *Law and Order* syndrome. This syndrome occurs when new law students think that being a successful lawyer mirrors what is shown on television—creating **novel** legal arguments or making **unexpected** factual breakthroughs in cases that yield a huge (and often unanticipated) win for a client. In all honesty, however, being a successful lawyer involves a more basic set of skills and is much less glamorous than the part of the *Law and Order* attorney suggests. Being a successful lawyer turns mostly on one’s ability to understand the basic tenets of the law and then to engage in careful and detailed application of the facts of a lawyer’s case to the current law and the current legal precedent.¹ This skill is the “A” of CRAC: the analysis. This skill is also the hardest skill for first-year law students to master because it requires a synthesis of the law. In addition, it requires the tedious task of explicitly applying the facts to the law or comparing facts of precedent case law to the facts of one’s own case to predict an outcome. Importantly, a student’s failure to master the art of analysis affects not only his or her legal writing grade but also his or her grades in doctrinal courses, which are based, at least in part, on performance on an essay exam.²

II. Analysis Using Rule of Reason versus Analogical Reasoning

A good analysis weaves together the law and the facts. It is meticulous in its approach. It is well organized in its application of rule-based or analogical reasoning. An analysis should employ rule-based reasoning when the problem before the lawyer involves a straightforward application of the law to the facts of a client’s case. For example, assume for a minute that Texas law makes wearing any red shirt on February 1, 2017 illegal. Your client, the Dallas Police Department, issued a citation on February 1, 2017 to Ms. Dress for violating the law. There is a picture of Ms. Dress dated February 1, 2017 in an all red shirt. To assess the case, the Police Department’s lawyer need only apply the facts—the fact the Ms. Dress was wearing a red shirt on February 1, 2017—to the law—prohibiting the wearing of red shirts on February 1, 2017—to determine that the citation was appropriate.

Cases handled by lawyers, however, are rarely this basic. When a lawyer encounters a more complex scenario, his or her legal analysis will need to employ analogical reasoning—comparing or contrasting the facts of the lawyer’s case with the facts of precedent case law to predict—or to argue for or against—a certain outcome. For example, let us again assume that Texas law makes wearing any red shirt on February 1, 2017 illegal. The Dallas Police Department issues a citation to Ms. Dress on February 1, 2017 for violating this law. The picture taken on February 1, 2017, shows Ms. Dress wearing a red shawl over a white tank-top. Texas law does not define “shirt.” The lawyer for the Dallas Police Department has to turn to precedent case law to uncover the definition of a shirt and to figure out whether issuing a citation to someone wearing a red shawl (not precisely a shirt) on February 1, 2017, was appropriate under the law. In the *Saman* case the court defined a scarf as an accessory rather than a shirt. In that case, the court reasoned that, because it is simply a neck warmer, a scarf does not constitute a shirt. Instead,

¹ See Randall Ryder, *Good Facts > Good Law*, Lawyerist.com (June 4, 2013) available at <https://lawyerist.com/good-facts-good-law>.

² Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 STETSON LAW REV. 1193, updated and republished online on July 5, 2015 available at <https://law.fiu.edu/wp-content/uploads/sites/21/2015/07/Suzanne-Rowe-LRW-article-2015-rev1.pdf>.

according to the *Saman* case a scarf is merely a fashion accessory. On the other hand, the *Perrin* case holds that a buttonless cardigan, although thicker in texture than a typical shirt and able to be worn on top of another item of clothing, is a shirt. The Dallas Police Department lawyer’s job—given that his client wants the citation to stick—is to figure out how a shawl is more like the cardigan in *Perrin* than the scarf in *Saman*. The attorney must engage in analogical reasoning and liken the shawl to a cardigan and distinguish it from a scarf in order to deem that a shawl is, in fact, a shirt and that Ms. Dress’s donning of the red shawl on February 1, 2017, violated the Texas law prohibiting the wearing of red shirts on that date.

III. How to Draft an Analogical-Reasoning Based Analysis

Any analysis, regardless of whether it is a rule-of-reason based analysis or an analogical-reasoning based analysis, should employ the following parts: 1) a topic sentence; 2) a sentence clarifying the result of the analysis (from the application of the rule to the facts or the comparison between the case at hand and precedent case); 3) a series of sentences that **demonstrate** the basis for that result by walking the reader through the fact-to-rule application or a fact-to fact comparison between the case at hand and the precedent case; and 4) a statement explaining or restating how the result of the comparison or the application of facts to law affects or helps predict the outcome in the case at hand. An analysis using analogical reasoning should employ a formula similar to this:

1.	Topic sentence
2.	Here a court [will likely or probably will not] reach the same result as [precedent case].
3.	[Like or Unlike] [precedent case]where [trigger facts from precedent case] here [similar trigger facts from our case]. <i>Repeat as needed to compare/contrast all relevant facts.</i>
4.	Accordingly a court [will follow or will not follow] [precedent case] and find [predicted or desired holding].

IV. Moving from Basic Analysis to the Best Analysis

So what makes one analysis better than another? In other words and put in student terms, what yields a full-credit analysis versus a partial-credit analysis on an exam or in a memorandum or brief assignment? In short, the success of an analysis turns on its ability to apply the rule of law or compare/contrast the facts from the legal precedent to the case at hand with incredible detail. Below is a simple scenario³ and examples of analyses with varying degrees of detail and depth. Each sample analysis has been assigned a grade using a rubric similar to those used in first-year and advanced legal writing courses at the College of Law. Understanding each level of analysis—from bad, to basic, to better, to best—can provide students with insight into how to improve their own analysis going forward.

Client Scenario:

Plaintiff Paul has sued Defendant Debbie for Intentional Infliction of Emotional Distress (IIED). Debbie, Paul’s ex-mother-in-law, posted on her public Facebook page (viewable to 3,000 people) that Paul cheated on his ex-wife with a 17-year-old minor, failed to pay child support, and was a “mentally unstable monster.” None of the allegations are true. While he did cheat on his ex-wife, it was not with a minor. After the post, Paul received death threats online. He emailed Debbie and asked that she remove the post because he was being threatened. Debbie refused to remove the post and instead re-posted it. Paul suffered a severe anxiety attack and was hospitalized.

Client’s Issue: Is Debbie’s conduct extreme and outrageous such that the first element of an IIED cause of action is satisfied?

³ The client scenario and mock case used below are borrowed from A LAWYER WRITES, the text book the College of Law uses in Legal Writing I. CHRISTINE COUGHLIN, JOAN MALMUD ROCKLIN & SANDY PATRICK, A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS (2d ed. 2013).

Precedent Caselaw

Precedent Case: *Woodruff v. Smith*

Relevant Facts: Plaintiff Sam was a teacher at a school. Thirty years prior he was arrested for a college prank. Defendant Dan, who recently lost a lawsuit to Sam, posted copies of Sam’s arrest record all over the school halls and then announced it on the PA system.

Holding: Jury properly found Dan liable for IIED, explaining that distributing derogatory information as part of a “calculated, persistent plan to disturb, humiliate, harass and ruin the plaintiff for no other purpose but defendant’s own spiteful satisfaction” was extreme and outrageous conduct.

Rubric Category	Sample Analysis
Deeply Struggling—1 point	Debbie’s conduct, like the defendant in <i>Woodruff</i> , constituted extreme and outrageous conduct. Just as the defendant in <i>Woodruff</i> , Debbie made multiple, false public statements about Paul. As such, Debbie’s conduct was extreme and outrageous.
Struggling—2 points	Debbie’s conduct, like the defendant in <i>Woodruff</i> , constituted extreme and outrageous conduct. Like the defendant in <i>Woodruff</i> , Debbie falsely accused Paul of sexual misdeeds with a minor, failure to pay child support, and being a “mentally unstable monster” on her public Facebook page, which is visible to more than 3,000 people. Like the defendant in <i>Woodruff</i> , Debbie’s conduct was done on more than one occasion and was done for the purpose of spite and retaliation for her daughter’s divorce. Additionally, the distributed information about Paul was false. In line with <i>Woodruff</i> , this Court will likewise find Debbie’s conduct was extreme and outrageous because it was a “calculated, persistent plan to disturb, humiliate, harass and ruin the plaintiff for no other purpose but defendant’s own spiteful satisfaction.”
Competent—3 points	Debbie’s public, repeated, and false accusations against Paul for no purpose other than spite were extreme and outrageous conduct. Like the defendant in <i>Woodruff</i> —whose conduct, consisting of distributing an old arrest record via multiple announcements in his place of employment in revenge for a lawsuit, was found extreme and outrageous—here, Debbie falsely accused Paul of sexual misdeeds with a minor, failure to pay child support, and being a “mentally unstable monster” on her public Facebook page, which is visible to more than 3,000 people. Like the defendant in <i>Woodruff</i> , Debbie’s conduct was done on more than one occasion and was done for the purpose of spite and retaliation for her daughter’s divorce. Additionally, the distributed information about Paul was false. In line with <i>Woodruff</i> , this Court will likewise find Debbie’s conduct was extreme and outrageous because it was a “calculated, persistent plan to disturb, humiliate, harass and ruin the plaintiff for no other purpose but defendant’s own spiteful satisfaction.”
Good—4 points	Debbie’s public, repeated, and false accusations against Paul for no purpose other than spite were extreme and outrageous conduct. Like the defendant in <i>Woodruff</i> —whose conduct, consisting of distributing an old arrest record via multiple announcements in his place of employment in revenge for a lawsuit, was found extreme and outrageous—here, Debbie falsely accused Paul of sexual misdeeds with a minor, failure to pay child support, and being a “mentally unstable monster” on her public Facebook page, which is visible to more than 3,000 people. Like the defendant in <i>Woodruff</i> , Debbie’s conduct was done on more than one occasion and was done for the purpose of spite and retaliation for her daughter’s divorce. Additionally, the distributed information about Paul was false. In line with <i>Woodruff</i> , this Court will likewise find Debbie’s conduct was extreme and outrageous because it was a “calculated, persistent plan to disturb,

Rubric Category	Sample Analysis
	humiliate, harass and ruin the plaintiff for no other purpose but defendant's own spiteful satisfaction.”
Excellent—5 points	Debbie’s public, repeated, and false accusations against Paul for no purpose other than spite constitute extreme and outrageous conduct. Debbie’s conduct is similar to the conduct in <i>Woodruff</i> which the court found extreme and outrageous. The defendant in <i>Woodruff</i> distributed an old arrest record via multiple announcements in his place of employment to seek revenge against the individual who filed a lawsuit against him. Similar to the conduct of the defendant in <i>Woodruff</i> , here, Debbie falsely accused Paul of sexual misdeeds with a minor, failure to pay child support, and being a “mentally unstable monster” in two separate posts on her public Facebook page, which were visible to more than 3,000 people. Like the defendant in <i>Woodruff</i> whose conduct was repeated and with a desire to retaliate for filing the lawsuit, Debbie’s conduct was done on more than one occasion and was done for the purpose of spite and retaliation for her daughter’s divorce. Additionally, just like the information distributed in <i>Woodruff</i> , the distributed information about Paul was false. In line with <i>Woodruff</i> , this Court will likewise find Debbie’s conduct was extreme and outrageous because it was a “calculated, persistent plan to disturb, humiliate, harass and ruin the plaintiff for no other purpose but defendant's own spiteful satisfaction.”