

# Table of Contents

---

PREFACE .....	V
TABLE OF CASES.....	XIII
<b>Introduction .....</b>	<b>1</b>

## SECTION I. GETTING STARTED

<b>Chapter 1. Identifying the Rule (What Does a Legal Rule Look Like?).....</b>	<b>7</b>
Part I. The Legal Rule Is a Primary <i>Source</i> .....	7
Diagram 1: Primary Sources and Branch/Originator of Government.....	8
A. <i>Statutes</i> (Legislative Branch).....	12
B. <i>Administrative Regulations</i> (Executive Branch).....	15
C. <i>Constitutions</i> (Constitutional Conventions).....	18
D. <i>Case Law</i> (Judicial Branch).....	22
Chapter 1 Legal Skills.....	28
Chapter 1 Vocabulary .....	29
Chapter 1 Research and Analysis Exercises.....	30
<b>Chapter 2. Whose Rule Is It? (Sorting out Subject Matter and Jurisdiction in the Legal Mess and Finding a Direction for Your Research) .....</b>	<b>41</b>
Part I. The Legal Mess .....	41
A. Thinking About the First Question: What Is the Geographic Jurisdiction for Your Legal Issue?.....	43
1. Where Am I? .....	43
2. Whose Law Governs? State Law, Federal Law or Both?.....	44
3. Which Courthouse Will I Go to?.....	46
Diagram 2: Whose Law Governs? State and Federal Jurisdiction.....	48
Diagram 3: Comparison of State Versus Federal Jurisdiction.....	51
B. Thinking About the Subject Matter: Is This a <i>Criminal Law</i> or <i>Civil Law Issue</i> ?.....	52
Diagram 4: Which Courthouse Will I Go to? State and Federal Jurisdiction.....	55
C. Thinking More About the Subject Matter: Is This a <i>Transaction</i> or a Conflict? .....	55

Part II. Starting Your Research: Key Word Searches and Secondary Sources.....	56
A. Key Word Searching and Reading Strategy .....	57
B. Different Types of Secondary Sources .....	59
C. Trying It out: Beginning Your Research .....	67
Chapter 2 Legal Skills.....	71
Chapter 2 Vocabulary .....	71
Chapter 2 Research and Analysis Exercises .....	72
<b>Chapter 3. What You Need to Know About Court Structure, Case Law, and Our Three Branches .....</b>	<b>77</b>
Part I. Understanding Legal Rules in the Court System.....	77
A. The Three-Tier Court System .....	77
Diagram 5: Triangle of Court System Hierarchy .....	79
B. <i>Precedent</i> and <i>Stare Decisis</i> .....	83
Diagram 6: Map of Federal Circuits for Federal Courts of Appeal.....	86
C. Understanding Legal Rules in Case Law .....	86
Diagram 7: Types of Case Law .....	87
1. Common Law: Judge-Made Law .....	87
2. Other Types of Case Law.....	90
3. Case <i>Holdings</i> .....	92
Part II. Advice for Research—Investigating Various Sources of Law .....	94
A. <i>Separation of Powers</i> .....	94
Diagram 8: <i>Checks and Balances</i> .....	95
B. General Research Strategies to Check All Sources of Law ...	96
C. Examples of Inter-Related Sources in Legal Problems .....	98
Chapter 3 Legal Skills.....	100
Chapter 3 Vocabulary .....	100
Chapter 3 Research and Analysis Exercises .....	101
<b>Chapter 4. Finding the Legal Rule .....</b>	<b>109</b>
Diagram 9: Rule with Elements and <i>Legally Relevant Facts</i> .....	110
Part I. Elements of the Rule, Issues, and the <i>Legally Relevant Facts</i> .....	110
Diagram 10: Example Showing Rule with Elements and <i>Legally Relevant Facts</i> .....	112
Part II. Finding the Applicable Legal Rule: A More In-Depth Look at Research Strategies .....	117
A. More on Constructing Searches.....	118
Diagram 11: Search Strategies .....	123
B. Sifting Through the “Lists”: A “Print” Research Method That Can Be Done Online or with Books—but Which Should Definitely Be Done.....	123
Diagram 12: Lists to Look at When You Research.....	124

C.	<i>Updating</i> the Legal Rule—Arguably the Most Important Research Task .....	127
D.	The Miracle of <i>Digests</i> for Case Law.....	129
E.	Making Sense of What You Find: Sorting the Weight of Primary Sources .....	132
	Diagram 13: Mandatory and Persuasive <i>Precedent</i> in State Courts .....	134
	Diagram 14: Mandatory and Persuasive <i>Precedent</i> in Federal Courts .....	135
	Diagram 15: Relevancy Scale.....	138
F.	Good Research Habits .....	138
G.	When Do I Stop Searching? .....	140
	Chapter 4 Legal Skills.....	142
	Chapter 4 Vocabulary .....	142
	Chapter 4 Research and Analysis Exercises .....	142

## SECTION II. WHEN YOUR LEGAL ISSUE COMES ALONG: IRAC

<b>Chapter 5. Issue, Rule, Application and Conclusion .....</b>	<b>153</b>
Part I. The Building Block of Legal Analysis— <i>IRAC</i> .....	153
Diagram 16: Understanding <i>IRAC</i> .....	155
Part II. <i>IRAC</i> as a Way to Understand the <i>Case Brief</i> .....	161
Diagram 17: Comparison of <i>IRAC</i> and the <i>Case Brief</i> .....	162
Diagram 18: Parts of the <i>Case Brief</i> Explained .....	164
Chapter 5 Legal Skills.....	184
Chapter 5 Vocabulary .....	184
Chapter 5 Research and Analysis Exercises .....	184
<b>Chapter 6. Determining the Legal Issue and the Legally Relevant Facts .....</b>	<b>189</b>
Part I. Issues.....	189
A. What Is a <i>Legal Issue</i> ? .....	189
B. How Do We Articulate the <i>Legal Issue</i> ?.....	190
Diagram 19: Articulating a <i>Legal Issue</i> .....	191
Diagram 20: Using a Chart to Articulate the <i>Legal Issue</i> .....	192
C. Importance of the Rule in Spotting a Legal Issue .....	194
Part II. <i>Factual Issues</i> : Spotting a <i>Factual Issue</i> Regarding One Element ....	200
Part III. <i>Legal Issues</i> : Identifying a <i>Legal Issue</i> in a Supreme Court Case ....	203
Chapter 6 Legal Skills.....	214
Chapter 6 Vocabulary .....	214
Chapter 6 Research and Analysis Exercises .....	215
Diagram 21: Using a Chart to Articulate the <i>Issue</i> .....	215

<b>Chapter 7. The Rule, Synthesizing the Rule, and Explaining the Rule.....</b>	<b>227</b>
Part I. A Quick Review of Rules .....	227
Part II. <i>Synthesizing</i> the Rule .....	229
A. What Is <i>Synthesis</i> ? .....	229
B. Everyday Examples of <i>Synthesis</i> .....	230
Diagram 22: <i>Synthesis</i> Chart of Everyday Scenario.....	232
C. <i>Synthesizing</i> the Rule from Case Law.....	234
Diagram 23: <i>Synthesis</i> Chart of Case Law.....	238
D. <i>Synthesizing</i> the Rule from Two Statutes .....	240
Diagram 24: <i>Synthesis</i> Chart of Two Statutes .....	243
Part III. <i>Explaining the Rule</i> .....	244
Chapter 7 Legal Skills.....	247
Chapter 7 Vocabulary .....	247
Chapter 7 Research and Analysis Exercises .....	248
 <b>Chapter 8. Rule Application .....</b>	 <b>253</b>
Part I. What We Mean When We Say <i>Rule Application</i> .....	253
A. The Process of <i>Legal Reasoning</i> : Examples of Applying Law to Facts .....	254
1. Example of Implicit Reasoning—the Parrot Case.....	254
2. Example of Explicit Reasoning—the Nazi March Case .....	257
3. Example of Explicit Reasoning from IRAC Exercises.....	259
Part II. <i>Holding</i> Sentences and Legally Relevant Facts.....	261
A. Examples of <i>Holding Sentences</i> from the Parrot Case.....	262
Diagram 25: Components of a <i>Holding Sentence</i> .....	265
B. Examples of <i>Holding Sentences</i> from the Nazi March Case...	265
Diagram 26: Components of a <i>Holding Sentence</i> .....	267
Part III. Distinguishing Between the <i>Substantive Holding</i> and the <i>Procedural Holding</i> in Cases .....	268
A. Background on Procedural Versus Substantive Holdings...	269
B. Recognizing <i>Procedural Holdings</i> .....	272
Diagram 27: Recognizing <i>Procedural Holdings</i> in Trial Court .....	273
Diagram 28: Recognizing <i>Procedural Holdings</i> in Appellate Court .....	274
C. Recognizing <i>Substantive Holdings</i> .....	275
Diagram 29: Recognizing <i>Substantive Holdings</i> .....	275
Part IV. Understanding <i>Summary Judgment</i> .....	276
A. Recognizing <i>Summary Judgment</i> .....	278
Diagram 30: Understanding <i>Summary Judgment</i> .....	279
B. Example Demonstrating How <i>Summary Judgment</i> Works.....	280

## Table of Contents

xi

Chapter 8 Legal Skills.....	282
Chapter 8 Vocabulary .....	283
Chapter 8 Research and Analysis Exercises .....	284
<b>Chapter 9. Methods of Rule Application.....</b>	<b>285</b>
Part I. Construing the Rule <i>Broadly</i> or <i>Narrowly</i> .....	286
A. Everyday Examples of <i>Broad</i> Versus <i>Narrow</i> Construction.....	287
B. Recognizing Broad Versus Narrow Construction in Case Law .....	289
Part II. Using Comparisons to Make <i>Analogies</i> or <i>Distinctions</i> .....	295
A. Everyday Examples of Analogies and Distinctions.....	296
B. Recognizing <i>Analogies</i> and <i>Distinctions</i> in Case Law.....	298
Part III. Understanding and Using the Purpose Behind the Rule .....	302
A. Everyday Examples of Recognizing the Purpose Behind a Rule.....	303
B. Recognizing the Purpose Behind the Rule in Case Law.....	304
Chapter 9 Legal Skills.....	309
Chapter 9 Vocabulary .....	309
Chapter 9 Research and Analysis Exercises .....	310

### SECTION III. CONCLUSION: PUTTING IT ALL TOGETHER

<b>Chapter 10. The Legal Memo.....</b>	<b>315</b>
Part I. Background on Legal Memos.....	316
Part II. Working Through an Example.....	320
A. The <i>Heading</i> .....	321
B. Question Presented or Issue .....	322
C. Short Answer .....	324
D. Facts.....	326
E. The Discussion .....	333
F. The Conclusion.....	343
Chapter 10 Legal Skills .....	345
Chapter 10 Vocabulary .....	346
Chapter 10 Research and Analysis Exercises.....	346
<b>Chapter 11. Onward and Upward—Persuasion.....</b>	<b>353</b>
Part I. Background on Legal Argument.....	355
Part II. Working Through an Example.....	357
A. The <i>Caption</i> .....	357
B. The Introduction or Summary of Argument.....	359
C. Statement of the Facts.....	359
D. Argument.....	362

---

E. Conclusion.....	364
Chapter 11 Legal Skills .....	365
Chapter 11 Vocabulary .....	366
Chapter 11 Research and Analysis Exercises.....	366
<b>Bibliography .....</b>	<b>369</b>
<b>Appendix A. Identifying Legal Sources Through Citation .....</b>	<b>371</b>
<b>Appendix B. Instructions and Rubrics for Case Briefing.....</b>	<b>383</b>
<b>Appendix C. Sample Case Briefs and Case Holding Sentences .....</b>	<b>389</b>
<b>Appendix D. Sample IRACs.....</b>	<b>399</b>
<b>Appendix E. Sample IRAC, Memo and Motion .....</b>	<b>403</b>
<b>Appendix F. Databases and Resources for Legal Instruction and     Legal Research .....</b>	<b>411</b>
<b>INDEX.....</b>	<b>415</b>