LEGAL SYNTHESIS AND ANALYSIS

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Detailed Licensing

Licensing

*A detailed breakdown of this resource's licensing can be found in **Back Matter/Detailed Licensing**.*

1: Getting Ready to Write

As Yogi Berra once said, “The best place to begin is at the beginning.” Legal writing has three stages:

1. Pre-writing (research, planning)
2. Drafting (writing)
3. Revising (rewriting, proofreading, editing)

Expect to spend 50% of your budgeted time in the pre-writing stage, and the remaining 50% in the drafting and revising stages.

Pre-Writing

Think about the last time you needed to write a paper. Did you sit down at your desk with your laptop, open up Microsoft Word to a new blank document, place your fingers on the keyboard, and start composing beautiful prose that flowed from your mind through your fingers onto the screen without any need to stop until you had finished writing a complete and perfect paper? Wait, does that not sound right? What about this: Did you sit down at your desk with your laptop, then get up to get a drink, then text some friends, then go to the bathroom, then return to your laptop and think to yourself, “I will never ever find a single word to write on this paper and the assignment is stupid and I just can’t?” You could also be a student who has never written a lengthy paper, so you do not have prior writing experiences to reflect on. Maybe you are returning to school after some time out of school and you cannot remember how you used to write a paper of any length. Or maybe you do not yet see how projects you have completed also count as writing projects, or at least will benefit from the same steps that are used in the writing process. Making a presentation to a boss, generating a lab report, and filling out spreadsheets with collected data are all projects that benefit from implementing the writing process, including these prewriting steps.

One of the biggest mistakes that writers make is to fail to consider the entire writing process timeline of a document. **Prewriting**, that time before you sit down to put words on a page, is an often-overlooked part of the writing process. There are two parts to prewriting. The first step is to assess what you need as a writer to create the best possible environment and the second step is to perform the preparation steps that come prior to writing.

Self-Assessment

Assessing yourself as a writer is something that you should complete in-depth every term. Although you should be sure to implement what you learn about yourself as a writer for every writing project you undertake, you will not need to complete a full assessment each time. For a starting point, consider completing this self-assessment questionnaire from Pam Jenoff, The Self-Assessed Writer: Harnessing Fiction-Writing Processes to Understand Ourselves as Legal Writers and Maximize Legal Writing Productivity, 10 Legal Comm. & Rhetoric: JALWD 187, 192 (2013).

Self-Assessment Questionnaire

Part One - Environmental/Atmospheric Preferences

1. What is your preferred time of day to write? Why?
2. What is your preferred writing environment? (Location? Activity or quiet?)
3. What is your preferred writing medium? (Desktop, laptop, longhand?)
4. Are there particular foods or beverages that enhance your writing experience?

Part Two - Substantive Assessment

1. What are your writing strengths?
2. What are your writing weaknesses?
3. Describe some of your prior favorite writing experiences. Least favorite?
4. Describe your writing style.
5. How do you like to begin a writing project?

You should consider these questions as a starting point to assess yourself. Other things you can consider for environmental and atmospheric preferences include what you prefer to wear when you write, whether you want to listen to music, and how much space you like to have to spread out your materials. When completing your substantive assessment, also ask yourself what evidence

you have to support your strengths and weaknesses. Ask why you identify certain previous writing experiences as favorites and least favorites; what do the favorites have in common and what set them apart?

Once you have determined what your preferences are to create an ideal writing environment, you will then need to assess whether you can meet those preferences. If you cannot, and chances are there will be times when you cannot, have a plan for what to do to cope with writing environments that are less than perfect. Consider how you can use your current environment to work best for you. If you have to write in a noisy environment, can you use earplugs or noise cancelling headphones? If you do not have access to a desk, can you use a dining room table? If your internet is unstable, can you go to a library or coffee shop?

Preparation Steps

The second part of prewriting is the series of steps that you should take prior to sitting down to put pen to paper. This part should feel familiar! However, many people forget to include these steps as vital parts of the writing process, which can result in either people not budgeting sufficient time for these steps or feeling like they are wasting time when they should be writing. Paying careful attention to these steps of the writing process is just as important as the others! This list is an overview of the prewriting process that you should use before starting to compose your written document:

- Read the assignment and any accompanying documents.
- Gain mastery over the facts.
- Develop your research plan.
- Read the authorities you find.
- Develop what categories you will use to determine relevancy.
- Retain the authorities that are relevant to deciding your legal issue.
- Analyze the remaining authorities to determine what narrow issue to use to answer your legal question.
- Map out how you will use the authorities to support the conclusion you draw.

And then, write.

Accept that there is more to creating a quality written document than just the time spent typing away on the keyboard. Discover the set-up that works best for you and build in time to your writing process to lay groundwork that sets you up for success.

Overview of Stage 1 (Pre-Writing)

The first stage involves factual and legal research, as well as general planning of how you will draft the required document or present your research findings.

Factual research:

Most legal writing involves drafting documents related to client services (for example, wills, contracts or other legal forms), or documents related to answering client questions. Regardless of the type of document you are drafting, you need a factual context.

For wills, contracts, and most other legal forms, the documents will inform you as to the factual information you need to complete them. Most law offices have checklists and/or templates for those types of documents.

This textbook focuses on Legal Analysis and Writing related to documents designed to assist the lawyer with answering client questions and providing legal advice to the client. As such, you'll want to begin by conducting factual research comprising

1. Reviewing all of the client file materials provided to you,
2. Interviewing the client and other relevant persons to "fill in the factual gaps" and obtain more detailed information than what is contained in the client's file, and
3. Obtaining copies of documents or reports relating to the client's question. For example, this could include accident reports, weather reports, insurance policies, medical records, etc.

Of course, you'll want to discuss with your supervising attorney what information is required, the attorney's strategy for obtaining the information, and the scope of your responsibility/authority for obtaining it.

Your factual research will form the basis for identifying the specific legal questions that need to be researched in the next step.

Legal research:

Keeping in mind your time and cost constraints, thoroughly research your issue(s). Your supervising attorney should provide you with guidance as to the best place to start your legal research. Often, the best places are statutes, administrative codes, and jury instructions.

Remember to organize your notes by legal issue, using a separate piece of paper (or Word document) for each legal question that requires research. Doing so will help you when the time comes to experiment with issue organization in the drafting stage.

While it's fine to start with a broader legal question (Is the client likely to be convicted of arson?), be prepared to revise that broad legal question into more focused and specific questions relating to narrower parts of that question (Will the State be able to prove that the client intentionally set a fire?). Sometimes the meaning of a single word within a statute becomes a legal question requiring additional research.

A good, complete set of research notes would include:

1. Notes demonstrating the researcher's determination of legal resources to research (statutes annotated, case digests, secondary sources, etc.);
2. Notes showing the researcher's brainstorming of research terms to look up in indexes, digests, or on computerized legal research sites such as FastCase®, Westlaw® or LexisNexis®;
3. Notes showing the research as it progresses (showing possible statutory sections to look up, or possible digest topics, based upon findings in the index);
4. Dates on which the research is performed, as well as the amount of time spent each day performing research (for billing purposes);
5. A system showing that all updating of authorities has been performed, and the date on which it was performed (using Shepard's®, or other computerized updating).

After researching and before beginning your first draft, take the following steps:

Assess purpose: To inform, persuade or advise; that is the question! How will you or your supervising attorney use the document? The purpose may be to inform the attorney and others working on the file of the current state of the law, as in a legal research memorandum. Sometimes the purpose is to persuade someone to adopt your view of the facts/law, as in a trial brief or settlement demand. Other times the purpose is to advise the client of the best course of action, given the facts and the state of the law. Your assessment of the document's purpose will affect its tone and language.

Assess audience: Who is your intended reader? Your assessment of the intended audience will affect your document's tone, language and degree of formality. For example, if your intended reader is an adversary, your tone will be more assertive. Similarly, if your intended reader has a legal or other specialized background, you are more likely to use legal or technical jargon in your document than if your intended reader is an average lay person. Additionally, the degree of formality will be higher if your intended audience is a Judge than it would be for a long-time client (but of course, your tone will always be professional).

Assess tone: What emotion do you want your document to convey? A document having an informative purpose will use a neutral tone. A document having a persuasive purpose will use an assertive tone. Finally, when advising a client, a respectfully instructive tone is appropriate. Tone is conveyed primarily through word choice and sentence structure. Certain words have positive or negative connotation (or "feelings") attached to them: there is a world of difference between a "child" and a "juvenile."

Mapping: What ideas must your document contain, and in what order? For simpler documents, such as letters, status memos or transactional documents, checklists are a particularly effective means to ensure that you include all of the necessary components/information. For documents involving legal analysis, such as legal research memoranda or trial/appellate briefs, outlining each issue to be addressed is an important step.

Overview of Stage 2 (Writing/Drafting)

Once the planning is complete, it's time to move to Stage 2: Drafting. In this stage, you will use your checklist/outline from Stage 1, as well as your assessments of audience, purpose and tone to start writing. Remember, you probably have about 50% of your budgeted time to spend in Stage 2 and Stage 3 (revising).

How much time you spend drafting versus revising depends on the type of writer you are. Some people spend a lot of time on their first drafts, revising as they go, such that very little revision is needed once that first draft is complete. Others are more comfortable getting their ideas down on paper (or computer) very quickly; these people spend much more time (hopefully!) revising than drafting. Whatever your personal style, plan to spend quality time in each stage.

When you are starting your first draft, there are several things to consider to help you keep in mind what the final product should look like.

Format: How should your documents look? Many legal documents require a specific format, with specialized headings and/or components. For example, letters are written on company letterhead. In Wisconsin, pleadings and other documents that are e-filed have required formats. You will learn about two formats in this textbook: Case briefs and Legal Research Memoranda.

Framework: How will you address the substance of your documents? Case Briefs and Legal Research Memoranda are based on formulas directing the order in which to address components. Different lawyers may use frameworks that differ slightly from the frameworks you will see in this textbook, but most of the components will be very similar. Before starting your first draft, make sure you know your supervising attorney's preferences.

Structure: How will you compose/construct paragraphs and sentences within each component of your document? Different documents call for different types of paragraph and sentence structures. For example, the discussion section of a Legal Research Memorandum uses the IRAC (issue, rule, application, conclusion) structure.

Clear writing: Which words, grammatical structure, punctuation, etc., will best convey your message? Usually, simple, direct, short words and sentences are most clear. Above all, you must remain professional. Clear writing is addressed in the Writing Fundamentals section of this textbook.

Overview of Stage 3 (Revising/Rewriting/Proofreading/Editing)

Once your ideas are down on paper, it's time to move to Stage 3: Revising. In this stage, you will refine the presentation of your ideas. The idea is to make sure your writing doesn't get in the way of the reader's comprehension of your message. **No matter how good your first draft appears, you should spend time revising it!**

Revising has two elements. Usually, people are strong in one element and may struggle a bit with the other element. When deciding where to start your revisions, think about how you would answer the following questions:

- Do you work more effectively if you first tackle difficult tasks and then move on to tasks that are more "in your wheelhouse?" Or does it work better for you to build confidence with tasks that come naturally to you before moving on to challenging tasks?

- Are you detail-oriented or big-picture-oriented?

Regardless of how you answered those questions, be sure to spend quality time in both elements of revision: (1) Micro-editing (making sure the details are correct) and (2) Macro-editing (making sure the document "as a whole" is correct).

WRITING FUNDAMENTALS (A CLOSER LOOK AT STAGE 2)

Once you've completed Stage 1 in the writing process, it's time to move on to Stage 2, the drafting stage. Here, we will review the components of clear writing: Proper punctuation, spelling, and grammar; appropriate word choice; effective sentence structure; smooth transitions; and logical organization.

Wait a minute. I know I've had that stuff in other courses…do I really have to learn about it again?

Yes, yes, absolutely yes! As a legal practitioner, your primary means of communication will be written communication. Your written language is thus a direct reflection of you as an intelligent, credible professional. Poor writing is a bad reflection on you and could sabotage your career. Clear writing enhances others' opinions of your intellect and credibility; clear writing commands respect.

Compare your writing to a construction project. Your final product is the "dream house" that will become your home. The punctuation, spelling, grammar, and words are your building materials; sentence structure, transitions, and organization are your workmanship. Substandard building materials and shoddy workmanship inevitably lead to a crummy house. You wouldn't put a pit toilet in a castle, would you? And regardless of the type of toilet you install, you wouldn't put it in the kitchen or forget to connect the drain, right?

Let's take a closer look at our building materials…

Proper Punctuation

Punctuation is the material that holds your sentences and words together. The wrong nails will not properly hold the framing or might stick out, ruining other materials. Likewise, the wrong punctuation won't hold your words or sentences together, and, to the trained eye, will certainly "stick out." For example, misuse of the lowly comma can wreak havoc with a sentence: "Students who cheat and plagiarize should be removed from the program" versus "Students, who cheat and plagiarize, should be removed from the program". In the first scenario, only the cheaters will be removed. In the second scenario, all students will be removed since they are all cheaters (this is most certainly not true!).

Proper punctuation placement proclaims professionalism. Punctuation pitfalls are pernicious! Following are some of the most common "Punctuation Pitfalls" to avoid.

The comma (,)

The comma is the workhorse of the English language. It is properly used to

- Precede a title (Mr. Jones, President; Al Johnson, Jr.)
- Write about a specific date (September 23, 2019)
- Differentiate between an abbreviation and the end of a sentence. (Andromeda, Inc., manufactures widgets.)
- Set apart a parenthetical phrase (Babies, who are helpless, require constant care.)
- Introduce a quotation. (She said, "I'll have what she's having.")
- Separate words in a series (I like bananas, coconuts and grapes). There is disagreement over whether a comma should precede the word "and" in a series. Either include it or don't, but be consistent throughout your document.

The comma *should not be used*

- As a cure-all for run-on sentences
- Following the phrase, "as well as"
- To connect two sentences together into one sentence (this is known as a comma splice)
- To write about a non-specific date (***not*** Spring, 2020 or September, 2019 – also, don't put the word "of" in these date phrases)

The semicolon (;)

The semicolon is used when a comma isn't strong enough to get the job done. It is properly used to

- Separate two related ideas contained in one sentence, when each of the ideas is itself a full sentence. (Roses are yellow; violets are blue.)
- Precede an adverbial conjunction, such as however, therefore, nevertheless. (Dogs are great pets; however, cats require less maintenance. Every bone in her body ached; nevertheless, she finished the race.)
- Separate the series within a series. (I like bananas, coconuts and grapes; beef, turkey and fish; and broccoli, carrots and corn.)

The colon (:)

A colon is primarily used as a grand introduction. It strongly emphasizes the phrase that follows it.

- A colon should only be used following a main clause that is itself a complete sentence. (President Clinton walked up to the podium: "It depends on what the meaning of 'is' is.")

- A colon should not be used to introduce information or a series. (***Not*** "The library hours are: 9 a.m. to noon." ***Not*** "She played: soccer, baseball and basketball.")

Quotation marks (" ")

Quotation marks record what others have said. Make sure you understand when to use double (" ") and single (' ') quotation marks.

- Use double quotation marks
  - around a short (less than 4 lines of text) quotation.
  - around a quote within a long quote (long quotes are single spaced, double indented, and have no quote marks surrounding them. Court opinions frequently use this format.)
- Use single quotation marks for a quote within a quote when the entire quote is less than 4 lines of text. (Karen said, "I heard Tom tell Jane, 'I went shopping yesterday.' We were standing outside when he said it."

? Exercise

To test your punctuation prowess, go to this website (opens in new window).

Capitalization, Numbers, and Time

Once again, there are so many tricky rules to follow! Here are some you will most commonly run into in legal writing:

- **Capitalization is required**
  - For proper names and titles, if the title refers to a specific person or entity (President Lincoln; the State of Wisconsin; George Jones, President and CEO of Americo; the Trial Court)
  - For the first word of a quotation, if the quotation is a complete sentence ("Haynesworth is a dirty crook," the witness stated.)
  - In a phrase using a room designation, if the room name or number is right before or after the word "room" (Today's meeting is in Room 322. The wedding reception is in the Niagara Room.)
- **Capitalization is not required**
  - For titles, if the title refers to a general category of persons or entities (All of our presidents have been men. There are fifty states in the United States of America. Trial courts must make specific findings of fact.)
  - For the first word of a quotation, if the quotation is not complete sentence ("Haynesworth," the witness stated, "is a dirty crook.")
- **Numbers should be written out as words when**:
  - The number is ten or less
  - For approximations (The paper route is approximately twenty miles long.)
  - Writing about fractions that are not preceded by a whole number ("The meeting starts in one half hour" ***not*** "The meeting starts in ½ hour")
  - Writing about decades or centuries (The twentieth century; The roaring twenties)
- **Use numerals when:**
  - The number is 11 or higher
  - Writing about fractions that are preceded by a whole number; use a space after the whole number (1 ½, ***not*** 1½, or one and one half)
  - Using numbers in a series (Jimmy ate 2 apples, 11 grapes and ½ pound of watermelon.)
  - Writing about dimensions, measurements, temperatures, percentages and page numbers (The room is 12 by 15 feet; yesterday's temperature was 85 degrees; see the sample on page 1002; Unemployment is down 2 percent) – notice that the measurements (feet, degrees, percent) are written out and not abbreviated.
- **When writing about time:**

- Write out the numeral if using “o’clock”, and don’t use “a.m.” or “p.m.” (The hearing begins at eleven o’clock.)
- Use numerals and either “a.m.” or “p.m.” if you don’t use “o’clock” (The hearing begins at 10:30 a.m.)
- Use only the numeral if writing about a time exactly on the hour (“The meeting will end at 11 a.m.” ***not*** “The meeting will end at 11:00 a.m.” The reason for this rule is that :00 is actually an abbreviation for o’clock.)

Proper Spelling

Always run spell-checker on everything you draft, whether it’s a document, Excel workbook, PowerPoint presentation, etc.! While you’re at it, **make sure your spellchecker is checking words in ALL CAPS (in MS Word, click file>more>options>proofing, uncheck “ignore words in UPPERCASE”).**

When you run spell-checker, be careful! Look closely at every error that is flagged as a spelling error. It’s so easy to go quickly through and “ignore” when a person’s name comes up as a misspelling. If a name comes up as a misspelling and you’ve spelled the name correctly, it’s OK to click “ignore all” – you can even add the name (and other legalese, such as per stirpes) to the dictionary.

After you run spell-checker, run “dumb-checker” – that’s your brain. Although spell-checker is constantly improving, it won’t catch all of the errors involving missing words (or missing letters in words). Spell-checker also might not catch homonyms (words that sound alike but are spelled differently and have different meanings). Beware these tricky “evil twins!”

Word	Meaning	"Twin"	Meaning
effect	the result (a noun)	affect	impact (a verb)
principle	rule, standards, primary	principal	the “main man” $ in a trust/investment
lead	as a noun, it’s a metal	led	past tense of the verb “lead” (She led the way)
elude	escape, dodge	allude	suggest, refer to
waiver	giving up something	waver	being indecisive
incite	start, provoke	insight	perception, knowledge
weather	the conditions outside	whether	if
to	a preposition (give it to me) part of an infinitive (to run)	too two	also the number 2
ensure	make definite	insure	protect against loss
choose	rhymes with chews present tense verb (choose me!)	chose	rhymes with hose past tense verb (he chose me)
loose	rhymes with moose adjective (the loose moose)	lose	rhymes with booze verb (drive with booze and you will lose)
their(s)	possessive of “they”	there’s	there is
your	possessive of “you”	you’re	you are
its	possessive of “it”	it’s	it is

Of course, there are many others, so it’s important to slowly and carefully proofread for spelling. If you’re unsure, take the time to look up the word in a dictionary. The time you spend doing this will be worth it. Mistaken use of homonyms can be fatal to an otherwise excellent piece of writing.

Proper Grammar

Grammar is crucial to getting your ideas across accurately. Improper grammar can result in the meaning of your sentence being lost or changed. There are many components to proper grammar; only a few are highlighted here. Spell-checker can help with grammar too, but it's not perfect. Here are some common grammar gaffes:

Adjective/Adverb Confusion: Both adjectives and adverbs give us additional information about something adding context and interest to your sentence. However, there are some important differences.

- Adjectives describe nouns (size, color, characteristics).
- Adverbs describe verbs, conditions, or reasons; sometimes they answer the question of "how." Typically, adverbs end in "ly." Notice the differences below:
  - A quick fox (adjective). A fox runs quickly (adverb).
  - Use clear writing (adjective). Writing clearly is important (adverb).

Pronouns: These are designed to replace a noun and can be very troublesome! Make sure you are using the correct pronoun (and spelling it correctly), based on what part of the sentence in which it appears.

- Use subject pronouns in the subject part of the sentence (Who or what is doing the action in the sentence)
  - "He and I went to the store." (***not*** "Him and I went to the store;" also not "Him and me went to the store.") When in doubt, write it separately before combining pronouns: "He went to the store." (We'd never say, "Him went to the store.") "I went to the store." (We'd never say, "Me went to the store.")
  - "Who is that masked man?"
  - "This is the man who was in jail." (Two sentences would be "This is the man. He was in jail." He and who are both subject words)
- Use object pronouns in the object part of the sentence. Use them when they receive the action, or after a preposition (such as to, for, from, under, etc.)
  - "Billy hit me/him/her/us/them."
  - "She gave the ball to me/him/her/us/them."
  - "Give me/him/her/us/them the ball."
  - "This is the man whom I mentioned earlier." (Helpful hint: two sentences would be "This is the man. I mentioned him earlier." Him and whom are both object words)
  - "To whom are you speaking?"
- Use possessive pronouns to show possession. (**NOTE**: **none of the possessive pronouns uses an apostrophe**!!)
  - "His dog is cute. Its name is Fido."
  - "Whose dog is this?"
- Use reflexive pronouns only if you have a subject that relates to the pronoun
  - "I ask myself this question all the time."
  - "He gave himself a raise."
  - "If you have any questions, feel free to contact Attorney Ramsdon or me." ***not*** "If you have any questions, feel free to contact Attorney Ramsdon or myself." (Again, think of two separate sentences. "If you have any questions, feel free to contact Attorney Ramsdon." and "If you have any questions, feel free to contact me." You wouldn't tell a client, "If you have any questions, feel free to contact myself."

Here's a chart than can help you choose the correct pronoun:

Subject	Object/Preposition	Possessive	Reflexive
I	Me	My/mine	I … myself
You	You	Your/yours	You … yourself
He/she/it	Him/her/it	His/hers/its	He … himself She … herself It … itself
We	Us	Our/ours	We … ourselves
They	Them	Their/theirs	They … themselves
Who	Whom	Whose	(not applicable)

Once you decide how your noun or pronoun is being used (or one of many pronouns in a phrase), you can substitute virtually any pronoun in the same column. Choose the one that is easiest for you to write correctly.

Additional problems can arise when substituting a pronoun for one or more nouns or names.

- Substitute singular pronouns for singular nouns or a single name:
  - "Each child should know his or her phone number." ***not*** "Each child should know their phone number."
  - "Schneider Corporation should fairly pay its employees." ***not*** "Schneider Corporation should fairly pay their employees."
- Substitute plural pronouns for plural nouns or multiple names
  - "All children should know their phone number."
  - "Schneider Corporation and McDonalds Corporation should fairly pay their employees."
- Don't substitute a pronoun for a noun or a person's name if the result is vague meaning.
  - She loaned her her prom dress. *I have no idea what's going on here!*
  - Tiffany loaned Justina her prom dress. *OK, now I know who is loaning whose dress to whom.*

Verbs: These action words present many potential traps for the unwary. Regular verbs, irregular verbs, and all the possible verb tenses (would you believe there are **24** of them?) make English one of the most difficult languages to learn. Watch out for these common verb usage traps:

- Singular/plural subject-verb disagreement (when there is only one subject of the sentence)
  - A singular subject requires a singular verb
    - These nouns are singular: corporation, jury, class, anyone, each, either, everybody, everyone, neither, nobody, none (usually), no one, somebody, and someone
    - "The jury is required to answer all of the verdict questions." ***not*** "The jury are required to answer all of the verdict questions." (even though a jury is made up of multiple people, the sentence refers to a single group).
    - "A dog makes a fine pet."
  - Plural subjects require a plural pronoun and a plural verb
    - "The jurors are required to answer all of the verdict questions." ***not*** "The jurors is required to answer all of the verdict questions."
- Singular/plural subject-verb disagreement (when there are multiple subjects in the sentence)
  - When all of the subjects are singular, the verb form is dictated by the "connector" between the subjects:
    - "Or" is disjunctive (or separating). That means multiple singular subjects require a singular verb:
      - "A dog **or** a cat makes a fine pet." ***not*** "A dog or a cat make a fine pet." If you were to write two separate sentences, you would write, "A dog makes a fine pet. A cat makes a fine pet."
    - "And" is conjunctive, bringing together multiple subjects and making them a plural subject requiring a plural verb:

        - "My cat and dog are good companions." ***Not*** "My cat and dog is a good companion."
    - When you have combinations of singular subjects and plural subjects connected by the word "or," the subject closest to the verb dictates the verb form:
        - The cat (singular) or the dogs (plural) are (plural) responsible for the damage to the furniture.
        - The dogs (plural) or the cat (singular) is (singular) responsible for the damage to the furniture. (Grammatically correct, but awkward to read. The first version of this sentence is better)
- Split infinitives – don't put an adverb between the parts of an infinitive verb ("To run quickly" ***not*** "to quickly run")

Prepositions: A preposition is a word or group of words used before a noun, pronoun, or noun phrase to show direction, time, place, location, spatial relationships, or to introduce an object. Some examples of prepositions are words like "in," "at," "on," "of," and "to." Here are a few tricky rules:

- To refer to one point in **time**, use the prepositions "in," "at," and "on." **Do not use "for!"** (Reja had to be at work at 8 a.m. ***not*** Reja had to be at work for 8 a.m.)
- **Do not end a sentence with a preposition.**
    - "The class in which I am currently enrolled" ***not*** "The class I am currently enrolled in."
    - "To whom am I speaking?" ***not*** "Who am I speaking to?"

Contractions: Because they are informal writing, it's usually best to avoid using contractions in legal writing. Because you sometimes need to use them when writing a direct quotation, knowing how to properly write contractions is important. Here is a contraction table that might help you:

Original	"To be" (am, is, are)	"Have"	"Would"
I	I'm (I am)	I've	I'd
You	You're (you are)	You've	You'd
He/She/It	He's She's It's (it is)	He's (he has) She's (she has) It's (it has)	He'd She'd It'd
We	We're (we are)	We've	We'd
They	They're (they are)	They've	They'd
Who	Who's (who is)	Who've	Who'd
Where	Where's (where is)	Where've (where have)	Improper – often "where'd" = where did
What	What's (what is)	What've (what have)	Improper – often "what'd" = what did
Why	Why's (why is)	Why've (why have)	Improper – often "why'd" = why did
How	How's (how is)	How've (how have)	Improper – often "how'd" = how did

One more note: **"Would of" is never correct!** The correct way to write out the contraction for "would've" is "would have." The same is true for should've and could've.

Modifiers: These are words that give us additional information about words, typically either nouns or verbs. One thing to watch out for is the placement of modifiers within your sentence. Modifiers are descriptions of the word/words closest to them. A misplaced modifier can change the meaning of your sentence in unintended ways.

- A “female former attorney” = a female who once was an attorney, but no longer practices law
- A “former female attorney” = an attorney who once was a female and has transitioned to being a male (and continues to practice law)

Another tricky modifier is “only.” The following sentence is ambiguous and could have several meanings: “Liu agreed only to lend her sister money.” Here are the potential meanings:

- Liu agreed to lend money to her sister and no one else.
- Liu agreed to lend her sister money and nothing else (not clothes).
- Liu agreed to lend money, but not to give it as a gift.

To fix the sentence, either use one of these three options, or place the word “only” right next to the word to modify (only her sister… only money … only to lend)

Exercise

To find out whether you are a grammar guru, go to this website (opens in a new window).

Appropriate Word Choice

Words are the basic building blocks in your document. High-quality building blocks (words) are concise, concrete and accurate. This is not to say that a writer never wants to use words that are not concise or concrete! Sometimes, if you want to de-emphasize something that is harmful to your client, you want to use words that are less concise or concrete (but accurate nonetheless). The important thing is to make a ***conscious decision*** about the words you use.

Concise words: Words are concise if they are direct and clear.

- Avoid using flowery language or unnecessary words that don’t add meaning to the sentence

Wordy	Concise
In order to	To
Whether or not In the event that	If or whether (We will play soccer regardless of whether it is raining. He was unsure if we would play baseball next weekend.)
Enclosed please find	Enclosed is/are
In accordance with	Under

- Avoid jargon or “legalese” unless it’s absolutely necessary to the idea you are expressing or the document you are drafting
  - Jargon should be used only with experts in the related field (when writing to a doctor, refer to the larynx, rather than the voice box)
  - Legalese to avoid: phrases using “said” as a substitute for “the” (as in “said plaintiff”); heretofore, wherefore, aforementioned.
  - Avoid Latin phrases unless you are writing to an attorney or judge (and even then, be careful!)

Do not use this ...	If this will work as well
Accord	Give
Bequeath, Devise	Give
Per annum	Yearly, each year
Forthwith	Immediately
Party of the first (or second) part	The party's name or title
Utilize	Use
Inter alia	Among other things
Arguendo	For the sake of argument

Concrete words: When writing descriptions of events or things, it's important to help the reader to visualize an event or action. Sometimes we call these "picture words." Like actual concrete, we want our words to be strong and effective, rather than weak. Below are some side-by-side comparisons to help illustrate this point. Notice how the words on the "concrete" side allow you to create a detailed picture in your mind of what is being described, while the words on the right provide too little information for a detailed picture.

Concrete/Powerful	Weak/Vague
His arm was severed when it became caught in the threshing machine.	He injured his body part in the device at issue.
It rained every day for a week.	A period of unfavorable weather set in.
The defendant boasted that he knew where the witness was secreted	The defendant stated he knew where the witness was.

Concrete/Positive (what is/was)	Weak/Negative (what isn't/wasn't)
He usually came late to class.	He did not often arrive on time to class.
The politician was dishonest.	The politician was not truthful.
She forgot/failed to do her homework.	She did not remember to do her homework

Accurate words: In legal writing, we need to use words that convey exactly the intended meaning (both dictionary meaning and "emotional" meaning).

- Sometimes simple is better. What good is a word if your reader really doesn't understand it?
  - "inapposite" is a very powerful word, but few people outside the legal field know what it means. It is an adjective meaning that an example or legal authority is completely irrelevant and inapplicable
  - "apropos" is also a powerful word, but it is often misused as a synonym for "appropriate." Apropos means "having the characteristics of" or "an example of": "The team's inability to produce any offense in the playoffs is apropos of the entire season." (this problem has nagged the team all season long)

- Be aware of the connotation (or emotional baggage) attached to certain words and choose your words accordingly. Here are some examples of words that have the same basic meaning, but very different "emotions" attached to them:
  - Child – juvenile
  - Affordable – cheap
  - Determined – stubborn
- Watch out for slang and colloquialisms
  - Ain't, cop, and other slang aren't used in legal writing unless you are directly quoting someone who used those words
  - Colloquialisms (words with "local flavor") such as y'all and bubbler (instead of drinking fountain) also aren't used in legal writing unless you are directly quoting someone who used those words
- Watch out for "made up" words or usage that is aways incorrect
  - "**I seen**" is incorrect – instead, write "I saw" or "I have seen"
  - **Irregardless** is not a word!
  - Other incorrect words**:** alright, anyways, alot
- Don't abuse your thesaurus! A thesaurus is a useful tool to help you avoid repeatedly using the same words, or to help you find more accurate words. However, not all synonyms are created equal; don't just substitute a synonym for a word without being certain of its exact meaning. Following are some examples of substitutions to be used with caution:

Word	**Meaning/Usage**	**"Synonym"**	**Meaning/Usage**
Guilty of	Used with crimes He was found guilty of larceny.	Liable for	Used with civil matters. He was found liable for damages.
comprise	include, make up of A jury is comprised of 12 persons.	constitute	add up to Seven days constitute one week.
imply	suggest, indicate Her hesitation to answer implies guilt.	infer	assume, deduce One might infer from her hesitation to answer that she is guilty.
apprise	notify, inform He was apprised of the situation	appraise	estimate value, opine Please appraise these diamonds.
disinterested	neutral Service of process should be competed by a disinterested person.	uninterested	bored, uncaring I am uninterested in hearing about that event.
prescribe	to order Doctors prescribe medication	proscribe	forbid, prohibit Criminal laws proscribe certain conduct
Different from	used to show contrast, typically between nouns This situation is different from the one we had yesterday.	Differently (than)	used to show contrast (typically other than nouns) Let me know if you conclude differently. Berta saw things differently than Jonas.

Effective Sentence Structure

Sentence structure provides the framework for your words. The best building materials are useless if they aren't put together properly. There are a few things to consider when choosing your sentence structure.

Active voice: As a general rule, the subject (or main idea/actor) comes first, with the verb (action) as close to the subject as possible, and the object (where the action is going) following the verb. This is known as subject-verb-object (s-v-o) structure, or active voice. The active voice is preferred; the subject is doing the action described by the verb, rather than having the action done to it.

Jade hit the ball. S V O	Active voice. The subject, Jade, does the verb action, hitting.
The ball was hit by Jade. S V O	Passive voice. The subject, the ball, is receiving the verb action, hitting. If you see the word "by" in your sentence right after a verb, it's likely is passive voice.
Mary was arrested yesterday. S V No object/actor	Passive voice. The subject, Mary, is receiving the verb action, arresting. We know a police officer was the actor. Active voice would read, "The police officer arrested Mary yesterday."
The parties entered into mediation.	Passive voice. The verb, mediate, was turned into a noun (nominalization – look for -tion, -sion, or -ment endings to words). Active voice would read, "The parties mediated."

HOWEVER: This is not to say that a writer never wants to use passive voice! Sometimes, if you want to de-emphasize something that is harmful to your client, you want to use passive voice. I want you to make a ***conscious decision*** about the sentence structure you use.

Sentence fragments: If a sentence does not contain a subject or a verb, it is a sentence "fragment." Sometimes sentence fragments are tricky to identify.

- Whether a person is liable for dog bite injuries. This looks like a complete sentence, but it isn't!
  - The word "whether" is a conjunction (a connector, like and, but, or).
  - This sentence is incomplete because we don't know what happens next. Substitute the word "if" and the incomplete thought becomes clear: "If a person is liable for dog bite injuries."
  - Make the sentence complete by adding an active verb and an explanation: Whether a person is liable for dog bite injuries requires examination of the totality of the circumstances.
- Adverb clauses also are not complete sentences, for similar reasons – we don't know what happens next. The following are all sentence fragments:
  - Even when I'm sick.
  - When you have finished working.
  - Whenever you like.
  - Wherever we prefer.
  - Since I returned from vacation.
  - As she was not there.
  - Since you always do well.
  - Before entering high school.

Run-on sentences: Too many thoughts, topics, or ideas with only a period at the end constitute the classic run-on sentence. Many times, these are multiple sentences connected with commas (a comma splice) or no punctuation at all. A good rule of thumb is that if your sentence runs longer than two full lines in a document, look at it carefully to determine whether there are multiple sentences covering multiple ideas that should be split into multiple sentences with appropriate transitions.

Parallel Construction: Just like you want to use the same size lumber throughout your house frame, you want to use similar structure as to nouns, pronouns, verbs or articles for similar ideas. Parallelism involves:

- Consistency in series as to nouns
  - Last week we studied cultures of the French, the Spanish. and the Germans (all start with "the").
  - I like bananas, coconuts and grapes (all fruits); corn, carrots and beans (all vegetables); and beef, pork and chicken (all meats).
- Consistency in series as to verbs
  - Diedre was not certain her call was being recorded, but she suspected it may be recorded (verb are all past tense. Don't switch from past tense to present tense or future tense).
  - We discussed hiring, training and supervising new employees (all -ing verbs).
- Consistency when using correlative or comparative expressions
  - both…and; not…but; not only…but also; either…or; etc.) should be followed by the same grammatical construction
  - The ceremony was both long and tedious (one adjective on each side of both/and).
  - The ceremony was not only long but also tedious.
  - ***Not*** It was both a long ceremony and very tedious.
- Patterns in writing, in which similar ideas are expressed with similar words. An excellent example of good parallelism is the Beatitudes, which consistently uses a "blessed are ... for they shall" structure.

Smooth Transitions

The blueprint shows how all of the materials come together and relate to each other to make the building. Transitions between sentences and paragraphs give your document "flow" and tell the reader how the ideas are related. Transitions also signal the reader when a new idea is being introduced. Imagine the foreman gives you a bunch of building materials and tells you to build a castle, without giving you directions as to how to put the materials together. If you fail to use transitions in your document, you leave the reader with no direction as to how to put your ideas together. Your ideas will come across much better if the reader doesn't have to work hard to understand them.

- Transitions between sentences tell the reader how the two sentences are related
- Transitions between paragraphs tell the reader how the two topics are related
- Transitions also let the reader know when you are discussing a new topic

Here are some examples of the different types of transitions you can use:

Similarity	Contrast	Combinations	Chronology	Summary
Similarly Similar to Likewise Like In the same way	In contrast Unlike However On the contrary Contrary to On the other hand	Additionally Also Moreover Furthermore	First Next Finally Lastly	Therefore Thus Hence In Conclusion Ergo

? Exercise

For more ideas, visit this website (opens in a new window).

Logical Organization

The floor plan, layout, and flow of your dream house need to make sense. When you walk through the front door of your dream house, you don't want to walk into the bathroom. The same is true for the overall flow of your writing.

- Make sure the order in which you discuss topics makes sense. Some possible ways to organize:
  - Chronological (tell the story from beginning to end)
  - Cause/effect (it's usually best to discuss cause before effect/result)
  - By claim/transaction (discuss each legal claim or transaction completely before moving on to the next one)
  - By party/person (discuss each party's role in the legal claim or transaction completely before moving on to the next one)
- Finish your discussion of one topic before going on to the next topic. Going back and forth between topics, or jumping back to previous topics, can be very confusing.
- Other common problems to avoid include
  - improper cause and effect (I sneeze every time I go to my friend's house, so I'm allergic to my friend);
  - wrong proof, right conclusion (improper data or facts are used to reach a conclusion – all diamond rings are engagement rings);
  - right proof, wrong conclusion (other conclusions may follow from the facts – Lassie is a girl's name, therefore all dogs that portrayed "Lassie" were girls. This conclusion is incorrect.)

REVISING (A CLOSER LOOK AT STAGE 3)

Now that you've completed Stages 1 and 2 in the writing process, it's time to move on to Stage 3, the revising stage. As a legal practitioner, your primary means of communication will be written communication. Don't skip or gloss over this stage! Remember, the client is paying for effective legal writing. More importantly, your writing should come across as professional and intelligent as you are.

As mentioned previously, revising involves two components, Micro-editing and Macro-editing. Micro-editing focuses on the details, and Macro-editing focuses on the "big picture." Here, we will look at the two components involved in proofreading and learn some tips on how to put the final "polish" on our product. Editing is a difficult skill to learn, and the best writers are not always the best editors.

Micro-editing

Detail-oriented people typically experience micro-editing as a strength. It's like putting the final touches on your home construction project. This part of the project is a combination of artistry and skill. You need to catch all the mistakes!

- Check for all components of clear writing (punctuation, capitalization, numbers, time, spelling, and grammar).
- Review word choices and eliminate unnecessary words; make sure the words are appropriate to your tone and audience.
- Look for typographical errors in dates, measures, and names.
- Check all details for accuracy.
- Run spell-checker – carefully and slowly
- Run "dumb-checker" – there is no substitute for human eyes and brains.
- Check citations. Here are some tips for effective citation-checking:
  1. Mark all citations: Use a highlighter, red pen or other method
  2. Ask your supervisor for specifics: Where is this document going to be filed/used? Does your supervisor or the judge prefer underlining or italics?
  3. Know the Rules: Familiarity with *The Bluebook* and local court rules is key. For local court rules, ask a law librarian or the clerk of courts, or check the court's home page on the Internet.
  4. Document your corrections: Write down the page number of *The Bluebook* that supports your corrections.
  5. Develop a system to track the citations you have corrected, in case you are interrupted during your cite-checking process.
  6. Focus on the task at hand: Don't attempt to proofread for spelling, grammar or other items while cite-checking. If you notice a problem, highlight it for correction at a later time.
  7. Be thorough: Check ***all*** citations in the document, not just those appearing in the argument or discussion section.

8. Be consistent: Make sure titles and signals (such as *supra, id., see*) are always either underlined or italicized (not both). Make sure abbreviations are consistent.

Among other things, legal writing is characterized by the need for

- Precision/clarity – words matter! To many of us, the word "drinking" in certain contexts means consuming alcohol (Were you drinking prior to the accident?). However, a person can also drink juice, coffee, water, and other things, so the word "drinking" by itself is imprecise.
- Correct punctuation – misplaced commas can change meaning! There's a big difference in the meaning of "Let's eat, Grandma!" and "Let's eat Grandma!"
- Accuracy – make sure your sentence says exactly what you mean it to say.
- Conciseness – believe it or not, some types of legal documents have word limits. Also, your reader is much more likely to understand and/or be persuaded by sentences, arguments and documents that are not unnecessarily wordy. More is not always better.

? Exercise

Read more about concise legal writing here (opens in new window).

Macro editing

Big-picture-oriented people typically experience macro-editing as a strength. It involves looking at the "big picture" to make sure you've used the proper tone, that your document is logically organized with smooth transitions between ideas and paragraphs, that it contains all legally required components, and that it is internally consistent. It's like the "final walk through" in your construction project, when you ensure everything was built to specifications and the whole project and its components are consistent and work well together.

- Check for effective sentence structure.
  - Are the sentences clear and easy to read?
  - Are the sentences neither too long nor too short?
- Check for smooth transitions.
  - Do you effectively signal the reader when you are changing topics?
  - Is it clear how sentences, paragraphs and topics relate to one another?
  - Is the document as a whole easy to read? Does it flow well?
- Make sure the document's tone matches its purpose and audience.
- Use professional writing at all times
  - Avoid informal words, contractions, slang, and colloquialisms.
  - Don't "personalize" your writing with phrases such as "I believe" or otherwise using the first person "I."
  - Don't use exclamation marks, all caps, or a lot of boldfacing.
  - Your writing should never be sarcastic, hostile or condescending.
- Review organization. Is it logical? Does the ordering of topics make sense?
- Check for internal consistency throughout the document.
  - Does the document, as a whole, make sense?
  - Later parts of the document should not conflict with earlier parts of the document.
- Make sure the document is complete.
  - Does it have all of the required components?
  - Did you include all of the important facts and legal provisions?

Revision may seem like a tedious waste of time, but it is one of the most important steps in preparing a well-written document. The tricky thing about revising is that it's very difficult to catch errors in your own work. Your brain knows what is supposed to be there, and it will "fill the gaps" with missing words and unclear meaning. To combat this, set your document aside for a few hours before doing your micro- and macro-editing.

After you have finished both micro- and macro-editing read your document out loud – slowly.

Achieving Your Writing Goals

The ultimate goal is that your readers understand what you are trying to convey to them. Whether you are writing a letter, a case brief, or a memorandum, your communication must be clear and organized. The proper formats, used at different times, will make your writing easier to read and understand. The time you spend planning, writing, and revising will pay off in the form of supervising attorneys who trust your work and then reward you with more interesting and complex work as you continue in your legal career.

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2: Introduction to Legal Synthesis

The next several chapters will provide you with tools for legal analysis and higher-level legal writing. Legal synthesis occurs in at two steps:

1. While you are doing research, as you analyze each legal authority you find to determine its relevance to your client's question and its meaning (**micro-synthesis**); and
2. After your research is completed, and you determine the interrelationship between the legal authorities (**macro-synthesis**).

Answering a client's legal question is like putting together a puzzle. Usually, when you put together a puzzle, you have a picture of the completed puzzle on the box. The picture is like the client's legal question, and each puzzle piece is a legal authority or one of the client's facts that fit together to form the answer to the client's legal question. We'll use this analogy to help explain legal synthesis.

Micro-Synthesis

Imagine that you have lots of different puzzles, and all of the pieces to all of the puzzles are contained in a huge box. The first thing you need to do is figure out which of the pieces belong to the puzzle you are trying to put together. Using the picture of the puzzle you want to put together, you sort out the pieces that belong to that puzzle, leaving the rest in the box. As you carefully examine each puzzle piece, you are able to figure out if each individual puzzle piece belongs to the puzzle you want to put together.

In the context of legal synthesis, this means you need to figure out which legal authorities are relevant to your client's legal question. When you look up search terms in an index, you are performing synthesis in its broadest sense; you decide to retrieve and read legal authority only if it is listed under your search term. In other words, you decide whether the legal authority listed in the index might apply to your client's legal question.

Once you have a list of legal authorities to read and analyze, it is time to do an in-depth micro-synthesis of each one. This involves analyzing the facts and requirements of the legal authority, what it means and when/how it applies. After you have thoroughly analyzed the legal authority, the next step is to compare it to the facts and circumstances presented by your client's legal question. Each detailed comparison between the legal authority and your client's facts will get you closer to confirming that the legal authority applies to your client – or determining that it does not apply. Your micro-synthesis of each legal authority should involve the following steps:

1. Analyze the client's facts/legal question (legal questions/issues drive your legal research)
2. Determine the facts of the legal authority
3. Compare the client's facts to the legal authority's facts, looking for similarities/differences (this helps to determine if the legal authority applies)
4. Determine the legal rule set forth in the legal authority
5. Predict how the legal rule will apply to the client

After you have weeded out the puzzle pieces that clearly don't belong to your puzzle, you'll find you still have a fairly large pile of pieces. The next thing to do is to figure out how the puzzle pieces (or legal authorities) in front of you fit together to complete the picture (or answer the client's question). This is macro-synthesis.

Macro-Synthesis

When putting together a puzzle, most people start by sorting the puzzle pieces by shape or color, predicting how they might fit together. Using the picture on the puzzle box as a guide, you sort each puzzle piece into its place with the other puzzle pieces, based on its shape and color.

Similarly, once you know how all the legal authorities you micro-synthesized relate to one another, you can predict how the legal rules as a whole will apply to the client's legal question. Be prepared to repeat the micro- and macro-synthesis processes several times; very rarely can a client's legal question be answered after a "one and done" synthesis. Often a full analysis of the client's

question (for example, is the client likely to be convicted of arson) requires full analysis of sub-questions or sub-issues (as you will soon see, the State must prove several different elements to secure an arson conviction). Legal research frequently will start with one broad question, and then morph into two or more narrower questions that must be answered before the broad question can be answered. That is why you should organize your research notes by legal issue, with a separate page for each issue, rather than by legal authority type (codified law, common law, secondary authorities, etc.). Even if you end up placing the same legal authority on multiple research note pages, organizing by legal issue helps you to more easily see how each legal authority relates to each legal issue as well as how it relates to other authorities that address each legal issue.

Macro-synthesis typically involves the following steps (which are similar to the steps used in micro-synthesis):

1. Analyze the client's facts/legal question (legal questions/issues drive your legal research)
2. Compare the facts and requirements of all the legal authorities you micro-synthesized, noting the differences and similarities
3. Compare the client's facts to the legal authorities' facts, looking for similarities/differences (this helps to determine how the legal authorities apply)
4. Combine the legal rules set forth in the legal authorities to get a "big picture" of how the rules apply, and when the outcome of the application of the rules changes
5. Predict how the legal rule will apply to the client by determining where on the continuum of outcomes the client's facts best fit.

The next several chapters will focus on micro-synthesis tools and techniques for statutes and case law. Once we've mastered those, we'll move into macro-synthesis.

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3: Statutory Synthesis

Let’s dig a little deeper into statutory synthesis tools and methods.

Example - Mr. Willy Wonka

To give us some context, suppose we have a client, Mr. Willy Wonka, who has come to our law office because he was recently charged with arson. Our factual research revealed the following facts:

- A fire started at the Chocolate Factory, located in Green Bay, Wisconsin, at approximately 1 a.m. on January 30.
- The factory had been closed since 5 p.m. on January 29.
- No one was in the building and no equipment was operating at the time of the fire.
- The fire caused $1,000,000 in damage to the factory.
- Mary Worth, who lives across the street from the factory, stated that at around 1:30 a.m. on January 30, she saw a man dancing in the street in front of her house. This man was wearing camouflage clothing and was repeatedly shouting, “Burn baby burn!” Mary Worth was shown a photo lineup of potential suspects and identified our client, Willy Wonka, as the man she saw.
- The Fire Inspector found accelerants at several sites around the outside of the factory.
- The Chocolate Factory is insured by Safeco Ins. Company (policy number FA6660297-SW)
- The Chocolate Factory is jointly owned by Wonka and another man, Charlie Bucket.
- Currently, Charlie Bucket is under investigation for improper business practices. The Chocolate Factory’s financial records are being audited by Weegocha Auditing Company. The investigation and audit have revealed
  - The Chocolate Factory has been operating at a loss for 3 years
  - $1,000,000 is currently unaccounted for (or missing) from the financial records
- Both Bucket and Wonka have Preferred Player’s cards at LaCasino, a local gambling casino. Preferred Player’s cards are issued only to $1,000,000 players.
- When the police interviewed him, Bucket stated that he was unaware of any plan to set a fire at the Chocolate Factory, and that he would not have consented to such a plan if he were aware of it.

At this point, Wonka has been charged only with arson. There is no charge that he defrauded the insurance company. Based on these facts and the criminal charge, our first step is to locate the Wisconsin Statute that defines the crime of arson. After we locate and read the statute, we need to perform an in-depth micro-synthesis to determine whether it applies to Wonka, and if so, how it might apply to Wonka. In criminal cases, a conviction is appropriate only if each and every one of the statute’s requirements are met; therefore, it is very important to know what the requirements, or “elements,” of arson are in Wisconsin. Each element will become a sub-issue or sub-question of the broad question of whether Wonka is likely to be convicted of arson.

But first, the arson statute …

Arson of Buildings; Damage of Property by Explosives

Wis. Stat. §943.02(1) Whoever does the following is guilty of a class C felony:

(a) By means of fire, intentionally damages any building of another without the other's consent or;

(b) By means of fire, intentionally damages any building with intent to defraud an insurer of that building; or

(c) By means of explosives, intentionally damages any property of another without the other's consent.

(2) In this section "building of another" means a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building. Proof that the actor recovered or attempted to recover on a policy of insurance by reason of the fire is relevant but not essential to establish the actor's intent to defraud the insurer.

Whoa, there are a lot of pieces to this puzzle! There are three different circumstances described. There is a section that defines one of the phrases used in the statute ("building of another"), but there are a lot of other words that aren't defined – and some of those words could have several meanings. While it's good to recognize these complexities, let's not get bogged down by them. Micro-synthesis starts with the actual language of the statute and nothing more.

Micro Synthesis Tools for Statutes

There are a few options with respect to synthesizing statutes. Which ones you use depends on the type of authority you are trying to synthesize, and which tools work best for you personally. Sometimes it's helpful to use them all, especially when you are new to synthesizing. The ones we will look at are 5W and 1H (who, what, when, where, why how), and the Statutory Elements approach. Each has advantages and disadvantages, depending on the type of statute you are synthesizing, the complexity of the statute and the complexity of the client's facts.

5W + 1H Approach

This is one of the most basic tools. What does the statute tell us with respect to who, what, when, where, why, and how it applies? These are the "facts" or requirements of the statute. Each factor or requirement must be met for the statute to apply, so it's important to include every word in the statutes in your 5W + 1H analysis. It's helpful to copy the statute into a document and then cross out each word as you put it into your 5W + 1H.

When using 5W + 1H, be very careful when dealing with statutes that have:

- "or" requirements – in other words, only one item out of the list must be proven
- Combinations of "or" and "and" requirements – only one item out of the first list of items must be proven, AND at least one other item must be proven
- References to other statutes as part of the requirements
- Exceptions to the general rule – usually indicated by "unless" or "except" or "this statute/section does not apply if"

Our arson statute is a criminal statute, and knowing the typical characteristics of criminal statutes is helpful. Most often, criminal statutes are not specific as to who, when, or where. In Wisconsin, criminal statutes typically have "whoever" or "any person" as the description of to whom it applies. Similarly, Wisconsin criminal statutes are frequently silent as to when (which then means "any time") and where (as long as it happens in Wisconsin, this requirement is satisfied). Statutes usually are also silent regarding "why" they apply. Criminal statutes are more concerned with "what" actions are prohibited and "how" those actions must be undertaken. With that in mind, let's take a look at our arson statute again:

Arson of Buildings; Damage of Property by Explosives

Wis. Stat. §943.02(1) Whoever does the following is guilty of a class C felony:

(a) By means of fire, intentionally damages any building of another without the other's consent or;

(b) By means of fire, intentionally damages any building with intent to defraud an insurer of that building; or

(c) By means of explosives, intentionally damages any property of another without the other's consent.

(2) In this section "building of another" means a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building. Proof that the actor recovered or attempted to recover on a policy of insurance by reason of the fire is relevant but not essential to establish the actor's intent to defraud the insurer.

Who = any person

What = the following actions are prohibited as criminal arson:

- the action of using **fire** to **damage another person's building** [subsection (a)]
- **OR** the action of using **explosives** to **damage another person's property** [subsection (b)]
- **OR** the action of using **fire** to **damage any building to defraud an insurer** [subsection (c)]

When = at any time

Where = in Wisconsin

Why = because the statute says so

How = the action of setting the fire or using explosives must be done

- Intentionally **AND** without the other person's intent [subsection (a) and (c)].
- **OR** With intent to defraud an insurance company that provides insurance coverage for the building [subsection (b)]

When a statute lists multiple ways to meet its requirements, it's important to highlight those differences. Every word matters and each circumstance must be fully and separately analyzed. That's why some parts are highlighted in yellow.

There's one more part of this statute to synthesize: Subsection (2) defines "building of another" and we need to know what this means to fully analyze Subsection (1)(a). Because it is a definition, it doesn't really have its own Who, What, When, Where, Why, and How. The best way to add this information is to put it anywhere you have "building of another" in your synthesis of Subsection (1)(a). Similarly, subsection (2) also explains how to prove intent to defraud an insurer; the best way to add this information is to put it anywhere you have "defraud an insurer" in your synthesis of Subsection (1)(b).

Here is a helpful worksheet you to use with the 5W + 1H statutory synthesis method.

COMPLETE CITATION OF STATUTE: Wis. Stat. §943.02(1) (20xx)

COMPLETE CITATION OF RELATED STATUTES: Wis. Stat. §943.02(2) (20xx)

QUESTION	STATUTORY REQUIREMENTS
WHO:	any person
WHAT:	(1)(a) and (2) the action of **using fire** and **damaging another person's building.** It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building. **OR** (1)(b) the action of **using fire** to **damage any building and to fraudulently gain insurance money.** The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire **OR** (1)(c) the action of **using explosives** to **damage another person's property**
WHEN:	any time
WHERE:	in Wisconsin in/to a building (a) and (b) on property (c)
WHY:	because the statute says so
HOW:	(a) or (c) the action of setting the fire/using the explosives must be done intentionally. (a) or (c) the action of setting the fire/using the explosives must also be done without the other person's consent (b) the action of setting the fire must be done with the intent to defraud an insurance company. The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire
EXCEPTIONS?	There are no "unless" or "except" statements in the statute

One advantage to using this approach is that it's very easy to put in your client's facts and see how the statute's requirements are or are not met. When adding the client's facts, be very detailed! It's better to put in facts that might not quite matter than to leave any out. You may also find that some client facts overlap or are repeated in more than one category of 5W + 1H. That's perfectly fine! Again, that overlap or repetition results in a deeper, more detailed synthesis that will serve you well when you are ready to do macro-synthesis of the statute and other legal authorities – and even more so when you are ready to begin writing your legal research memorandum. When performing analysis and synthesis, more detail is always better.

Here is an example of how this worksheet might be completed with Mr. Wonka's facts.

COMPLETE CITATION OF STATUTE: Wis. Stat. §943.02(1) (20xx)

COMPLETE CITATION OF RELATED STATUTES: Wis. Stat. §943.02(2) (20xx)

QUESTION	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
WHO:	any person	Wonka is a person
WHAT:	(1)(a) and (2) the action of **using fire** and **damaging another person's building.** It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building. **OR** (1)(b) the action of **using fire** to **damage any building and to fraudulently gain insurance money.** The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire **OR** (1)(c) the action of **using explosives** to **damage another person's property**	(a) A fire was set and the Chocolate Factory was damaged ($1 million); Bucket is another person who owns the Chocolate Factory (b) at this time, we aren't sure if insurance fraud is involved; the facts do not tell us if Wonka tried to obtain insurance money after the fire (c) explosives were not used, only fire. The Chocolate Factory is a type of property and it was damaged. Bucket is another person who owns the Chocolate Factory
WHEN:	any time	January 30, 1 a.m.
WHERE:	in Wisconsin a building (a) and (b) property (c)	Fire occurred in Wisconsin, at the Chocolate Factory, which is a building and also is a type of property
WHY:	because the statute says so	n/a
HOW:	(a) or (c) the action of setting the fire/using the explosives must be done intentionally. (a) or (c) It must also be done without the other person's consent (b) the action of setting the fire must be done with the intent to defraud an insurance company. The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire	(a) Accelerants used; Wonka seen dancing at scene of fire yelling "burn baby burn;" motive exists for setting fire ($ problems). These facts are evidence of intent (a) Bucket denies knowledge of plan or consent; no evidence that Bucket set the fire or otherwise participated in the plan; joint ownership is a legal right (under subsection (2) of statute) (b) this is not clear from the facts and hasn't been charged
EXCEPTIONS?	There are no "unless" or "except" statements in the statute	n/a

Statutory Elements Approach

The nice part about this approach is that you might have jury instructions to help you with understanding how each element would need to be proven to a jury. This can be especially helpful with criminal statutes. You still want to give meaning to every word and phrase appearing in the statute, but some of the repetition of 5W + 1H is removed. Here's the same arson statute, done using this approach:

COMPLETE CITATION OF STATUTE: Wis. Stat. §943.02(1) (20xx).

COMPLETE CITATION OF RELATED STATUTES: Wis. Stat. §943.02(2) (20xx)

ELEMENTS	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
ELEMENT #1	(1)(a) and (1)(b) Person uses fire **OR** (1)(c) Person uses explosives	(1)(a) and (1)(b) A fire occurred at the Chocolate Factory (1)(c) no explosives used
ELEMENT #2	(1)(a), (1)(b), and (1)(c) Person Intentionally damages	(1)(a), (1)(b), (1)(c) Accelerants used; Wonka seen dancing at scene of fire yelling "burn baby burn;" motive exists for setting fire ($ problems). These facts are evidence of intent The Chocolate Factory (a building and/or some property) was damaged ($1 million) Motive exists ($ problems)
ELEMENT #3	(1)(a) a building owned by another. It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building. **OR** (1)(b) any building **OR** (1)(c) property owned by another	(1)(a) and (1)(c) Bucket is a part owner of the Chocolate Factory building and any property inside of it (1)(b) the Chocolate Factory is a building
ELEMENT #4	(1)(a) and (1)(c) Other owner didn't consent to damage (1)(b) with intent to fraudulently gain insurance money	(1)(a) and (1)(c) Bucket, the other owner of the Chocolate Factory, denies knowledge of plan or consent (1)(b) at this time, we aren't sure if insurance fraud is involved; the facts do not tell us if Wonka tried to obtain insurance money after the fire
EXCEPTIONS?	There are no "unless" or "except" statements in the statute	n/a

What does our micro-synthesis tell us? Because Wonka did not use explosives, subsection (c) of the statute does not apply. Also, we are not overly concerned with subsection (b) of the statute, because Wonka is not charged with insurance fraud (although he probably could be, based on the facts provided).

Our micro-synthesis also tells us we have more questions to answer before we can advise our client whether it's best to take a plea deal or go to a jury trial:

- What is a "building" – is it a permanent structure or does a tent qualify? Does it have to be someone's home?
- What does "intentionally" mean and how is it proven? After all, no one really knows what was in Wonka's mind as far as what he intended regarding a fire at the Chocolate Factory. We have facts that we think might show intent and motive, but are they enough?
- What does "without consent" mean and how is it proven? After all, no one really knows what was in Bucket's mind as far as what he actually knew or thought about plans for a fire at the Chocolate Factory. We know what he said to the police, but maybe he lied!

And so, the cycle begins again. We have synthesized the arson statute into its requirements or elements, and we need to locate legal authorities that help us understand the meaning of several words/phrases in the statute: "building," "intentionally," and "without consent." to answer that question.

The first and best place to look is in other statutes, preferably ones that are closely related to our arson statute. Are there other statutes in Chapter 943 of the Wisconsin Statutes, Subchapter I (which covers a multitude of crimes against property) that define any of those terms? Unfortunately, there are not.

What about in Subchapter II, which relates to Trespass (another crime that can be committed against buildings)? Some possibilities exist in §943.13(1e) relating to "dwelling unit" and "implied consent." We can probably presume that "building" has a broader definition than "dwelling unit" in that a "building" probably doesn't have to be one used or intended to be used as a home, residence or sleeping place; but that doesn't answer the permanent structure vs. tent question. The definition of "implied consent" isn't super helpful beyond what logic tells us – it can consist of conduct or words.

When there are no statutes to help, we need to look to other legal authorities, such as case law, jury instructions, or other secondary sources. We will want to do this separately for each word/phrase ("building," "intentionally," and "without consent") we still need to define. Again, it's best to organize your research notes by creating a separate page for each legal issue – what does "building" mean? What does "intentionally" mean? What does "without consent" mean?

You will go through the process of locating and micro-synthesizing authorities for each requirement or element of the statute that you decide to research. When you are done researching, you should have several research pages documenting your research. In other words, you will have sorted the puzzle pieces into several distinct picture piles, with each pile representing a different part of the puzzle picture.

Once we find those legal authorities and synthesize each of them, the next step will be to perform macro-synthesis to see how it all fits together. And then, we will know all there is to know about the crime of arson against buildings in Wisconsin.

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4: Introduction to Case Briefing

In the next several chapters, you will learn about case briefing. Unfortunately, this term can be confusing. As you probably know from your other legal studies classes, sometimes lawyers file “briefs” with trial courts or appellate courts. These briefs present legal arguments about one or more issues. In contrast, **case briefing** is a tool to help you perform in-depth micro-synthesis on a single case that you have retrieved as a result of your legal research. We used to dissect frogs in high school biology class to see what was inside; with case briefing, you are dissecting a court decision to see what’s inside.

Benefits of Case Briefing

Case briefing is a good way to “divide and conquer” a case to discover its true meaning and applicability. Instead of trying to figure this out after reading through a 50-page decision, case briefing requires you to look at each component of the decision separately. The result is a detailed "roadmap" of the legal analysis used by the court to answer the legal questions involved in the case before it. Understanding the court’s analytical process is an important part of understanding the legal significance of the decision.

How to Read a Case

Before you can effectively brief a case, you’ll need to read it. Sounds simple, right? It is simple once you understand the different parts of a court decision and how they relate to one another.

An essential part of reading cases is breaking down a case into its pieces. By dissecting cases and understanding their parts, you will be equipped to create rules, analogize and distinguish cases, and predict and advocate for outcomes in factual scenarios. You will also detect patterns in judicial reasoning and see legal theory put into practice.

When you read a case, you should read with the goal of pulling information from the text. Ask yourself as you read what facts are relevant, what legal arguments are made, and how the facts and the legal arguments fit together. Determine what reasoning the court uses to reach its conclusion and see how the relevant facts and legal arguments fit into that reasoning. If you read passively, just scanning your eyes across the page and failing to engage with what you are reading, then you are wasting your time.

Below are definitions of the parts of a case to help you locate different pieces and to understand each component’s role. They are listed in the order in which you will typically encounter each one while reading an opinion. Be forewarned, however, that there is never a guarantee that each piece will be found in the same place every time. Judicial writing can, at times, leave a lot to be desired in terms of structure.

Caption: Also known as the header; tells you who the parties are in the case, which court the opinion comes from, the date the opinion was issued, and what the case citation is.

Citation: A citation is a unique set of numbers and letters that is assigned to that particular case. Think of it like a barcode. A citation for a case typically comes in this format: ### XXX ####. Back when you had to look up cases in bound book volumes, the XXX would tell you which reporter to look for the case in, and the numbers told you what volume of the case would be and page number the case would be. For instance, if a case citation was 123 S.E.2d 456, then that would mean you should look for the case in the 123rd volume of the second series of the Southeastern Reporter on page 456.

Facts, Substantive: Facts that the court has decided are relevant or material to its decision-making process. These facts usually include who the parties are, their relationship to each other, and facts that show what the legal dispute is about. A good, quick way to decide if a fact is relevant is to see if it answers part of the issue presented in some way. If the case is about whether there was a signed agreement, then facts surrounding a written document and signatures on the paper will likely be legally significant. Whether the ink used to sign was pink will likely not be legally significant.

Facts, procedural: Facts surrounding how the legal dispute got from its start to where it is now. These facts usually include when the harm occurred, when the lawsuit was filed, and what type of proceedings occurred before the court heard the case.

Issue: What the legal dispute is about. The issue may be presented in question form asking about what the outcome is when the legal rule is applied to the material facts. Identifying the issue makes following the legal arguments, reasoning, and holding easier because you will see what question the court has decided it needs to answer.

Rule Statement/Rule of Law: The legal rule, either from a statute, case, regulation, or some combination, that the court will use to address the legal question.

Standard of Review: This will tell you how much deference the appellate court must give the lower court's decision.

Reasoning: Also called rationale. The reasoning usually makes up the bulk of the opinion and is where the court "shows its work," or explains what sources of law and policy it used to reach the answer to the legal issue. In its reasoning, a court can use statutes, case law, other primary authorities, other secondary authorities, or public policy to support its thought process. If a court is going to rely on precedent or *stare decisis*, a court will show the precedent on which it is relying and explain why.

Holding: Outcome of the case when the legal rule is applied to the facts of the case. This outcome can serve as precedent in future cases. While this sounds simple, sometimes locating what the court has held can be challenging. "A holding consists of those propositions along the chosen decisions path or paths of reasoning that (1) are actually decided, (2) are based upon the facts of the case, and (3) lead to the judgment. If not a holding, a proposition stated in a case counts as dicta." Michael Abramowicz and Maxwell Stearns, Defining Dicta, 57 Stan. L. Rev. 953, 1065 (March 2005).

Disposition: The procedural outcome of the case. Cases can be **affirmed** (higher court says lower court got it right), **reversed** (higher court says lower court got it wrong and higher court is replacing lower court's judgment with its own), **vacated** (judgment of the lower court is voided but not replaced with higher court's judgment), or **remanded** (higher court sends the case back to the lower court to make a new decision in light of higher court's decision). A case that is vacated will usually also be remanded. Cases can be **affirmed in part and reversed in part** (higher court says lower court got part of it right and part of it wrong).

Opinion, majority: Opinion that states the outcome that is controlling in the case. The holding in this case is the one that determines the legal dispute and that can be used as precedent in the future.

Opinion, concurring: Opinion in which the author agrees with the holding of the case but not with the reasoning that the majority used. If a casebook includes a concurring opinion, read it carefully because it is likely presenting a nuance in the law that your professor will want to discuss

Opinion, dissenting: Opinion in which the author does not agree with the holding of the case and wants to explain why the majority is wrong. If a casebook includes a dissenting opinion, read it carefully because it is likely presenting a counterpoint to the holding in the majority opinion that your professor will want to discuss.

Footnotes or Endnotes: Case citations or substantive comments that the author did not place in the main body of the opinion but that relate to the portion of the case where the footnote or endnote is flagged. You should always read the footnotes. If the author felt strongly enough about what is in the footnote to take the time to format the document to add the footnote, it is important. Further, when you see a footnote or endnote included for a case in one of your textbooks, you absolutely should read the footnote or endnote, because not only did the author of the opinion include it, but the textbook author also independently decided it was important

By practicing categorizing the different parts of a case as you read, you will be preparing yourself to brief cases and also how to locate the different components you will want to use for your legal analysis.

Practice your skills by clicking here and reading the Miller v. Thomack decision from the Wisconsin Court of Appeals.

Anatomy of a Case Brief

You'll notice quite a few similarities between the sections of a case brief and the parts of a court decision. Though the definitions are similar, what you do with the information is slightly different. Case briefing allows you to put the information you learned while reading the court decision into your own words to explain what happened and why.

If you Google "how to write a case brief" (don't do it!) you'll end up with a lot of different methods, structures and components. Each professor or lawyer has his/her own preferred way of writing a case brief. For this class, we will use a simplified format designed to help you understand what happened to the case procedurally, the legal issues the court addressed, the facts of the case, the legal rule(s) of the case, and the reasoning the court used to arrive at the legal rule(s).

The case briefing structure we will use in this class has 8 sections:

1. Complete citation of the case being briefed
2. Procedural history
3. Applicable statutes
4. Issues
5. Holdings
6. Facts
7. Reasoning
8. Disposition

Following is a brief (😊did you get the pun?) description of each section.

Complete Citation

The complete and proper citation for the case goes at the top of your brief. It will include the name of the case (*italicized*), followed by a citation of all the reporters in which the case is found. In Wisconsin, this would always include the Wisconsin Reports (Wis. or Wis. 2d) and the Northwestern Reporter (N.W. or N.W.2d). Depending on when the case was decided, you'd also have either a public domain citation or a date parenthetical. If you're unsure of the proper citation form, use your *Bluebook*.

Procedural History

The procedural history tells us what the courts have done with the case so far. It should include only facts regarding court action, not substantive facts of the case. Who are the plaintiff and defendant? Who is appealing and why – what did the lower court(s) do that resulted in a loss for the appellant? This section will include very little, if any, of the "story" or "substantive" facts of the case; only procedure is included.

Applicable Statute(s)

This section tells us which statute(s) if any, the court interpreted or applied in its decision. Usually, it is quite easy to determine which statute(s) to include in this section, because the court tells you in its decision. If the statute is well-written, directly quote it using quotation marks. Include only the words of the statute, and not a statement of how the court interpreted or applied it.

Issue(s)

Here we explain the legal questions the court is answering in its decision. What is the legal dispute about? The issue is a combination of the legal standard being interpreted and applied (for example, the statutory language) and the legally significant facts of the case (the facts or circumstances to which the statutory language or other legal standard is being applied). The best way to write it is as a question.

Holding(s)

In this simplified case briefing structure, the holdings are the direct answer to the questions raised in the issues. No additional explanation is provided. All you need to do is answer the question ("yes" or "no") and then copy and paste your issue question, revising the grammar and punctuation of your issue question into a statement, using the same words in roughly the same order.

Facts

This is the place to tell the story of the case. All court decisions are based on a certain set of facts. Although appellate courts do not review issues of fact, the facts provide a context for the legal questions. The facts tell us what happened to the persons involved in the appeal – the Who, What, When, Where, Why, and How that are the basis of the parties' legal dispute. Like the applicable statute(s), the facts are usually quite easy to find because courts often have a "facts" section in the decision.

Reasoning

This is the longest and most important section of the case brief. While the issue and holding sections tell you what the law is, the reasoning section tells you why the law is what it is. How did the court interpret and apply the legal standard(s) to the facts? What tools (dictionaries, other case law, etc.) did the court use to help it interpret and apply those legal standards? How did the court explain or justify the end result? This section combines the applicable statutes, issues, facts, and holdings into a detailed discussion of the court's legal and factual analysis.

Disposition

This section describes the procedural "ending" or resolution of the case. It tells us what the court whose decision we are reading did with the case. Did the court affirm or reverse what happened procedurally in the lower court? In addition to stating whether the reviewing court affirmed or reversed the lower court, it also briefly explains the impact on the parties (for example, the claim was dismissed, or the claim was reinstated). Like the Procedural History section, this section will include very little, if any, of the "story" or "substantive" facts of the case; only procedure is included.

Case Briefing Tips

Case briefing is one of those tools that "you get out of it what you put into it." The more time you spend on the case brief, and the more detail you provide, the easier it will be to use it for macro-synthesis and for writing your legal research memorandum. Here are some tips for effective case briefing:

- Read through the entire court decision at least once before starting your case brief
- During your second (and subsequent) read-through, use highlighters to mark the parts of the court decision that will go into the different sections of your case brief. Develop a system of consistently using different colors for each section (for example, yellow for procedure, green for facts, etc.)
- Use your own words when writing your case brief. Copying and pasting from the court decision may seem quick and easy, but it defeats the purposes of writing the case brief in the first place. Using your own words benefits you by
  - Keeping you actively engaged in the process of synthesizing the decision
  - Enhancing your understanding of the decision
- Be detailed rather than summarizing, especially when it comes to the Facts and Reasoning sections. Including lots of details benefits you by
  - Making it easier for you compare what happened in the decision to the client's facts and legal questions
  - Making macro-synthesis becomes much easier because it's easier to see the differences (or similarities) in facts, rules (holdings), and reasoning between several cases relating to a single legal issue.

In the next several chapters, you'll learn how to draft each section of a case brief.

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5: Case Briefing - Procedural History, Disposition, Applicable Statutes and Facts

In this chapter, we are going to explore what goes into writing the Procedural History, Disposition, Applicable Statutes, and Facts sections of your case brief. This is not the order in which the sections will appear in the final case brief – for example, the Procedural History is the first section and the Disposition is the last section. We are drafting our brief this way to take advantage of sections that logically go together (Procedural History and Disposition), as well as to write the two sections that form the foundation of the reviewing court's decision (Applicable Statutes and Facts).

We will be **writing a case brief for the Miller v. Thomack decision from the Wisconsin Court of Appeals -- Access the decision.**

PROCEDURAL HISTORY

The purpose of the Procedural History section is to tell the reader ***how the case came before the reviewing court*** which has written the decision that is the subject of your case brief. In other words, it explains what has happened in the case so far: Who sued whom, what happened in the Trial Court, who appealed to the Court of Appeals, what happened in the Court of Appeals, and, if applicable, who Petitioned the Supreme Court for Review.

Finding and Understanding the Procedural History

An important first step in writing your case brief is making sure you understand who's who in terms of parties, lower courts and reviewing courts. Much of this information is contained in the caption of the court decision you are briefing, along with a lot of other information about the case.

The Parties

In Wisconsin, the parties involved in an appeal to the Court of Appeals will have either the word **Appellant** or the word **Respondent** tacked onto the end of their original party designations of plaintiff or defendant. Below is an example of what you might see in the caption:

Rhonda MILLER, Richard Miller and Kay Miller, Plaintiffs–Appellants, v.
Craig J. THOMACK, Defendant,
State Farm Mutual Automobile Insurance Company, a Foreign Corporation,
Defendant–Co–Appellant, James D. Thomack, ABC Insurance Company, as Insurer
of James Thomack, Michelle
Melberg, DEF Insurance Company, as Insurer of Michelle Melberg, Defendants,
Kimberly Ransom, Defendant–Respondent,
Fire Insurance Exchange, Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., United Fire & Casualty
Company, a Foreign Corporation, Waupaca County, as Agent for the State of
Wisconsin, Brian Clary, GHI Insurance, as Insurer of Brian Clary, John Doe, Susan
Roe, Defendants, Karen Miller, Defendant–Respondent,
NOP Insurance, as Insurer of Karen Miller, Defendant, Craig J. Thomack, Third
Party Plaintiff–Co–Appellant, and
James D. Thomack, Third Party Plaintiff, Jason Beattie, Third Party Defendant–
Respondent,
Lee Beattie, Carol Beattie and KLM Insurance Company, as Insurer of Jason
Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

There are several parties who don't have either Appellant or Respondent as part of their party designations. Those parties, for whatever reason, did not participate in the appeal. Only Rhonda Miller, Richard Miller, Kay Miller, State Farm Mutual Insurance Company and Craig Thomack participated in this appeal as Appellants, and Karen Miller and Jason Beattie as Respondents.

The Reviewing Court

In Wisconsin, there are two places where you can find the identity of the reviewing court that wrote the decision you are briefing. One is in the citation. A Court of Appeals decision will have either WI APP in the public domain citation, or Ct. App. In the date parenthetical. A Supreme Court decision will have WI in the public domain citation, or only the year of the decision in the date parenthetical. The other place to look is near the top or the bottom of the caption for the words "Court of Appeals of Wisconsin" or "Supreme Court of Wisconsin."

The Lower Court(s)

At least one of the lower courts will nearly always be the Trial Court (also called the Circuit Court). If you are briefing a decision written by the Supreme Court, then the Court of Appeals will also likely be a lower court. Finding the identity of the lower court(s) is a little more complicated. Where you find it depends on whether you are accessing the reviewing court's decision in a hard copy reporter (book), on Westlaw®, or on FastCase® or the Internet in general.

If you are accessing the reviewing court's decision in a hard copy reporter (book) or on Westlaw®, the best place to find the identity of the lower court(s) is often in the synopsis, which usually provides at least a general statement of what happened. Below is the synopsis of the *Miller v. Thomack* case in the Court of Appeals.

Synopsis

Action was brought against bar operators and against minors who had contributed money for purchase of beer intended for consumption by minors to recover for injuries sustained by minor passenger in accident involving vehicle driven by minor, both of whom had consumed beer. The Circuit Court of Waupaca County, Philip M. Kirk, J., denied operators' motion for summary judgment but granted minor defendants' similar motion. Appeals were taken. The Court of Appeals, Vergeront, J., held that: (1) bar operators were not liable absent any evidence that they knew of underage drinking occurring outside bar and involving beer that had been brought onto premises rather than purchased at bar; (2) minors' contribution of money for purchase of beer for consumption by minors amounted to "procurement" within meaning of statute barring procurement and was negligence per se; (3) fact issue existed as to whether any negligence of passenger was greater than that of minor defendants; and (4) statutory exception to immunity from civil liability for injury to third party arising out of procurement of alcoholic beverages applied even though minor passenger's own consumption of beer may have contributed to her injuries.

If you are accessing the reviewing court's decision or on FastCase® or the Internet in general, there is no synopsis. Instead, you will need to search the decision for the phrase "Circuit Court" or the phrase "Trial Court" (yes, you can use the "find" function!). Typically, you will see a sentence that looks like this:

Rhonda Miller and her parents appeal from the trial court order granting summary judgment to Kimberly Ransom, Karen Miller, Jason Beattie and their insurers, all of whom contributed money to purchase the beer. They were all under twenty-one

What Happened in the Lower Court(s)

Lots of things can happen in a trial court that can cause a party to "lose" and want to appeal. Here are some of the most common types of **trial court procedure** that might result in an appeal:

- A **judgment or jury verdict has been entered after a full trial**. The result is that either (1) the plaintiff successfully obtained a judgment against the defendant for one or more of the plaintiff's claims against the defendant; or (2) the defendant was determined to be not liable for the plaintiff's claims (civil) or not guilty (criminal)

- The plaintiff or the defendant asked the trial court to enter a judgement after the trial began, but before it was completed – this is called a **motion for directed verdict**. If the motion is granted, the result is basically the same as a judgment or jury verdict entered after a full trial.
- The plaintiff or the defendant asked the trial court to enter a judgement before the trial began, based on facts revealed by discovery – this is called a **motion for summary judgment**. If the motion is granted, the result is basically the same as a judgment or jury verdict entered after a full trial. Motions for summary judgment are used in civil cases only.
- The plaintiff or the defendant asked the trial court to enter an order either allowing or disallowing certain evidence to be used in trial. In civil cases, this can be an evidentiary objection raised during or before the trial (sometimes through a motion ***in limine***). In criminal cases, this can be an evidentiary objection raised during or before the trial (sometimes through a motion **to suppress evidence**). If the motion is granted, the person appealing is usually claiming that allowing the improper evidence caused the person to lose. If the motion is denied, the person appealing is usually claiming that the inability to offer the evidence caused the person to lose.
- The defendant asked the trial court to dismiss the plaintiff's claims in a **motion to dismiss**, which is usually requested before discovery has begun in a civil case. If the motion is granted, the result is that the plaintiff is not allowed to sue the defendant for one or more claims raised in the complaint -- the claims against the defendant are dismissed.

The typical options for appellate court procedure that might result in a Petition for Review in the Supreme Court are fewer:

- The Court of Appeals **affirmed** the trial court action (meaning that the appellant loses again)
- The Court of Appeals **reversed** the trial court action (meaning that the appellant wins). A reversal might be coupled with a **remand** to the trial court for additional proceedings (for example, a recalculation of damages, or an order to conduct a full trial or a new trial).

Once again, where you find an explanation of the lower court procedures depends on whether you are accessing the reviewing court's decision in a hard copy reporter (book), on Westlaw®, or on FastCase® or the Internet in general. If you are accessing the reviewing court's decision in a hard copy reporter (book) or on Westlaw®, the best place to find the identity of the lower court(s) is often in the synopsis, which usually provides at least a general statement of what happened. Below is the synopsis of the *Miller v. Thomack* case in the Court of Appeals.

Synopsis
Action was brought against bar operators and against minors who had contributed money for purchase of beer intended for consumption by minors to recover for injuries sustained by minor passenger in accident involving vehicle driven by minor, both of whom had consumed beer. The Circuit Court of Waupaca County, Philip M. Kirk, J., denied operators' motion for summary judgment but granted minor defendants' similar motion. Appeals were taken. The Court of Appeals, Vergeront, J., held that: (1) bar operators were not liable absent any evidence that they knew of underage drinking occurring outside bar and involving beer that had been brought onto premises rather than purchased at bar; (2) minors' contribution of money for purchase of beer for consumption by minors amounted to "procurement" within meaning of statute barring procurement and was negligence per se; (3) fact issue existed as to whether any negligence of passenger was greater than that of minor defendants; and (4) statutory exception to immunity from civil liability for injury to third party arising out of procurement of alcoholic beverages applied even though minor passenger's own consumption of beer may have contributed to her injuries.

If you are accessing the reviewing court's decision or on FastCase® or the Internet in general, there is no synopsis. Instead, you will need to search the decision for the phrase "Circuit Court" or the phrase "Trial Court" (yes, you can use the "find" function!). Typically, you will see a sentence that looks like this:

Rhonda Miller and her parents appeal from the trial court order granting summary judgment to Kimberly Ransom, Karen Miller, Jason Beattie and their insurers, all of whom contributed money to purchase the beer. They were all under twenty-one

If you were briefing a Supreme Court decision, the procedure in the Court of Appeals would be found in the same area.

Writing the Procedural History

It's important to provide a full and detailed explanation of what occurred prior to the appeal that resulted in the reviewing court's decision that you are briefing. Procedural history can get confusing if there are multiple appeals by different parties who are unhappy about what happened in the lower court for different reasons. It usually helps to begin by diagramming the parties involved in the appeal(s), briefly describing what they are appealing and why. Below is a simple table that you can use for this purpose.

Elements	Appeal #1 (describe)	Appeal #2 (describe)
Appellants/Petitioners		
Respondents/Respondents		
What is being appealed?		

We'll use the *Miller v. Thomack* Court of Appeals decision to complete this table step by step.

Step 1: Determine the number of appeals and describe them.

Most decisions involve only a single appeal to the Court of Appeals. In that situation, you would write "Court of Appeals" where it says "(describe)" under Appeal #1 in the middle column. The column for Appeal #2 remains blank unless you are briefing a Supreme Court decision; in that situation, you would write "Supreme Court" where it says "(describe)" under Appeal #2 in the right-side column. Sometimes, as in the *Miller v. Thomack* appeal, there are multiple appeals by different parties. We know this because there are two full captions, each with its own appellate docket number. Below is the full caption of the *Miller v. Thomack* appeal to the Court of Appeals. Notice how there is a horizontal line between the two full captions, each of which begins with Rhonda MILLER, Richard Miller, and Kay Miller (the plaintiffs). In the first caption, the Plaintiffs are the Appellants (circled in blue) and in the second caption, the Plaintiffs are the Respondents (outlined in a red box). At the bottom of the second caption, you see the two appellate docket numbers outlined in a green box.

204 Wis.2d 242
Court of Appeals of Wisconsin.

Rhonda MILLER, Richard Miller and Kay Miller, Plaintiffs–Appellants, v.
Craig J. THOMACK, Defendant,
State Farm Mutual Automobile Insurance Company, a Foreign Corporation,
Defendant–Co–Appellant, James D. Thomack, ABC Insurance Company, as Insurer
of James Thomack, Michelle
Melberg, DEF Insurance Company, as Insurer of Michelle Melberg, Defendants,
Kimberly Ransom, Defendant–Respondent,
Fire Insurance Exchange, Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., United Fire & Casualty
Company, a Foreign Corporation, Waupaca County, as Agent for the State of
Wisconsin, Brian Clary, GHI Insurance, as Insurer of Brian Clary, John Doe, Susan
Roe, Defendants, Karen Miller, Defendant–Respondent,
NOP Insurance, as Insurer of Karen Miller, Defendant, Craig J. Thomack, Third
Party Plaintiff–Co–Appellant, and
James D. Thomack, Third Party Plaintiff, Jason Beattie, Third Party Defendant–
Respondent,
Lee Beattie, Carol Beattie and KLM Insurance Company, as Insurer of Jason
Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

Rhonda MILLER, Richard Miller, and Kay Miller, Plaintiffs–Respondents, v.
Craig J. THOMACK, Defendant–Appellant,
State Farm Mutual Automobile, James D. Thomack, ABC Insurance Company,
Michelle Melberg, DEF Insurance Company, Kimberly Ransom, Fire Insurance
Exchange, Waupaca County, Brian Clary, GHI Insurance Company, John Doe,
Susan Roe, Karen Miller, and NOP Insurance Company, Defendants, Craig J.
THOMACK, and James D. Thomack, Third Party Plaintiffs,
Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., and United Fire & Casualty Company,
Defendants–Appellants, v.
Jason BEATTIE, Lee Beattie, Carol Beattie, and KLM Insurance Company, an
Insurer of Jason Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

Nos. 95–1684, 95–1766.

Based on what we see in the caption, here is what our diagram box would look like so far:

Elements	Appeal #1 (95-1684) Rhonda, Richard & Kay Miller	Appeal #2 (95-1766) Thomack and Pamperins
Appellants/Petitioners		
Respondents/Respondents		
What is being appealed?		

Step 2: Fully describe the parties involved in each appeal.

Look at the full caption of the case and write down the name of each person or entity involved. Then write each person's party designation next to his/her/its name. Pay particular attention to parties with the following designations: appellant, appellee, respondent, co-appellant, co-appellee, co- respondent, cross-appellant, cross-appellee, cross-respondent, petitioner, co- petitioner and cross-petitioner. These are the parties participating in the appeal. If someone only has a plaintiff or defendant designation, that party is not participating in the appeal.

Based on what we see in the caption, here is what our diagram box would look like so far:

Elements	Appeal #1 (95-1684) Rhonda, Richard & Kay Miller	Appeal #2 (95-1766) Thomack and Pamperins
Appellants/Petitioners	Rhonda, Richard & Kay Miller (Plaintiff-Appellants) State Farm Mut. Ins. Co. (Defendant-Co-Appellant)	Craig Thomack, Kurt Pamperin Sr., Kurt Pamperin Jr., and United Fire & Casualty Company (Defendants-Appellants)
Respondents/Respondents	Kimberly Ransom, Karen Miller (Defendants- Respondents) and Jason Beattie (Third Party Defendant-Respondent)	Rhonda, Richard & Kay Miller (Plaintiff-Respondents)
What is being appealed?		

Step 3: Briefly describe the lower court action involved in each appeal.

As mentioned earlier, read the synopsis and the reviewing court's decision to determine the nature of the lower court action the Appellant is appealing. Was a motion granted? Was a motion denied? Did the Appellant lose after a jury trial? What happened to the Appellant as a result of the lower court's action? We know from the synopsis that in Appeal #1, the "minor defendants" filed a Motion for Summary Judgment that was granted. To learn more, we must read the decision until we see a more detailed explanation. We find it on page 5 of the decision, in the "Background" section:

Procedural History, Miller Appeal

Rhonda and her parents sued Thomack, Karen, Ransom, the Pamperins and their respective insurers. Thomack joined Beattie, his parents and their insurer, alleging that Beattie aggravated Rhonda's injuries when he extricated her from the vehicle. There were various cross-claims among the defendants. Karen, Ransom, Beattie and the Pamperins moved for summary judgment. The court ruled that contributing money to purchase the beer did not constitute furnishing alcohol to a minor in violation of
§§ 125.035 or 125.07, STATS. It determined as a matter of law that Rhonda Miller was more negligent than Karen Miller or Kimberly Ransom and dismissed them from the action. It dismissed Beattie because there was no evidence that he

Now we know that "the minor defendants" are Kimberly Ransom, Karen Miller and Jason Beattie. We also know that as a result of the Trial Court granting their Motions for Summary Judgment, the Millers' claims against them were dismissed. So, we add that information to our table:

Elements	Appeal #1 (95-1684) Rhonda, Richard & Kay Miller	Appeal #2 (95-1766) Thomack and Pamperins
Appellants/Petitioners	Rhonda, Richard & Kay Miller (Plaintiff-Appellants) State Farm Mut. Ins. Co. (Defendant-Co-Appellant)	Craig Thomack, Kurt Pamperin Sr., Kurt Pamperin Jr., and United Fire & Casualty Company (Defendants-Appellants)
Respondents/Respondents	Kimberly Ransom, Karen Miller (Defendants- Respondents) and Jason Beattie (Third Party Defendant-Respondent)	Rhonda, Richard & Kay Miller (Plaintiff-Respondents)
What is being appealed?	Grant of summary judgment dismissing Plaintiff Millers' complaint against Kimberly, Karen and Jason	

In those same paragraphs, we also see an explanation of what happened in Appeal #2:

Procedural History, Pamperin Appeal

and the Pamperins moved for summary judgment. The court ruled that contributing money to purchase the beer did not constitute furnishing alcohol to a minor in violation of §§ 125.035 or 125.07, STATS. It determined as a matter of law that Rhonda Miller was more negligent than Karen Miller or Kimberly Ransom and dismissed them from the action. It dismissed Beattie because there was no evidence that he caused, exacerbated or contributed to Rhonda's injuries. The trial court denied the Pamperins' motion for summary judgment, concluding that there were disputed

This tells us the Pamperins also tried to get the Plaintiff Millers' claims against them dismissed by filing a Motion for Summary Judgment, but they were unsuccessful.

Elements	Appeal #1 (95-1684) Rhonda, Richard & Kay Miller	Appeal #2 (95-1766) Thomack and Pamperins
Appellants/Petitioners	Rhonda, Richard & Kay Miller (Plaintiff-Appellants) State Farm Mut. Ins. Co. (Defendant-Co-Appellant)	Craig Thomack, Kurt Pamperin Sr., Kurt Pamperin Jr., and United Fire & Casualty Company (Defendants-Appellants)
Respondents/Respondents	Kimberly Ransom, Karen Miller (Defendants- Respondents) and Jason Beattie (Third Party Defendant-Respondent)	Rhonda, Richard & Kay Miller (Plaintiff-Respondents)
What is being appealed?	Grant of summary judgment dismissing Plaintiff Millers' complaint against Kimberly, Karen and Jason	Denial of summary judgment seeking to dismiss Plaintiff Millers' complaint against the Pamperins. The claim was allowed to continue.

Step 4: Write the Procedural History in Your Case Brief.

Based on this diagram, we now have enough information to write the Procedural History for each appeal. Resist the temptation to simply copy and paste from the reviewing court's decision! Instead, put it into your own words. There are many correct ways to do so; just make sure your Procedural History contains all of the following content:

- The identity of the Appellant (or, if this is a Supreme Court decision, the Petitioner), including the Appellant's name and full party designation
- A complete description of the lower court action being appealed, and the impact/result of the lower court's action on the parties' claims
- If you are briefing a Supreme Court Decision, a description of what the Court of Appeals did with the lower court's action, and a statement that the Supreme Court granted a petition for review.

Here's how the Procedural History for the *Miller v. Thomack* Court of Appeals decision could be written:

In the first appeal, Plaintiff-Appellants, Rhonda Miller, Richard Miller & Kay Miller (the Millers), and Defendant-Co-Appellant, Craig Thomack, appeal the Trial Court's grant of Summary Judgment dismissing the Millers' claims against Kimberly Ransom, Karen Miller and Jason Beattie. In the second appeal, Defendants-Appellants, Kurt D. Pamperin, Sr., Kurt Pamperin Jr., and United Fire & Casualty Company (the Pamperins), appeal the trial court's refusal to grant summary judgment dismissing claims made against them in the Complaint.

That's it. No facts about underage drinking, and no statement about what the Court of Appeals did in its decision.

A further example …

If someone has petitioned the Supreme Court for Review, you will also see the word **Petitioner** and another **Respondent** tacked onto the end. Ultimately, the Wisconsin Supreme Court granted a Petition for Review of the Court of Appeals' decision in *Miller v. Thomack*. The caption of this same case, after a Petition for Review was granted by the Wisconsin Supreme Court, looks like this:

Rhonda MILLER, Richard Miller and Kay Miller, Plaintiffs-Appellants-Respondents,
v.
Craig J. THOMACK, Defendant,
State Farm Mutual Automobile Insurance Company, a Foreign Corporation,
Defendant–Co–Appellant, James D. Thomack, ABC Insurance Company, as Insurer
of James Thomack, Michelle
Melberg, DEF Insurance Company, as Insurer of Michelle Melberg, Defendants,
Kimberly Ransom, Defendant-Respondent-Petitioner,
Fire Insurance Exchange, Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., United Fire & Casualty
Company, a Foreign Corporation, Waupaca County, as Agent for the State of
Wisconsin, Brian Clary, GHI Insurance, as Insurer of Brian Clary, John Doe, Susan
Roe, Defendants, Karen Miller, Defendant-Respondent-Petitioner,
NOP Insurance, as Insurer of Karen Miller, Defendant, Craig J. Thomack, Third
Party Plaintiff–Co–Appellant, and
James D. Thomack, Third Party Plaintiff, Jason Beattie, Third Party Defendant–
Respondent,
Lee Beattie, Carol Beattie and KLM Insurance Company, as Insurer of Jason
Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

If you were briefing that case, here's what the procedural history would look like:

> Defendants-Respondents-Petitioners, Kimberly Ransom and Karen Miller, seek review of the Court of Appeals' decision in their case. The Court of Appeals reversed the Trial Court's grant of Summary Judgment that dismissed the Millers' claims against them, which resulted in the Millers' claims being reinstated. The Supreme Court granted the Petition for Review.

DISPOSITION

The purpose of the Disposition section is to tell the reader ***what the reviewing court whose decision you are briefing did with the case.*** Essentially, it is the end of the procedural story of the case, like skipping to the end of a murder mystery novel book to find out who did it.

Finding and Understanding the Disposition

The easiest place to find the reviewing court's disposition is at the end of the majority opinion. In Wisconsin, it will typically be one of these options, printed in italics:

- *Judgment affirmed*
- *Judgment reversed* (or *Judgment reversed and remanded*)

Once again, if you are accessing the reviewing court's decision in a hard copy reporter (book) or on Westlaw®, you can also find it at the end of the synopsis, usually in italics.

You can also find it in the reviewing court's decision, typically right near the procedural history:

Procedural History, Pamperin Appeal

The Pamperins and their insurer, United Fire & Casualty Company, appeal the trial court's denial of their motion for summary judgment, raising a number of issues. We address only the issue of their liability under § 125.07(1)(a) 3, STATS., because that is dispositive. We conclude that there are no issues of fact concerning whether the Pamperins violated the statute and that they are entitled to judgment as a matter of law. We therefore reverse the trial court's denial of their motion for summary judgment.

Disposition, Pamperin Appeal

Procedural History, Miller Appeal

Rhonda Miller and her parents appeal from the trial court order granting summary judgment to Kimberly Ransom, Karen Miller, Jason Beattie and their insurers, all of whom contributed money to purchase the beer. They were all under twenty-one

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at the time. Rhonda contends that the trial court erred as a matter of law in ruling that these three did not violate § 125.07(1)(a) 1, STATS., which provides that "no person may procure for, sell, dispense, or give away" any alcohol beverages to an underage person. She contends that the court also erred in ruling that their negligence, if any, was less than hers. We conclude that contributing money to the purchase of alcohol under the circumstances presented by this record violates the statute and is therefore negligence per se. We also conclude that the issue of comparative negligence should be decided by the jury. Finally, we conclude that Karen, Ransom and Beattie are not immune from liability under § 125.035, STATS. We therefore reverse the grant of summary judgment to these defendants.

Disposition, both Appeals

Writing the Disposition

Again, resist the temptation to simply copy and paste from the reviewing court's decision! Instead, put the Disposition into your own words. There are many correct ways to do so; just make sure your Disposition contains all of the following content:

- The name of the Appellant (or, if this is a Supreme Court decision, the Petitioner). You can include the Appellant's full party designation if you wish, but it's not required
- A statement of the what the reviewing court did to the **lowest court's action** that is being reviewed
- A description of the impact/result of the reviewing court's action on the parties' claims

Here's how the Disposition for the *Miller v. Thomack* Court of Appeals decision could be written:

The Court of Appeals reversed the trial court's grant of summary judgment in favor of Karen, Ransom and Beattie, and ordered the Millers' claims against those parties reinstated. The Court of Appeals also reversed the trial court's denial of summary judgment to the Pamperins and ordered that the Millers' claims against the Pamperins be dismissed.

That's it. No facts about underage drinking, and no explanation of why the Court of Appeals reversed the Trial Court.

A further example …

As you know, the Wisconsin Supreme Court granted a Petition for Review of the Court of Appeals' decision in *Miller v. Thomack.* As it turned out, the Supreme Court agreed with (or affirmed) the Court of Appeals' decision. If you were briefing the Supreme Court decision, your Disposition could look nearly identical to what you saw as the Disposition for the Court of Appeals' decision.

> The **Supreme Court reversed the trial court's grant of summary judgment** in favor of Karen, Ransom and Beattie, and ordered the Millers' claims against those parties reinstated. The Court of Appeals also reversed the trial court's denial of summary judgment to the Pamperins and ordered that the Millers' claims against the Pamperins be dismissed.

That's because what we really want to know is what the Supreme Court ultimately did with the parties' claims that began in the Trial Court. That being said, if you want to include all of the details, you could write the Disposition this way:

> The **Supreme Court affirmed the Court of Appeals' reversal of the trial court's grant of summary judgment** in favor of Karen, Ransom and Beattie, and ordered the Millers' claims against those parties reinstated. The Court of Appeals also reversed the trial court's denial of summary judgment to the Pamperins and ordered that the Millers' claims against the Pamperins be dismissed.

Either way is fine; I just find the second version to be a bit confusing since there are two dispositional words (affirmed, reversed) used.

Remember, when you prepare your final draft of your case brief, the Disposition will go at the end. I just think it's helpful to write the Disposition right after you write the Procedural History because the two are so closely related.

APPLICABLE STATUTE(S)

Many, but not all, court decisions that you brief will involve decisions that interpret and apply statutes or administrative regulations. Because it forms the basis of the reviewing court's decision, it's important to take the time to identify the statute/regulation and the specific words or phrases in the statute/regulation, that are being interpreted and applied.

Finding and Understanding the Applicable Statute(s)

The first step is to find the actual statute that is being interpreted and applied to the parties involved in the appeal. This can be tricky because reviewing courts also typically mention statutes that define the procedure that must be followed in the appeal (sometimes called the Standard of Review). The reviewing court may also mention the statute that gave the parties the right to file a certain motion (such as a Motion for Summary Judgment or a Motion to Dismiss). That means the first statute you come across in the decision might not be the substantive statute being interpreted in the decision and applied to the parties' claims.

Finding applicable statutes can be complicated. Where you find it depends on whether you are accessing the reviewing court's decision in a hard copy reporter (book), on Westlaw®, or on FastCase® or the Internet in general.

If you are accessing the reviewing court's decision in a hard copy reporter (book) or on Westlaw®, you will see a series of **headnotes** below the synopsis. Some of them may contain brief overviews of statutes discussed in the decision, along with (improperly formatted) citations to statutes:

[2] Alcoholic Beverages Owners or lessors of premises

Under statute pursuant to which no adult may knowingly permit or fail to take action to prevent illegal consumption of alcoholic beverages by underage person on premises owned or controlled by adult, bar operators were not liable for injuries sustained by minor passenger in accident involving minor driver who had consumed beer outside bar, in parking lot and on adjacent beach; operators had not provided beer, which was brought onto premises by driver and others, and there was no evidence that operators knew of underage drinking occurring in parking lot and beach area on evening of accident. W.S.A. 125.07(1)(a)3.

The purpose of the headnote is to allow the reader to jump to the portion of the decision that discusses the topic summarized in the headnote:

Applicable statute -- Authority being interpreted – Pamperin appeal

[2] The statute the Pamperins are alleged to have violated is § 125.07(1)(a) 3, STATS., which provides

No adult knowingly may permit or fail to take actions to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This subdivision does not apply to alcohol beverages used exclusively as part of a religious service.

If you are accessing the reviewing court's decision or on FastCase® or the Internet in general, there are no headnotes.

Regardless of whether you have headnotes to help you locate the appliable statute(s), it is critically important to read the entire decision *thoroughly and carefully* and use a highlighter or other methods to mark the statutes the reviewing court is interpreting and applying. Look for portions of the decision discussing the meaning and/or application of words or phrases in a statute beyond just a citation of the statute.

Writing the Applicable Statute(s)

Once you have found the statute(s) the reviewing court is interpreting and applying in its decision, writing the Applicable Statutes section of your case brief is fairly simple:

- Start with the complete and proper *Bluebook* citation of the statute
- Copy and paste the actual language of the statute and put it in quotation marks
- If the statute is long or contains a lot of words and phrases that aren't directly relevant to the legal questions on appeal, revise the statute by taking words out or paraphrasing it.

Do not include the reviewing court's interpretation of the statute, or an explanation of its meaning. Include only the words of the statute itself. Here are the applicable statutes in the *Miller v. Thomack* case brief.

> Section 125.07(1)(a)1., Wis. Stat. (1996): "No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."
>
> Section 125.07(1)(a)3., Wis. Stat. (1996): "No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control."

The reviewing court expressly stated it was focusing on the phrase "procure for" (see below),

Applicable statute -- Authority being interpreted – Miller appeal	**[6]** In this case, we focus on the term "procure for." **"Procure" is not defined in the statute. We therefore construe the word according to its ordinary and accepted meaning, and we may consult a dictionary for that purpose. In the Interest of Christopher D., 191 Wis.2d 680, 704, 530 N.W.2d 34, 43 (Ct.App.1995).**

Thus, it would be fine to write the first statute this way:

Section 125.07(1)(a)1., Wis. Stat. (1996): "No person may procure … any alcohol beverages [for] any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

FACTS

All court decisions are based on a certain set of substantive facts. Although appellate courts do not review issues of fact, the substantive facts provide a context for the legal issues being reviewed. Thus, to get a true understanding of the legal impact of the reviewing court's decision, you need to have a good grasp of the substantive facts.

Understanding the Facts

The substantive facts tell us what happened to the persons involved in the appeal. Unlike procedural facts (which we detailed in the Procedural History and Disposition sections of the case brief), the substantive facts are the who, what, when, where, why (sometimes) and how of the contract, accident, transaction, etc., that forms the basis of the original court action. There are generally three different types of facts: legally significant, contextual (background) and irrelevant.

Legally significant facts are those facts that directly lead to or otherwise affect the legal outcome of the case. If the legally significant facts are changed, the outcome would likely change as well. Whether a fact is legally significant depends upon the legal issue in question. For example, the date of an accident would be legally significant if there was a question as to whether the statute of limitation had passed. In contrast, if there is no issue as to the statute of limitation, the date of the accident is merely background information.

Contextual facts provide you some background or "flavoring" of the case. Although such facts do not impact the legal issue, they do help us understand the issue better. Think of contextual facts as similar to supporting characters in a movie or book. Often, they help us to understand the main character and the plot, and their interaction with the main character adds interest.

Irrelevant facts are neither legally significant nor contextual. They really don't add to our understanding and simply take up space. Usually, irrelevant facts relate to minor details, such as the color of the car the defendant was driving, or the name of the hairstylist the plaintiff uses. If you always keep the legal issue in front of you, it's easy to determine which facts are irrelevant. If they don't directly affect the legal issue, or help you to understand it, they are irrelevant.

Suppose the issue is whether the defendant breached a legal duty (one of the elements of negligence. A witness tells you the defendant drove a new blue SUV through a red light and smashed into the plaintiff's old white Geo Metro. The fact that the defendant failed to stop at a red light is legally significant. The fact that the defendant drove a blue car is irrelevant. The location of the accident, the facts that the defendant drove a large SUV and the plaintiff drove a sub-compact, are contextual.

Finding the Facts

The facts are usually pretty easy to find. Typically, there is a distinct "facts" section of each decision. Sometimes the court uses a heading, as in the Miller v. Thomack case on page 133 (it's titled "Background"). In shorter decisions, the facts section starts with a paragraph that states something like, "The following facts are before us on this appeal." The synopsis also usually has a general statement of the facts. **Be careful!** Sometimes the "facts" or "background" section of the decision doesn't contain ***all*** of the facts.

The court may include additional legally significant facts when it discusses its holding or its reasoning. It can be helpful to highlight all instances of facts as you read the decision and decide later if the facts are legally significant, contextual or irrelevant.

Like many decisions, the Miller v. Thomack decision has a "Background" section that contains most of the facts:

BACKGROUND

Facts

For purposes of this appeal, these facts are not disputed. Early in the evening of June 12, 1990, Thomack picked up Rhonda and her cousins, Karen and Ransom. There was discussion among the four about getting beer and they drove to a parking lot where young people were gathered. Brian Clary, who was twenty-one, said he would buy beer for them. He bought either a twelve pack or a case of beer for them at a local liquor store. Karen and Ransom contributed money for the purchase of the beer, as did Beattie. The beer was put in Thomack's car and Thomack drove Rhonda, Karen and Ransom to a nearby unoccupied cabin, where they consumed some of the beer. No one served anyone else beer.

Facts

From the cabin, Thomack drove the other three to the parking lot of Pamperin's Bear Lake Bar & Hall on Bear Lake. The beer either remained in the back of the car, was placed beside it, or on the trunk, and any of the group who wanted a beer took one. No one distributed or passed the beer purchased by Clary to others, and consumption was voluntary. Thomack, Rhonda and others consumed beer on the beach area. None of the alcohol consumed by Thomack or Rhonda was purchased from Pamperin's Bear Lake Bar & Hall. The Pamperins leased the tavern from a relative of the person who owns the Bear Lake Campground, which is located next to the tavern. The leased property includes the tavern building, the parking lot to the east of the building and "outback." "Outback" means the area between the building and the lake, which includes a block of lake frontage. The lake shore is approximately 300 feet from the tavern.

Facts

Rhonda left Bear Lake in the early morning of June 13 as a passenger in Thomack's car. While passing another car, Thomack lost control of his car and it went off the road and struck a tree. Rhonda was seriously injured. She was not wearing a seat belt and was not then in the habit of wearing a seat belt.

As you might have noticed, the facts relating to both appeals (the Millers' and the Pamperins') are recited together. This is not the only place in the decision that contains the facts. Later on in the decision, when discussing the appeal by the Millers against Kimberly Ransom, Karen Miller and Jason Beattie, the Court repeated these facts:

Facts

[7] Clary was willing to purchase the beer for the underage persons in the car, but he needed money, and a reasonable inference from the undisputed facts is that he was not going to use his own. For purposes of this appeal, it is undisputed that when Karen, Ransom and Beattie contributed the money, they knew Clary was going to use it to purchase beer for the persons in the car, including Thomack, and they knew Thomack was underage. constitutes a violation of § 125.07(1)(a) 1, STATS., and is therefore negligence per se.

Karen and Ransom argue that cases from other jurisdictions support their position that underage persons who do nothing more than contribute to a common fund for the purchase of alcohol do not "furnish" alcohol to other underage persons. However, because the statutory language and controlling precedent in those cases differ from our own, we do not find them persuasive. The attempt to distinguish the conduct of underage persons drinking with friends from the conduct of adults is not, in our view, a viable distinction after *Kappell*. And we do not view contributing money for the purchase of the beer as somehow less significant in making the beer available than the act of handing a beer to a friend, which was the conduct found to violate the statute in *Kappell*.

Facts

Similarly, when discussing the Pamperins' appeal, the Court added the following facts:

Facts

[3] There was evidence that Clary and his uncle asked the person bartending that evening, Kurt Pamperin, Jr., for permission for Clary and his friends to swim because there was a sign saying "No swimming after dark." According to Clary, Pamperin agreed. Since Pamperin testified he did not recall this, or recall that anyone was on the beach area that evening, there is a genuine factual issue as to

Facts

Pamperin testified that he did not go outside that evening, did not see any young people and did not know about any drinking that evening. There is no evidence, or reasonable inferences from evidence, that disputes this. There was testimony from some of the young people that they were being loud and were afraid someone would complain. But Clary testified that when he was inside the tavern having a beer with his uncle at the bar, he could not hear the others outside. It is undisputed that none of the group went inside the tavern except Rhonda, Karen and Ransom, who used the bathroom. They could be seen from the bar, and their clothes were wet, but there is no evidence that anything about their behavior in the tavern suggested they were drinking alcohol.

Facts

We have also considered whether there is evidence or reasonable inferences from evidence that Pamperin, from inside the tavern, saw young people drinking, or saw the beer cans on the picnic table near the beach area. There are windows in the tavern facing the lake and Pamperin testified that when he is serving at the bar he can see the lake. Rhonda testified that "you can see from the bar where the beach is." But Clary, who was sitting at the bar that night, testified that you could not see the beach from the bar at night unless you went right up to the window. Since

Pamperin saw beer cans on the picnic table of young people on the beach drinking alcohol that night. Thomack's testimony that he saw "the owner" in the bar through the window when he, Thomack, was outside also

Facts

Facts

Rhonda points to Pamperin's testimony that he knew there "was the potential" for underage drinking on the beach. He testified he had such problems three times in the past four years. On those occasions, he simply told the people to leave and that he would lock the gate if there were continuing problems. There is no evidence that the beach area had a reputation as a place underage persons could drink or that any of the underage persons drinking there that evening had done so before. Pamperin denied that he knew any of these particular young people before the accident, and no evidence suggests otherwise.

When facts are repeated in the reviewing court's decision, or discussed in the portion of the decision that explains the reviewing court's legal analysis, there's a good chance those facts are legally significant.

Based on what we see in the decision, we know that:

With respect to the Millers' appeal, the **legally significant facts** are those that relate to:

- Who contributed money toward the purchase of the beer
- Whether the people who contributed money to buy the beer knew that underage persons would be drinking it

With respect to the Millers' appeal, the **contextual facts** are those that relate to:

- Who actually purchased the beer (Brian Clary) and from where (a liquor store)
- Where the minors drank the beer
- Where the beer was located while the minors drank it
- Whether someone served or distributed the beer or everyone who drank the beer helped themselves to it
- A description of the accident which injured Rhonda Miller

With respect to the Pamperins' appeal, the **legally significant facts** are those that relate to:

- Who actually purchased the beer (Brian Clary) and from where (a liquor store)
- Where on the Pamperins' property the minors drank the beer
- Contact the Pamperins may have had with one or more of the minors
- Actual knowledge the Pamperins had that the minors were on the property drinking beer
- Circumstances that should have led the Pamperins to believe that the minors were on their property drinking beer (what could/should the Pamperins have seen or heard with respect to the minors' activities on the Pamperins' property)

With respect to the Pamperins' appeal, the **contextual facts** are those that relate to:

- How the minors purchased the beer (with whose money, whose ID, etc.)
- Where the minors drank the beer other than on the Pamperins' property
- A description of the accident which injured Rhonda Miller

Writing the Facts

As with many of the other sections of your case brief, resist the temptation to simply copy and paste from the reviewing court's decision! Instead, write the facts in your own words. Think about how you want to organize the facts. Most of the time you'll write the facts as a chronological story about what happened. Here's one way you could write the facts for the *Miller v. Thomack* appeal:

> On the night of the accident which injured Rhonda Miller, Rhonda arranged for Brian Clary, who was 21 years old, to buy beer for her, for her two cousins, Kimberly Ransom and Karen Miller, for Craig Thomack and for Jason Beattie, all of whom were minors under the age of 18 and could not purchase beer legally. Kimberly contributed $5.00 toward the purchase; it is assumed that Karen and others also contributed money. Clary bought the beer and placed it in Craig's car.
>
> After drinking some of the beer at an unoccupied cabin, Craig drove Rhonda, Karen and Kimberly to the parking lot of Pamperin's Bear Lake Bar and Hall. Rhonda, Craig, Karen, Kimberly and Jason consumed the beer on the beach area behind the tavern. No one distributed or served the beer; they all helped themselves.
>
> Testimony indicated that one of the minors may have asked the bartender if the group could swim at the lake, and that one or more of the minors may have used the tavern's restroom. None of the minors purchased any alcohol from the tavern; all of the beer they consumed was purchased by Brian Clary at a liquor store. Several of the minors testified that they could see into the bar that evening. However, testimony from persons inside the tavern that evening, including Brian Clary, indicated that the minors could not be seen or heard from inside the bar.
>
> Rhonda and Craig later left the beach area in Craig's car, with Craig driving. Rhonda was not wearing her seat belt. At some point, Craig lost control of the vehicle in a rainstorm, resulting in an accident that severely injured Rhonda.

If you compare the above paragraphs to what you read in the *Miller v. Thomack* decision, you can see that the legally significant facts are included in detail, whereas contextual facts (most notably the facts about the accident and Rhonda's injuries) are merely summarized.

Now that you have the Procedural History, Disposition, Applicable Statutes and Facts of the *Miller v. Thomack* decision, you have a good foundation for understanding and writing the case brief sections that explain the Court of Appeals' legal analysis: The Issues, Holdings, and Reasoning sections.

5: Case Briefing - Procedural History, Disposition, Applicable Statutes and Facts is shared under a CC BY 4.0 license and was authored, remixed, and/or curated by Beth R. Pless, J.D. (Northeast Wisconsin Technical College).

6: Case Briefing - Issues and Holdings

In this chapter, we are going to explore what goes into writing the Issues and Holdings sections of your case brief. These sections go right after your Applicable Statute(s) section. In these two sections, we begin to explain the reviewing court's legal analysis.

We will be continuing to write a case brief for the Miller v. Thomack decision from the Wisconsin Court of Appeals. Access the decision.

ISSUES

The Issue(s) contain the legal question(s) the court is deciding in the case. What are the parties arguing about? What legal question(s) are you hoping to answer by reading and understanding the court's decision? Some court decisions focus on only one legal question; others analyze two or more closely related legal questions. The purpose of the Issues section of your case brief is to identify each legal question the reviewing court analyzed in its decision.

Finding and Understanding the Issues

The Issue has two components that must be included. The first component is the legal standard. The second component consists of the legally significant facts or circumstances to which the reviewing court applied the legal standard in its decision.

The Legal Standard

The first component of the Issue is the legal standard. The legal standard comes from the statutory language, precedent or other legal authority the reviewing court is interpreting and/or applying to the parties in the case. Legal standards often involve questions such as

- What does the legal authority (for example, a statute) require or prohibit?
- How are specific words or phrases in the legal authority defined?
- What does a party have to prove to successfully assert the claim or defense involved in the case?

If the decision you are briefing has an Applicable Statute (or Administrative Regulation), this is a good starting point for finding and understanding the legal standard. The next step is to identify the specific legal standard(s) the reviewing court analyzed in its decision that guided its application of the statutory requirements to the parties involved in the appeal.

Finding the legal standard(s) in the decision can be tricky. Sometimes the decision expressly identifies them. Other times, you can "reverse engineer" the legal standard by finding the reviewing court's legal conclusions – kind of like what happens on the game show Jeopardy!© where contestants are given the answer and need to come up with the question. And still other times, the reviewing court identifies the legal standard through statements about the parties' arguments or contentions on appeal.

More often, you need to hunt for the legal standard(s) while you carefully and thoroughly read the entire decision for perhaps the second or third time. As you read the decision, use a highlighter to mark all of the places the reviewing court discusses the legal authority being interpreted/applied. Then, reread what you've highlighted and look for the legal issue "indicator language" such as or similar to the following phrases:

- "The issue (or question) before this Court is…"
- "The parties raise the following issues (or questions) on appeal …"
- "We hold (or conclude) that …" (using the answer to identify the legal question)
- "Appellant (or other party designation or name) argues (or contents) that ..." (using the parties' arguments to identify the legal question)

As you will recall, we identified two Applicable Statutes in the *Miller v. Thomack* decision:

> Section 125.07(1)(a)1., Wis. Stat. (1996): "No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."
>
> Section 125.07(1)(a)3., Wis. Stat. (1996): "No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control."

Because we have two different Appliable Statutes, there are at least two different Issues, each with its own legal standard. Let's focus on identifying the specific legal standard the reviewing court analyzed with respect to the first statute (§ 125.07(1)(a)1., Wis. Stat. (1996)), which prohibits procuring, selling, dispensing, or giving away alcoholic beverages to an underage person.

You may have noticed during your previous read-through of the Miller v. Thomack decision that the reviewing court used headings or topic titles to guide the reader through its analysis. About ¾ of the way through the opinion, you see the heading/topic title, "**LIABILITY UNDER § 125.07(1)(a) 1, STATS., FOR CONTRIBUTING TO PURCHASE**" – this looks like a great place to look for the legal standard! In the paragraph following this heading, the Court wrote:

> Rhonda contends that the trial court erred in concluding that Karen, Ransom and Beattie did not violate § 125.07(1)(a) 1, STATS., by contributing to the purchase of the beer. The statute provides: "No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

A few sentences later, the court wrote: "In this case, we focus on the term 'procure for.' Bingo! We now know the **legal standard**, or the legal question, is

> What is the meaning of the phrase "procure for" as used in § 125.07(1)(a)1., Wis. Stat. (1996), which prohibits procuring alcoholic beverages for underage persons who are not accompanied by their parent, guardian or spouse who can legally consume alcohol?

The Legally Significant Facts

The second component of the Issue, the legally significant facts, gives us context for understanding the legal standard and how it is applied to the parties in the appeal. It tells us what the case is really about. Identifying the legally significant facts also gives us useful information we can use later on when we want to compare the decision we are briefing to other decisions discussing similar Issues as part of our macro-synthesis.

When you are looking for the legally significant facts, think of it asking, "Why are we here?" It can be helpful to think of the following questions:

- What happened that is raising the legal question for the reviewing court?
- What did the parties do (or not do) that is making the reviewing court question whether the legal standard has been met (or has been violated, or should be applied to the parties)
- What conduct or facts are the parties arguing about?

Previously, we wrote the Facts section of our case brief, which contains all of the legally significant and contextual facts for the entire appeal. For our Issue, we want to pull out only the facts the reviewing court stated were legally significant when it was determining whether Kimberly, Karen, Craig and Jason "procured" alcohol. Luckily, the reviewing court repeated the legally significant facts related to this legal standard when it discussed (§ 125.07(1)(a)1., Wis. Stat. (1996):

Facts

[7] Clary was willing to purchase the beer for the underage persons in the car, but he needed money, and a reasonable inference from the undisputed facts is that he was not going to use his own. For purposes of this appeal, it is undisputed that when Karen, Ransom and Beattie contributed the money, they knew Clary was going to use it to purchase beer for the persons in the car, including Thomack, and they knew Thomack was underage.

Remember, if the reviewing court repeats facts in its decision, they are probably pretty important.

For each legal authority (or word or phrase in the legal authority), you will want to repeat the process above: first, identify the specific legal standard. Then, identify the legally significant facts relating to each legal standard.

Writing the Issue Section

There are a few different ways to structure your Issues. Some people like to use Roman numerals (I, II, III) for the legal standard and capital letters (A, B, C) when listing the legally significant facts relevant to each legal standard. Other people like to use Arabic numerals (1, 2, 3) for the legal standard and lowercased letters (a, b, c) or bullets when listing the legally significant facts relevant to each legal standard. Still other people like to write the Issue in one sentence (this works best with short legal standards and only a few facts). Regardless of the structure you use, be sure to phrase each issue as a question.

I also recommend using a formula similar to what you see below for writing your Issues, to make sure you include both the legal standard and the legally significant facts:

> Is [legal standard, specifically described] met **when the facts show**: [legally significant facts relevant to the legal standard]?

We'll use the Millers' appeal in the *Miller v. Thomack* Court of Appeals decision to write the Issue step by step.

Step 1: Write the legal standard.

Make sure you are writing your legal standard as narrowly as possible, focusing on the words or phrases the reviewing court is interpreting or applying in its decision. You may even want to refer to the legal authority from which you got the legal standard. Do not, however, just generally describe the legal standard. Most importantly, resist the temptation to copy and paste from the reviewing court's decision. Write it in your own words.

Example

Here is a good example of the legal standard:

1. Does a person "procure" alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show:

Here are some poor examples of the legal standard:

- Does a person violate the statute when the facts show (too broad)
- Whether a person "procures" alcohol … (avoid starting with "whether" – it will almost always result in a grammatically incorrect sentence fragment)

Step 2: Add a list of the legally significant facts relevant to the legal standard.

Pay close attention to which legally significant facts are relevant to the legal standard. Try not to list all of the facts of the case for each legal standard. Also, if you are using lists, make sure each item in the list grammatically fits with the phrase "when the facts show."

Example Issue

Here's an example of an Issue that follows the formula suggested above:

1. Does a person "procure" alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show: (legal standard)

   a. The person contributed money toward a fund that the person knew would be used to purchase alcohol; (legally significant fact)
   b. The person knew that underage persons would consume the alcohol purchased with the person's funds; and (legally significant fact)

c. The person knew the alcohol would be consumed by underage persons outside the presence of a parent, guardian or spouse who could legally consume alcohol? (legally significant fact)

In the sample case brief for the *Thomack v. Miller* decision, you see another example of how this Issue could be written.

Step 3: Cross-check your list of legally significant facts against the Facts section of your case brief.

It's important to make sure that all of the facts you list in your Issues are also included in the Facts section of your case brief. Yes, it's repetitious; that repetition helps to strengthen your (and your reader's) understanding of the decision being briefed. While you're reviewing the Facts section of your case brief, decide whether you want to add contextual facts to your Issue to flesh out the story or make it more interesting. If you're going to make a mistake regarding which facts to include as part of your Issue, it's better to make the mistake of including facts that don't really matter, rather than leaving out crucial facts.

Step 4: Make sure the question in the Issue can be answered "Yes" or "No" without extra clarification.

The question asked in your Issue will be answered in the Holding. You want to make sure that, based on what you read in the decision, the answer to the question is clearly either "yes" or "no" and not "maybe" or "both yes and no."

Step 5: Repeat steps 1-4 for each additional legal standard.

Even if the legal standards come from the same legal authority or overlap somewhat, write a separate Issue for each one analyzed by the reviewing court. For example, if the court in *Miller v. Thomack* also analyzed whether the minor defendants' behavior constituted dispensing alcohol, or giving alcohol away, those would each be a separate Issue – even though the same legally significant facts would be relevant to each Issue. That means you'd have 3 issues with 3 different legal standards (one for procuring, one for dispensing, and one for giving away) with very similar legally significant facts (though I would add facts about everyone serving themselves alcohol, or perhaps that the person purchased the alcohol with no intent to consume it himself). Writing closely related Issues separately also avoids potential problems when writing the Holding, such as needing to explain that the reviewing court answered one legal standard identified in the Issue with a "yes" answer and another legal standard in that same Issue with a "no" answer.

Step 6: Review your Issues for consistency.

Excellent legal writing is internally consistent with respect to structure and details. Some things to check:

- Is your main numbering system consistent across all Issues (I, II, III or 1, 2, 3, or A, B, C)?
- Are the verb tenses consistent across all Issues (past tense or present tense)?
- Are the nouns consistent across all Issues (plural nouns or singular nouns, for example)?
- Are all Issues phrased as questions?

Take the time to make sure your Issues accurately describe the legal standard and legally significant facts analyzed in the decision, are written well, and are complete before moving on to writing your Holdings. It will definitely make writing your Holdings easier!

Writing the Holding Section

Once you have your Issue section written, writing the Holding section is super easy, at least if you are using the format required in this class! In this class, the Holdings simply answer the questions raised in the Issues, with no extra explanation (sometimes referred to as using "mirror image" language). Here are the steps:

Step 1: Copy and paste your Issues into the Holding section.

After you title the Holding section, this really is the next step! Then make sure that the main numbering system of the Holdings matches the main numbering system of the Issues.

Step 2: Add “Yes” or “No” to the beginning of each Issue.

How did the reviewing court answer the question you asked in the Issue? If you wrote the Issue correctly, it should be either “yes” or “no.”

Step 3: Revise the grammar and punctuation in each Holding to a statement.

You wrote your Issue as a question. The holding needs to be a statement that starts with “yes” or “no.” That means you’ll need to change some words or word order and change the final punctuation from a question mark to a period. Here is what our holding would look like (the changes are highlighted in yellow):

Example Holding

Here’s an example of a Holding that answers the example Issue above:

1. Yes. A person does “procure” alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show:

    a. The person contributed money toward a fund that the person knew would be used to purchase alcohol;
    b. The person knew that underage persons would consume the alcohol purchased with the person’s funds; and
    c. The person knew the alcohol would be consumed by underage persons outside the presence of a parent, guardian or spouse who could legally consume alcohol.

Now that you have the Procedural History, Disposition, Applicable Statutes, Facts, Issues and Holdings of the *Miller v. Thomack* decision, you have a good foundation for understanding and writing the case brief section that explains the Court of Appeals’ legal analysis in detail: The Reasoning section.

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7: Case Briefing - Reasoning

In this chapter, we are going to explore what goes into writing the most important section of your case brief: the Reasoning Section. This section goes right after the Facts section and before the Disposition section. In this section, we explain in detail the reviewing court's legal analysis.

We will be continuing to **write a case brief for the Miller v. Thomack decision from the Wisconsin Court of Appeals -- Access the decision.**

REASONING

The reasoning section is perhaps the most important component to your understanding of the decision. While the issue and holding sections tell you what the law is, the reasoning section tells you why the law is what it is. Later on, when you write your legal research memo, you will rely heavily on the reasoning section to help you clearly define the legal rule of the case. It will also help you with your application section. The reasoning gives you the ability to use a case that is on point to make an analogy to your client's facts and predict a legal outcome for your client.

Finding and Understanding the Reasoning

Many reviewing courts label sections of the decision containing the legal analysis of the Issues as "Analysis" (pretty creative, right?) or sometimes, as with the *Miller v. Thomack* Court of Appeals decision, the courts use topic titles or headings to guide the reader through its analysis. Even so, during your careful and thorough rereading of the decision, it can be helpful to mark the parts of the decision where the reviewing court:

- Specifically identifies the legal standard being interpreted/applied, as well as the source of the legal standard (for example, a statute);
- Identifies the tools it used to interpret those words/phrases;
- Explains the meaning of the words or phrases in the legal authority it is interpreting/applying;
- Describes why it has concluded the words or phrases mean what it says they mean;
- Applies its interpretation of the legal authority to the facts involved in the appeal; and
- Explains the "yes" or "no" answer in its holding and reaches a conclusion.

Thinking about the reviewing court's reasoning as involving each component above will help you to write a complete and detailed Reasoning section. Let's take a closer look at each of these components in the context of the reasoning applied by the Court of Appeals in *Miller v. Thomack* to explain the holding we identified in the previous chapter:

✔ Example Holding

1. Yes. A person does "procure" alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show:

    a. The person contributed money toward a fund that the person knew would be used to purchase alcohol;
    b. The person knew that underage persons would consume the alcohol purchased with the person's funds; and
    c. The person knew the alcohol would be consumed by underage persons outside the presence of a parent, guardian or spouse who could legally consume alcohol.

The Legal Standard

We know from our previous readings of the decision that the legal standard relevant to Kimberly, Karen, and Jason is the phrase "procure for" based on the statement in the decision "In this case, we focus on the term 'procure for.'" We also know the phrase "procure for" comes from §125.07(1)(a)1., Wis. Stat. (1996), which provides, "No person may procure … any alcohol beverages [for] any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

Tools Used to Interpret the Legal Authority

A good first step in this part of our analysis is to determine why the interpretation is necessary. You would think that it's always clear what words or phrases really mean but that's not always true in the legal field, especially when it comes to words or phrases in legal authorities. The inherent imprecision of the written English language, coupled with the lack of opportunity to ask for clarification or meaning from the people who wrote the legal authorities, means that we need to refer to other authorities to figure out the precise and intended meaning of the words used.

When a word or phrase is not defined within the statute itself, courts use a wide variety of tools to determine precise and intended meaning of the words used. These tools include

- References to dictionaries and other secondary sources
- References to related statutes/admin rules
- History of the statute (previous language and interpretation)
- References to other case law
- The parties' arguments ***if*** the Court used them to further explain the interpretation

Dictionaries/Secondary sources. A basic rule of statutory interpretation is that words are to be given their "plain" and "ordinary" meaning. Of course, the best resource for finding a word's plain and ordinary meaning is a dictionary. The reviewing court may also refer to a secondary source such as the *Restatement of Torts* or a scholarly legal article. If the reviewing court used a dictionary, this is expressly stated in the decision.

the statute. We therefore construe the word according to its ordinary and accepted meaning, and we may consult a dictionary for that purpose. In the Interest of Christopher D., 191 Wis.2d 680, 704, 530 N.W.2d 34, 43 (Ct.App.1995).

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976) lists the following pertinent definitions of "procure":

1a(1) to get by possession: obtain, acquire ... especially to get possession of by particular care or effort ... and sometimes by devious means ...

2a(1) to cause to happen or be done: bring about: effect....

Reasoning – Tools used to interpret authority – Miller Appeal

Related statutes. Most States group together statutes that relate to the same topic. For example, crimes are defined in Chapters 940-951 of the Wisconsin Statutes. Nearly every crime has some form of "intent" as one of its required elements of proof. The word "intent" is defined in a related statute, §939.23, Wis. Stat. (2024). A court needing to interpret the word "intent" as used in §943.02(1), Wis. Stat. (2024), would look to the related statute, 939.23, Wis. Stat. (2024). Again, if the reviewing court used related statutes to define a word or phrase in the statute being interpreted, this is expressly stated in the decision.

Statutory history. Another important tool for statutory interpretation is to look at the history of the statute to see if any of language has been changed, added, or removed. Courts are required to presume that every word in a statute was intentionally included and has important meaning. Thus, if the legislature made changes to previous statutory language, those changes were intended to change the fundamental meaning and/or application of the statutory language.

When a reviewing court looks at the history of a statute, typically a direct comparison between the previous and current language is mentioned. For example,

> The predecessor of sec. 174.02(1)(b), Stats., required that the owner of the dog have "actual notice" of the first injury before the owner would be liable for multiplied damages for subsequent injuries. See secs. 174.03, 174.04 (1979-80). The current version of the statute imposes double damages "if the [dog] owner *was notified or knew*" that the dog previously bit

someone, breaking the skin and causing permanent injury. (Emphasis added.) The amended version of the statute replaced the "actual notice" language with the requirement that the owner "was notified or knew" of the prior biting injury. We must presume that in amending the statute, the Legislature intended to require knowledge different from "actual knowledge."

The reviewing court must ensure its interpretation reflects a meaningfully different interpretation and application of statutory language that has been revised, amended or repealed.

Other case law. As you know, the rule of *stare decisis* and precedent practically guarantee that the reviewing court will rely on previous court decisions that interpreted the statute. Typically, reviewing courts will start by summarizing the interpretation contained in the precedent, and how that interpretation was applied to the facts in the precedent. From there, the reviewing court will determine how the precedent should shape the reviewing court's interpretation and application of the statutory language to the facts in front of it.

Sometimes the discussion of precedent is lengthier, especially if there are several precedents to consider, if the interpretation/legal standard has been evolving, or if the application of the legal standard is very fact intensive. It can feel tedious to read through a long discussion of history or the discussion of several different precedents; however, it is time well spent. Knowing the history gives you a greater context for understanding why a word or phrase has been interpreted and applied a certain way in the past; this in turn can help you to understand why the court that wrote the decision you are briefing interpreted and applied that same word or phrase – or a slightly different word or phrase – the way it did. Knowing the facts of precedents that have interpreted and applied the same (or similar) legal standard gives you a better handle on which facts are legally significant, as well as which facts are most likely to result in the same or a different outcome as that contained in the precedents or in the decision you are briefing. Seeing and understanding these nuances will lead to a more accurate understanding of the legal standard, and better predictions of how the legal standard may impact your client.

When dealing with statutes, the reviewing court may go beyond precedent interpreting and applying the statutory language and include a discussion of what the law required before the statute was enacted. This can also provide valuable insight, as sometimes the legislature enacts statutes in response to a court decision. For example, in the *Miller v. Thomack* case the reviewing court felt it appropriate to discuss the common law history of "social host" liability for accidents caused by intoxicated persons:

LIABILITY UNDER § 125.07(1)(a) 3, STATS.

We begin with some background on the common law of civil liability for furnishing alcoholic beverages. In *Sorensen v. Jarvis,* 119 Wis.2d 627, 645, 350 N.W.2d 108, 117 (1984), the supreme court altered the common law immunity for vendors of intoxicating liquors in actions brought by someone who had been injured as a result of the purchaser's intoxication. The court held that an injured person had a cause of action against a retailer who sells alcohol beverages to someone whom the retailer knows or should know is underage, and when the underage person's consumption of alcohol is a substantial factor in causing the injury.

[1] In *Koback v. Crook,* 123 Wis.2d 259, 276, 366 N.W.2d 857, 865 (1985), the court held that a social host is liable where the host serves alcohol to an underage person, knows or should know the person is underage, knows or should know the person will drive, and where the underage person's consumption of alcohol is a substantial factor in causing a third-party injury. The rationale of *Koback* and *Sorensen* was that the negligent supplier of an intoxicant to a minor, under "... the rules of Wisconsin tort law, may be liable in the same manner and to the same extent as any person who engages in negligent conduct." *Id.* at 273, 366 N.W.2d at 864. Conduct is negligent either because it will foreseeably cause harm, or because it violates a safety statute where the statutory purpose is to avoid or diminish the likelihood of harm that resulted; the latter case is negligence per se. *Id. Sorensen* and *Koback* both concerned negligence per se because the complaints alleged violations of statutes prohibiting the furnishing of alcoholic beverages to underage persons. *Id.* at 266, 366 N.W.2d at 860.

Understanding the relationship between the common law that existed prior to the enactment of the specific statutory language being interpreted is vital to understanding what the legislature intended the word or phrase in question to mean.

The parties' arguments. The reviewing court's responses to various arguments from the parties' lawyers as to how the legal standard should be interpreted or applied can provide insight into (more often than not) how the reviewing court believes the legal standard should ***not*** be interpreted or applied. When this occurs, the reviewing court will describe the party's argument and then accept or reject it. Reviewing courts will typically use language such as "we disagree" or "we are not persuaded" to See, for example, the following language in the *Miller v. Thomack* decision:

> Karen and Ransom argue that cases from other jurisdictions support their position that underage persons who do nothing more than contribute to a common fund for the purchase of alcohol do not "furnish" alcohol to other underage persons. However, because the statutory language and controlling precedent in those cases differ from our own, we do not find them persuasive. The attempt to distinguish the conduct of underage persons drinking with friends from the conduct of adults is not, in our view, a viable distinction after Kappell. And we do not view contributing money for the purchase of the beer as somehow less significant in making the beer available than the act of handing a beer to a friend, which was the conduct found to violate the statute in Kappell.

Keep in mind that the reviewing court may use one of the tools discussed above or may use many of them. Even if you are briefing a case of first impression, meaning there is no controlling precedent, you will still see at least one of these interpretation tools being used.

Interpretation of the Legal Authority

Once you have pondered all of the interpretation tools used by the reviewing court, it's time to move on to the reviewing court's actual interpretation. Most often in more recently written decisions, the reviewing court will express its interpretation based on all of the tools it used very neatly, in a paragraph that comes after its discussion of the tools themselves. Look for language such as "We conclude" or "Based on the above" or other phrases that seem to show that you're about to read the interpretation. For example:

We conclude that when an individual contributes money for the sole purpose of purchasing alcohol knowing that it will be consumed by an underage person, that individual is procuring alcohol for the underage person. Applying the first dictionary definition, that individual is obtaining alcohol for the underage person, with particular effort, and by devious means. Applying the second definition, which is perhaps even more apt, that individual is bringing about the consumption of alcohol by the underage person.

In older decisions, you may have to piece together the actual interpretation based on what the reviewing court said when it separately discussed each tool it used to interpret the legal authority. One of the best ways to do this is to write the reviewing court's statements about how it used each tool on a separate piece of paper so that you can see how they interrelate and form a detailed explanation of the reviewing court's determination of the meaning of the word or phrase being interpreted.

Facts of the case relevant to the application of the Legal Standard

Once the reviewing court has determined the appropriate meaning/interpretation of the legal standard, it's time to apply that interpretation to the parties' facts. As you know from reading previous chapters, many times a decision will contain a section titled "Background" or "Facts." Be aware that this section in the decision will certainly contain most of the legally significant facts, but not necessarily all of them. Not only that, but a complete understanding of the legal standard and its potential impact on your client requires that you know which specific facts are legally significant to the particular word or phrase on which you've been focusing.

As mentioned in the chapter covering Issues and Holdings, these are the facts that tell us what the case is really all about, and why we are here. Frequently, when discussing the interpretation of the legal standard, the reviewing court will repeat the legally significant facts that are directly related to that legal standard. Remember, if the reviewing court repeats facts in its decision, they are probably pretty important.

In *Miller v. Thomack*, we now know that in § 125.07(1)(a)1., Wis. Stat. (1996), "procure for" includes (a) contributing money (b) for the sole purpose of purchasing alcohol (c) knowing that it will be consumed by an underage person. The reviewing court repeated the following facts directly related to the interpretation: "… it is undisputed that … Karen, Ransom and Beattie contributed the money [to purchase the beer;] they knew Clary was going to use it to purchase beer for the persons in the car, including Thomack, and they knew Thomack was underage."

Conclusion of the Reviewing Court

At its most basic, the reviewing court's conclusion is simply its determination as to whether and how the legal standard applies to the parties in the appeal. Were all of the requirements met? Is one of the parties liable, or guilty, or otherwise responsible? Does the legal standard apply? Keep in mind that there is often a broader question the reviewing court needs to answer, beyond the meaning of the word or phrase in the legal standard. In Miller v. Thomack, that broader question was whether the people who contributed money toward the purchase of beer could be held responsible for Rhonda's injuries, based on a violation of § 125.07(1)(a)1., Wis. Stat. (1996), which prohibits people procuring alcohol for underage persons to consume. Now that we know that prohibited "procuring" includes contributing money for the sole purpose of purchasing alcohol knowing that it will be consumed by an underage person, and that Karen, Ransom and Beattie did all of those things, we see why the reviewing court concluded that Karen, Ransom and Beattie violated the statute and should be held responsible for Rhonda's injuries that resulted from that violation.

Writing the Reasoning Section.

The first thing you should do is go back and look at how you structured your Issues and Holdings (Roman numerals, capital letters, Arabic numerals), because you will want to structure your Reasoning section the same way. That means Issue 1, Holding 1, and Reasoning 1 all relate to the same legal standard.

I also recommend using a formula similar to what you see in the steps below for writing your Reasoning sections. This makes it less likely you'll forget a component of the Reasoning section. Using the same structure repeatedly also helps with writer's block, and the consistency makes your writing more predictable and easier to follow.

We'll use the Millers' appeal in the *Miller v. Thomack* Court of Appeals decision to write the Reasoning section step by step.

Step 1: Write the legal standard.

The best place to start is by copying the legal standard from the Issue that you are discussing. If necessary, simplify it: don't include any facts unless the sentence doesn't make sense without them. Decide whether you want to write your legal standard as a question or as a statement (and you'll want to be consistent in all of your Reasoning sections).

Here is what we wrote for our legal standard component of the Issue:

> Does a person "procure" alcohol to an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996)?

We'll want to revise the sentence so that it makes sense, and also so that it is not unnecessarily repetitive of other sentences we know we will write in this same Reasoning section. Because we'll be citing the statute containing the legal standard in the next sentence, it's not necessary to also cite the statute in our legal standard sentence. Here's what our first revision might look like:

> Does a person "procure" alcohol to an underage person?

Obviously, this sentence needs some factual context. Adding a few facts and further revising the sentence makes it much clearer what is going to be discussed:

> Has a person who contributed money toward the purchase of alcohol that the person knew would be consumed by underage persons illegally procured alcohol for underage persons?

Now we know what legal standard will be discussed, and in what context. Notice how the legal standard is narrowly stated – has a person illegally procured alcohol – rather than broadly stated (has a person violated the statute, is a person liable under the statute). Writing the legal standard narrowly keeps the discussion focused, and also makes it easier to end the discussion with a sentence that answers the question directly.

Step 2: Specify the portion of the statute, administrative rule or common law containing the legal standard.

Next, expressly refer to the statutory language that forms the basis for the legal standard. The easiest and most accurate way to do this is start by copying the statutory language from your Applicable Statute section (make sure you use quotation marks!), along with its correct and complete *Bluebook* citation.

> "No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age." Section 125.07(1)(a)1., Wis. Stat. (1996).

Then, revise the sentence by removing any parts of the statutory language that are not part of the legal standard you are discussing.

> "No person may procure … any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age." Section 125.07(1)(a)1., Wis. Stat. (1996).

Finally, add a transitional phrase that makes your writing flow well from the first sentence containing the legal standard to this sentence. You have a couple of options here, depending on your writing style. Here are two examples:

> Wisconsin Statutes provide in relevant part, "No person may procure … any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age." Section 125.07(1)(a)1., Wis.

Stat. (1996).

Section 125.07(1)(a)1., Wis. Stat. (1996), provides, in relevant part, "No person may procure … any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

Of course, there are other ways to correctly write this sentence. The key is to make sure you include the specific language, you cite the statute involved, and you like the way the sentence sounds when you read it out loud.

Step 3: Briefly explain why interpretation is necessary.

The reviewing court may have expressly written in its decision why interpretation is necessary. Other times, you have to extrapolate the reason(s) interpretation is necessary based on your thorough reading of the decision. The most common reasons are:

- the word or phrase that forms the basis of the legal standard is not defined in the statute or in related statutes
- the word or phrase that forms the basis of the legal standard was changed from the original language of the statute
- the legal standard is fact intensive, and this is the first time this particular fact scenario has been presented to a court

The explanation should be simple and brief – just enough to let the reader know why we're here, and what some of the interpretation tools are likely to be. For example, in the *Miller v. Thomack* case, the word "procure" wasn't defined in the statutes, so the reviewing court relied on a dictionary as its primary interpretation tool. Here's an example of a very simple sentence that expresses why interpretation is necessary and provides a good segue into the interpretation tool:

> The word "procure" is not defined in this statute; thus, the word is given its plain and ordinary meaning.

Here are some sentences that could be used in other circumstances:

- The word "xxx" is not defined in this statute; however, a related statute defines the word as "…." [cite the related statute]
- The word "xxx" is not defined in this statute; thus, the reviewing court looked to [other caselaw, or secondary sources, or …] to guide its understanding of the meaning of the word.
- The previous version of this statute [did not contain this word, or contained these words]; thus, the statute's history was examined.
- This is the first time the word "xxx" has been applied to the facts involved in the present case.

Again, there are other ways to correctly write this sentence. The key is to – at a minimum – specifically describe the reason the reviewing court needed to interpret the legal standard. It's important to use your own words and make sure you like the way the sentence sounds when you read it out loud.

Step 4: Describe in detail the tools used to interpret the authority.

Typically, a decision will cite numerous cases and other primary (as well as secondary) legal authorities as part of its reasoning. It is not necessary for the brief to include a listing of all of these authorities. It is the court's *reasoning* that is important, not the specific authorities which are given in support of that reasoning. That being said, the purpose of the brief is to help you understand how the decision impacts your client's legal question(s). If you feel you will benefit more from including citations to all of the authorities the reviewing court used to interpret the authority, then by all means, include them.

The *Miller v. Thomack* Court used a dictionary to interpret the word "procure." Here's how that tool might be discussed:

> Webster's Dictionary defines "procure" as follows: "To get by possession: obtain, acquire ... especially to get possession of by particular care or effort ... and sometimes by devious means ... to cause to happen or be done: bring about: effect...."

Regardless of whether you include the citations, make sure you fully discuss each type of interpretation tool before moving on to the next one. For example, if the reviewing court referred to a dictionary, statutory history, and other case law, discuss each of those three types separately. For example:

- The previous version of the statute contained the following language: "…" Because this represents a change in statutory language, the Court presumes that the current language has a meaning different from the previous language.

- Wisconsin Courts have interpreted the word “xxx” on numerous prior occasions. [Then, summarize in your own words what the decision you are briefing said about those precedents. Include facts from those precedents if it helps you make sense of the current decision]
- The Court, however, rejected the following definitions (or arguments) regarding the meaning of the word “xxx” ….

Remember, if you decide to use citations in your Reasoning section, you must use proper *Bluebook* citation form!

Step 5: Expressly state how the reviewing court interpreted the legal standard.

This can be as simple as writing, “Based on the above, the Court defined the word xxx as follows ….” As simple as it is, actually writing how the reviewing court defined or interpreted the legal standard is an important way to “tie up” your discussion of all of the interpretation tools.

> Contributing money toward purchase of alcohol necessarily involves an effort to cause that purchase to happen so that a person can obtain or acquire alcohol. Giving the money to another person who can legally purchase the alcohol and who is willing to provide that alcohol illegally to underage persons as a way to get around statutory prohibitions, certainly appears “devious.”

It also provides a nice guide for writing the next part of your Reasoning section – an explanation of how the reviewing court applied its interpretation to the facts in the appeal.

Step 6: Describe in detail the legally significant facts to which the reviewing court applied the legal standard

This part of your reasoning section should be contained in its own paragraph and start with a transition to signal the reader you are done discussing the reviewing court’s interpretation of the legal standard. Again, you have a lot of options, such as “In this case” or “In this appeal” or “The Court applied its interpretation to the following facts …” Then, using the interpretation you wrote in Step 5, detail the legally significant facts that are relevant to the legal standard and its interpretation:

> In this case, Karen, Ransom and Beattie all contributed money toward the purchase of the beer. At the time they contributed the money, they all knew and intended that the beer would be consumed by underage persons – themselves, Thomack and Rhonda. They provided the money to someone who could purchase the beer legally from a liquor store, and who was willing to then give the beer to them, knowing that they were underage. This demonstrates both “particular effort’ and “devious means.” As such, they caused underage persons to obtain beer illegally.

Again, use your own words, resisting the temptation to just copy and paste from the reviewing court’s decision. Make sure that all the facts you write about in your Reasoning Section are also contained in your Facts section.

Step 7: Write the reviewing court’s conclusion to the question contained in the legal standard.

This final step in writing the Reasoning section is simple, yet important. It’s the end of the story, like the final reveal of the murderer’s identity in a whodunnit novel. Even though we already know the end of the story, there’s a certain satisfaction in being able to say to yourself after the final reveal, “Yes! I *knew* the butler did it!” Although a case brief Reasoning section isn’t as exciting as a murder mystery, it’s still useful to end the story with the direct answer to the question raised in the first sentence of the Reasoning section. Start with a “concluding” transition (therefore, thus, hence, ergo, consequently, in conclusion), and then answer the question. For example:

> Therefore, by contributing money toward the purchase of beer, knowing it would be consumed by underage persons, a person “procures” alcohol in violation of §125.07, Wis. Stat.

Step 8: Repeat steps 1-7 for each additional Reasoning section.

Even if the legal standards come from the same legal authority or overlap somewhat, write a separate Reasoning section for each Issue you identified in your brief. The reviewing court may use the same interpretive tools when discussing different legal

standards, and the facts may overlap as well. Don't let that tempt you to be lazy or to just copy and paste from your other Reasoning sections. Remember, the purpose of each Reasoning section is to help you see the nuanced meanings of different words, and how they are applied differently. Then, you will have a more accurate and complete understanding of the legal standard and its potential impact and be better able to make an analogy to your client's facts and predict a legal outcome for your client.

Step 9: Review your Reasoning sections for consistency.

Excellent legal writing is internally consistent with respect to structure and details. Some things to check:

- Do you have the same number of Issues, Holdings, and Reasoning sections?
- Is your main numbering system consistent across all Issues, Holdings and Reasoning sections (I, II, III or 1, 2, 3, or A, B, C)?
- Does Reasoning section 1 answer the question raised in Issue 1 (and answered in Holding 1)?

Consider reading related sections out loud, in this order: Issue 1, Reasoning 1, Holding 1. Are they consistent with one another? If you had never read the decision you are briefing, would you have a complete understanding of the issue, reasoning and holding? If you can answer those questions, "Yes" you are on your way to an excellent case brief!

Other tips for writing the Reasoning

Don't let your paragraphs get too long. Typically, the first paragraph of your Reasoning section will be limited to the sentences containing the legal standard, the statute (or other authority) that forms the basis of the legal standard, and the reason interpretation is necessary. Whether you discuss several interpretation tools or just one interpretation tool in a single paragraph depends on how much detail you include in your discussion. Keep in mind that generally, paragraphs should contain at least two, but not more than four or five sentences.

7: Case Briefing - Reasoning is shared under a CC BY 4.0 license and was authored, remixed, and/or curated by Beth R. Pless, J.D. (Northeast Wisconsin Technical College).

8: Case Briefing - Put it all Together

Now that you've learned how to draft each of the case brief components separately, it's time to put the components together in the correct order. After that you'll want to carefully review and revise your case brief. This chapter contains some suggested steps and, at the end, a checklist for completing this process.

Step 1: Write the complete citation of the decision you are briefing.

The complete and proper citation for the case goes at the top of your brief. It will include the name of the case (*italicized*), followed by a citation of all the reporters in which the case is found. In Wisconsin, this would always include the Wisconsin Reports (Wis. or Wis. 2d) and the Northwestern Reporter (N.W. or N.W.2d). Depending on when the case was decided, you'd also have either a public domain citation or a date parenthetical. If you're unsure of the proper citation form, use your *Bluebook*.

Step 2: Put the case brief components in the correct order.

Remember, this is the case briefing structure we use in this class. Components 2-8 are labeled within the brief.

1. Complete citation of the case being briefed
2. Procedural history
3. Applicable statutes
4. Issues
5. Holdings
6. Facts
7. Reasoning
8. Disposition

Step 3: Check the case brief components for accuracy and completeness.

Revision is an important part of excellent legal writing. Re-read the court decision first. Then, review each component of your brief to make sure what you wrote in your brief accurately reflects the reviewing court's decision. Some *common errors to avoid in each component*:

- **Procedural History**

  ☹ failing to adequately identify the parties involved in the appeal with unique names and with their party designations (plaintiff, defendant, appellant, respondent, petitioner).

  ☹ failing to describe the procedural action that is being appealed (motion granted, motion denied, judgment entered, etc.).

  ☹ including what the reviewing court did in its decision.

- **Applicable Statute(s)**

  ☹ writing the reviewing court's interpretation of the statute(s) rather than the actual statutory language.

  ☹ failing to use quotation marks when copying/pasting the actual statutory language.

  ☹ failing to include all statutes related to the legal standard identified in your Issue section.

  ☹ failing to include the complete citation of the statute(s).

- **Issue(s)**

  ☹ writing the legal standard too broadly (is someone liable, guilty, responsible, etc.) rather than focusing on the word or phrase being interpreted and applied.

  ☹ failing to include a list of legally significant facts related to the legal standard.

  ☹ including facts in the Issue section that are not also included in the Facts section.

- **Holding(s)**

  ☹ failing to start with yes/no (based on how the reviewing court answered the question in its decision).

☹ inaccurately answering the issue(s) yes/no (based on how the reviewing court answered the question in its decision).

☹ adding explanations or other information to your holding(s) not contained in your issue(s).

- **Facts**

☹ omitting legally significant facts, especially when they weren't included in the reviewing court's "background" or "facts" section of its decision.

☹ omitting contextual facts that help the reader understand what happened to the parties involved in the appeal – especially facts that are similar to your client's facts.

☹ including procedural information (for example, what the trial court did with the case).

☹ including legal conclusions (don't answer the question in the legal standard or make a statement that the legal standard's requirements were met or not met).

☹ including the parties' legal arguments.

- **Reasoning**

☹ failing to include the statutory language that forms the basis of the legal standard.

☹ failing to fully explain the interpretation tools used by the reviewing court.

☹ failing to expressly state the reviewing court's interpretation/definition of the word or phrases in the legal standard.

☹ failing to describe in detail the legally significant facts to which the reviewing court applied the legal standard.

☹ including facts in the Reasoning section that are not also included in the Facts section.

☹ failing to include a conclusion at the end of the reasoning section.

Step 4: Check the case brief components for internal consistency.

After making any necessary revisions in Step 3, you want to make sure your brief is internally consistent structurally, grammatically, and substantively. Some items to check:

- Do you have the same number of Issues, Holdings, and Reasoning sections?
- Is there a one-for-one correlation between each Issue, Holding, and Reasoning Section (that is, do Issue 1, Holding 1, and Reasoning 1 all address the same legal standard)?
- Do you use the same numbering system across the Issues, Holdings, and Reasoning sections?
- Are the verb tenses consistent across all Issues, Holdings, and Reasoning sections (past tense or present tense)?
- Are the names/nouns/pronouns consistent across all Issues, Holdings, and Reasoning sections (plural nouns or singular nouns, for example)?
- Do the legal standards at the beginning of each Reasoning section match the Issue to which they relate?
- Do the conclusions at the end of each Reasoning section match the yes/no in the Holding to which they relate?

Step 5: Proofread the entire brief.

Don't let things like improper citation form, errors in writing mechanics (including grammar, punctuation, capitalization), or spelling errors ruin an otherwise great case brief! Run spell-checker – slowly and carefully! Then put the case brief aside for a while (at least an hour); after that, run "dumb-checker" – consider slowly and carefully reading your case brief out loud.

Briefing cases might not come easily to you at first. That's OK! Your comfort level with the skills involved in briefing a case will increase the more you practice them.

Access the completed *Miller v. Thomack* case brief.

CHECKLIST FOR DRAFTING THE CASE BRIEF

Use the checklist below to help you write your case brief. Or use access the interactive version. **Checklist for Drafting The Case Brief.docx**

Citation of case:

PROCEDURAL HISTORY:

Court that decided the case:	__ WI Court of Appeals	__ WI Supreme Court
Name of Appellant		N/A
Name of Respondent		
Name of Person who Petitioned Supreme Court for Review	N/A	

What was appealed from?

__ Trial Court Order granting:

__ Trial Court Order denying:

__ Judgment in favor of:

What was the result of the Trial Court's action on the case (dismiss complaint, refuse to dismiss, someone is held liable or not liable, etc.):

If this case is in the Supreme Court, did the Appellate Court: __ Affirm __ Reverse the Trial Court

DISPOSITION:

The reviewing court (Court that decided the case): (See what you checked in Procedural History, above)	__ WI Court of Appeals	__ WI Supreme Court

Did the reviewing court: __ Affirm __ Reverse the Trial Court?

What was the result of the Trial Court's action on the case (dismiss complaint, refuse to dismiss, someone is held liable or not liable, etc.):

APPLICABLE STATUTE(S):

Citation of Statute(s)	**Words/Phrases being interpreted/applied (or entire statute, with emphasis on words being interpreted/applied)**

__ Make sure you only have the words of the statute(s) in this section. Don't include any of the Court's interpretation or any facts here.

FACTS:

__ Check the "background or "Facts" section of the Court decision

__ Read through the rest of the Court decision, to see if there are more facts mentioned, or certain facts repeated

__ Double-check your facts:

__ Do you have enough facts so you can make a comparison to the client's facts?

__ Do you have any facts that aren't relevant to the specific parts of the statute being interpreted? If so, consider taking them out

ISSUE(S):

Narrow Legal Standard from Statute – use the words/phrases you listed above	**Case law facts relevant to the legal standard – what behavior or circumstances cause us to wonder whether the statute applies?**
1.	
2.	
3.	

__ Double-check your legal standards against the Applicable statutes

__ Double-check the facts you have listed here against your Facts section, above. Do all of the facts you have written here appear in your Facts section?

REASONING:

Reasoning Section #1:

Explain how and why the Court interpreted and applied the statute the way it did, using IRAC Format.

Issue	Legal standard only from Issue #1, above
Conclusion	Answer the question above (Therefore ….)
Rule	Words of the statute(s) being interpreted and applied in issue #1, above
	Citation of the statute(s) being interpret and applied in issue #1, above
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this
	Use a transition to introduce the tools the Court used in its Decision to interpret the statute Discuss the tools the Court used in its Decision __ Dictionary? __ Other related statutes? __ Secondary sources (such as Restatement of the law)? __ Other case law interpreting this statute or similar statutes?
Application	Case law facts the Court used when it applied the statute that it interpreted __ Do all of the facts you have written here appear in your Facts section, above? __ Do you have enough facts here to help you compare the case to our client in your analysis section, below?

Reasoning Section #2:

Explain how and why the Court interpreted and applied the statute the way it did, using IRAC Format.

Issue	Legal standard only from Issue #2, above
Conclusion	Answer the question above (Therefore ….)
Rule	Words of the statute(s) being interpreted and applied in issue #2, above
	Citation of the statute(s) being interpret and applied in issue #2, above
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this
	Use a transition to introduce the tools the Court used in its Decision to interpret the statute Discuss the tools the Court used in its Decision __ Dictionary? __ Other related statutes? __ Secondary sources (such as Restatement of the law)? __ Other case law interpreting this statute or similar statutes?
Application	Case law facts the Court used when it applied the statute that it interpreted __ Do all of the facts you have written here appear in your Facts section, above? __ Do you have enough facts here to help you compare the case to our client in your analysis section, below?

Reasoning Section #3:

Explain how and why the Court interpreted and applied the statute the way it did, using IRAC Format.

Issue	Legal standard only from Issue #3, above
Conclusion	Answer the question above (Therefore ….)
Rule	Words of the statute(s) being interpreted and applied in issue #3, above
	Citation of the statute(s) being interpret and applied in issue #3, above
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this
	Use a transition to introduce the tools the Court used in its Decision to interpret the statute Discuss the tools the Court used in its Decision __ Dictionary? __ Other related statutes? __ Secondary sources (such as Restatement of the law)? __ Other case law interpreting this statute or similar statutes?
Application	Case law facts the Court used when it applied the statute that it interpreted __ Do all of the facts you have written here appear in your Facts section, above? __ Do you have enough facts here to help you compare the case to our client in your analysis section, below?

Check your entire Reasoning section:

__ Does the content of each the reasoning section match up with the content of your issues (1 matches 1, 2 matches 2, 3 matches 3, etc.)?

Review and revise what you have so far

__ Is it complete?

__ Does it make sense?

__ Is it internally consistent (does everything match up correctly)?

HOLDING(S):

Do not write these until you're finished revising the rest of your brief!

__ Copy and paste your issue(s)

__ Start with "Yes" or "No" depending on how the Court answered the question

__ Make changes to grammar, sentence structure and punctuation as needed to change the question to a statement.

Did you add any words or explanations that are not in your issue? __ Yes __ No

If yes, why? __ I need to revise my issue. __ My issue is fine, I just couldn't resist adding more (and I will take it out now)

Finalize your case brief!

__ Put Case Brief Components in Proper Order

__ Run spell-checker (make sure it checks words in all caps)

__ Run dumb-checker (carefully proofread everything you've written)

__ Is it complete?

__ Does it make sense?

__ Is it internally consistent (does everything match up correctly)?

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9: Macro-Synthesis

Macro-synthesis occurs after you have completed your synthesis of each legal authority individually and it's time to figure out how the legal authorities relate to one another. In an earlier chapter, we used an analogy of putting together a puzzle to better understand micro-synthesis. We now return to that analogy to better understand macro-synthesis.

You've pulled out all of the puzzle pieces that contain parts of the whole picture of what it would take (for example) for the State to successfully pursue an arson conviction. You now have a huge pile of puzzle pieces in front of you. Each piece represents a legal authority – one or two pieces might be statutes, several pieces might be court decisions, and still others might be secondary resources (such as a section from the Restatement of Torts). After you put all of these pieces together, you'll have the complete picture and, hopefully, some answers to your client's legal question.

When putting together a puzzle, most people start by sorting the puzzle pieces by shape or color, predicting how they might fit together. Using the picture on the puzzle box as a guide, you sort each puzzle piece into its place. Look at the shape and color of the piece: Is it an edge piece? Is it a piece of the sun or the sky? Put it in the appropriate pile.

With legal authorities, we don't have edge pieces, but we do have guidelines about how they relate to one another. In your Legal Research class, you learned the following hierarchy of legal authorities:

1. Codified primary sources of law
2. Common law primary sources of law
3. Secondary sources of law

Codified authorities – Constitutional provisions, Statutes, and Administrative Rules (if they apply to the client's question) – are the starting point, kind of like the corner and edge pieces. We need to have a good understanding of what they require/prohibit, to whom they apply, when they apply and where they apply (micro-synthesis) before we can determine how they relate to the other codified authorities. Some questions to ask would be:

- Which codified authority contains the general rule – the one that applies most of the time to most of the situations and people?
- Which codified authority contains definitions of words or phrases contained in the general rule?
- Which codified authority contains explanations of when, where, to whom or how the general rule applies?
- Which codified authority contains exceptions or restrictions on when, where, to whom or how the general rule applies?

Common law authorities – court decisions (also known as case law) – are next in the hierarchy. Often, case law interprets or defines words/phrases in codified authorities and explains how to apply them to a set of facts or circumstances. To see how the case law fits with the codified authorities, especially when you have multiple court decisions to macro-synthesize, you would ask similar questions:

- Which court decision contains definitions of words or phrases contained in the general rule?
- Which court decision contains the general rule of how to interpret and apply the codified authority?
- Which court decision contains explanations of when, where, to whom or how the codified authority applies?
- Which court decision contains exceptions or restrictions on when, where, to whom or how the codified authority applies?

Sometimes there are no codified authorities that apply to your client's question. The case law then becomes the starting point, again with nearly identical questions:

- Which court decision contains the general rule – the one that applies most of the time to most of the situations and people?
- Which court decision contains definitions of words or phrases contained in the general rule?
- Which court decision contains explanations of when, where, to whom or how the general rule applies?
- Which court decision contains exceptions or restrictions on when, where, to whom or how the general rule applies?

Finally, secondary sources (such as Restatements, A.L.R., legal encyclopedias, etc.) may also have a role to play in helping you to see the complete picture of the client's legal question. That role is to help you understand, interpret and explain the rules contained in codified or common law authorities. You will often see court decisions refer to these secondary sources; however, secondary sources do not contain "rules" of any kind.

Performing Macro-Synthesis

Remember our client from a previous chapter, Mr. Willy Wonka? He came to our law office because he was recently charged with arson. Our factual research revealed the following:

- A fire started at the Chocolate Factory, located in Green Bay, Wisconsin, at approximately 1 a.m. on January 30 last year.
- The factory had been closed since 5 p.m. on January 29.
- No one was in the building and no equipment was operating at the time of the fire.
- The fire caused $1,000,000 in damage to the factory.
- Mary Worth, who lives across the street from the factory, stated that at around 1:30 a.m. on January 30, she saw a man dancing in the street in front of her house. This man was wearing camouflage clothing and was repeatedly shouting, “Burn baby burn!” Mary Worth was shown a photo lineup of potential suspects and identified our client, Willy Wonka, as the man.
- The Fire Inspector found accelerants at several sites around the outside of the factory.
- The Chocolate Factory is insured by Safeco Ins. Company (policy number FA6660297-SW)
- The Chocolate Factory is jointly owned by Wonka and another man, Charlie Bucket.
- Currently, Charlie Bucket is under investigation for improper business practices. The Chocolate Factory’s financial records are being audited by Weegocha Auditing Company. The investigation and audit have revealed
  - The Chocolate Factory has been operating at a loss for 3 years
  - $1,000,000 is currently unaccounted for (or missing) from the financial records
- Both Bucket and Wonka have Preferred Player’s cards at LaCasino, a local gambling casino. Preferred Player’s cards are issued only to $1,000,000 players.
- When the police interviewed him, Bucket stated that he was unaware of any plan to set a fire at the Chocolate Factory, and that he would not have consented to such a plan if he were aware of it.

We located and synthesized Wisconsin’s arson statute and determined that §943.02(1)(a) is the section that is most applicable to Wonka’s facts. That statute tells us, in relevant part, that a person is guilty of arson to a building if that person ‘[b]y means of fire, intentionally damages any building of another without the other's consent.” Our micro-synthesis of that statutory section looked like this:

COMPLETE CITATION OF STATUTE: Wis. Stat. §943.02(1)(a) (2005)

COMPLETE CITATION OF RELATED STATUTES: Wis. Stat. §943.02(2) (2005)

QUESTION	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
WHO:	Any person	Wonka is a person
WHAT:	The action of using fire and damaging another person's building. It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building.	A fire was set and the Chocolate Factory was damaged ($1 million); Bucket is another person who owns the Chocolate Factory
WHEN:	any time	January 30, 1 a.m.
WHERE:	in Wisconsin a building	Fire occurred in Wisconsin, at the Chocolate Factory, which is a building
WHY:	because the statute says so	n/a
HOW:	The action of setting the fire must be done intentionally. The action of setting the fire must also be done without the other person's consent	Accelerants used; Wonka seen dancing at scene of fire yelling "burn baby burn;" motive exists for setting fire ($ problems). These facts are evidence of intent Bucket denies knowledge of plan or consent; no evidence that Bucket set the fire or otherwise participated in the plan; joint ownership is a legal right (under subsection (2) of statute)
EXCEPTIONS?	There are no "unless" or "except" statements in the statute	n/a

While we know that fire was used and damage was caused, we have more questions to answer before we can advise our client whether it's best to take a plea deal or go to a jury trial:

- What is a "building" – is it a permanent structure or does a tent qualify? Does it have to be someone's home?
- What does "intentionally" mean and how is it proven? After all, no one really knows what was in Wonka's mind as far as what he intended regarding a fire at the Chocolate Factory. We have facts that we think might show intent and motive, but are they enough?
- What does "without consent" mean and how is it proven? After all, no one really knows what was in Bucket's mind as far as what he actually knew or thought about plans for a fire at the Chocolate Factory. We know what he said to the police, but maybe he lied!

For our purposes, let's assume that a "building" has been defined as any permanent structure, regardless of whether it is someone's home or dwelling place. That means the Chocolate Factory is a "building" to which the arson statute applies.

We know that the word "intentionally" is not defined in the Wisconsin criminal statutes. Let's assume that we found two court decisions that help us define "intentionally" and understand how it is proven. Below is a summary of those two cases (which, by the way, are fictitious):

State v. Johnson, 349 Wis. 2d 894, 455 N.W.2d 338 (1988). That case said, "Intent to commit arson must be proven with objective facts. This intent can be inferred from the following facts: use of an accelerant, the setting of the fire during a time of the day when the area is likely to be unpopulated, or any other facts tending to show hostility or intent to cause damage." The case involved

Randy Johnson, who was accused of arson to a school. The school caught fire at 3 a.m. on Easter Sunday. A search of Randy's home yielded some clothes that smelled of smoke and gasoline. The fire inspector's report revealed the presence of gasoline in the area where the fire started. An empty gas can was found in the football field behind the high school. Witnesses also testified that Randy's Chemistry class was scheduled to take a big exam the following Monday. Randy's Chemistry teacher testified that Randy needed to earn an A on the exam or he would fail the class. The *Johnson* court held that this evidence was sufficient to prove that Randy intentionally set fire to the school, even though there was no evidence that he was seen in the area of the fire. As a result, Randy's conviction of arson was upheld.

State v. Rodriguez, 548 Wis. 2d 293, 560 N.W.2d 81 (1993). This case applied the same statute, and the definition in *Johnson:* "Intent to commit arson must be proven with objective facts. This intent can be inferred from the following facts: use of an accelerant, the setting of the fire during a time of the day when the area is likely to be unpopulated, or any other facts tending to show hostility or intent to cause damage." The Court clarified that proving "intent" beyond a reasonable doubt requires more than just evidence of the presence of accelerants at the site coupled with "vaguely suspicious" circumstances. In *Rodriguez*, the fire started on Alex Rodriguez's back porch at 5 p.m. on a Saturday, causing damage to his home. At the time of the fire, due to a renovation project at the home, the door to the back porch had been boarded up, such that Rodriguez needed to go out the front door and around the home to access the back porch. Rodriguez was at home when the fire started, and immediately called the fire department to report the fire. Several days later, Rodriguez made a claim with his insurance company, which denied the claim, calling the fire "suspicious" and noting that accelerants were present on the back porch where the fire started. Rodriguez testified that he always kept his grill, charcoal, and charcoal lighter fluid on the back porch. Witnesses for the insurance company were unable to describe any other evidence that the fire had been set intentionally. The *Rodriguez* court held that this evidence was not sufficient to prove that he intentionally set the fire. As a result, Rodriguez's conviction of arson was overturned – the opposite result of the *Johnson* case.

Based on what we see above, it's safe to conclude that an arson conviction must be supported by several pieces of evidence that demonstrate intent to cause damage, with no "innocent" explanation for that evidence. One or two pieces of evidence are not enough, especially when only a "vague suspicion" is generated by the evidence – particularly when there is an "innocent" explanation for it.

With fact-intensive legal standards, it is helpful to perform a detailed side-by-side comparison of relevant court decisions. When you do this, include details about each decision with respect to court level (Supreme Court or Court of Appeals) and which decision was published first. While the questions we ask will be unique to each legal standard, the following example is a good model:

Questions	*State v. Johnson* WI Supreme Court 1988	*State v. Rodriguez* WI Supreme Court 1993
Who is the primary defendant?	Randy Johnson, high school student	Alex Rodriguez, adult
Where did the fire occur?	The high school Randy attended	The back porch of Alex's home
Did the primary defendant own the property where the fire occurred?	No	Yes
Was the primary defendant present when the fire occurred?	No one witnessed Randy at the school	Yes, Alex was at his home and called the fire department
Did the fire occur at a time when the property was likely to be unoccupied?	Yes. The fire occurred at 3 a.m. on a Sunday, when the school was closed	Probably not. The fire occurred at 5 p.m. on a Saturday, when someone might typically be home preparing dinner
Were accelerants present at the site of the fire? If so, what were they?	Yes. Gasoline was found at the site where the fire started. An empty gas can was found on the football field behind the school.	Yes. Charcoal and lighter fluid were found on the back porch.
Was there an "innocent explanation" for the presence of accelerants at the site of the fire?	No	Yes. Alex testified he always kept his grill, charcoal, and lighter fluid on the back porch
Was there any other "suspicious" evidence that implicated the primary defendant?	Yes. A search of Randy's home resulted in the police finding some of Randy's clothing that smelled like gasoline and smoke.	It seems odd that Alex would keep his grilling supplies on the back porch when the door leading from the inside of the house to the porch was boarded up.
Was there an "innocent explanation" for the presence of the other "suspicious" evidence?	No	Yes. Alex's home was undergoing renovations at the time; presumably, the door was only temporarily boarded up
Was there evidence that the primary defendant had a motive to set the fire?	Yes. Randy's Chemistry class was scheduled to take an exam the day after the fire. If Randy didn't earn an A on the exam, he'd fail the class	Maybe? Alex might have wanted to get insurance money to pay for his remodeling project. This is not clear from the Court's decision
Would the primary defendant benefit in some way as a result of the fire?	Yes. Randy would get more time to study for a "do or die" exam.	Yes. Alex would have received insurance money to cover the damage caused by the fire if the insurance company had not denied the claim.
Was the primary defendant convicted of arson?	Yes	Yes
If the primary defendant was convicted of arson, was the conviction upheld or overturned?	Randy's conviction was upheld	Alex's conviction was overturned
Why did the Court uphold the conviction?	"Objective evidence" of intent to set a fire existed: presence of accelerants; the fire occurred during a time of the day when the school was likely to be unpopulated; the primary defendant's clothes smelled like	n/a

Questions	*State v. Johnson* WI Supreme Court 1988	*State v. Rodriguez* WI Supreme Court 1993
	gasoline and smoke; the primary defendant had a clear motive to set the fire.	
Why did the Court overturn the conviction?	n/a	While an accelerant was present at the site of the fire, there was a logical "innocent" explanation for its presence. There was evidence inconsistent with "hostility" or "intent" – the primary defendant called the fire department right away. The only motive for setting the fire (getting insurance money) is only "vaguely suspicious."

Even though some of these details may not be crucial to the outcome of the decision, it is better to include facts that end up being trivial, than to risk excluding facts that may turn out to be legally significant. When macro-synthesizing case law, we are trying to determine what accounts for the changes (if there are any) in how the legal standard is applied to different persons or fact scenarios.

This amount of detail also helps us with the next step: comparing Wonka's facts to the facts in *Johnson* and *Rodriguez*.

Questions	***State v. Johnson*** **WI Supreme Court 1988**	***State v. Rodriguez*** **WI Supreme Court 1993**
Wonka's facts that are similar	• Both fires occurred at a time when the buildings were likely to be unoccupied • Accelerants were present at the site where both fires started • There is no "innocent" reason why accelerants would have been present at a school or at the Chocolate Factory • Randy's clothes smelled like gasoline and smoke; Wonka was seen wearing camouflage clothing • Both primary defendants had a motive for setting the fire	• Both primary defendants owned the property where the fire occurred. • Accelerants were present at the site where both fires started • Both primary defendants were present at the site of the fire • Both primary defendants could have benefited financially by setting the fire (insurance money)
Wonka's facts that are different	• Randy was a high school student; Wonka was an adult • A school is a public building; the Chocolate Factory is a privately owned building • Wonka was co-owner of the building where the fire occurred • A witness saw Wonka dancing in the street in front of her house, which is across the street from the Chocolate factory. Randy was not witnessed at the site of the fire • Wonka was seen at the site of the fire and heard repeatedly shouting, "Burn baby burn!" • Wonka's potential motive for setting the fire was to obtain insurance money potentially to cover gambling losses and/or embezzlement from the Chocolate Factory. Randy did not financially benefit from the fire; Randy's motive was to delay a Chemistry exam	• Wonka's fire started at a factory. Alex's fire started at his home • Wonka's fire occurred at a time when the Chocolate Factory would be closed and unoccupied; Alex's fire occurred at a time when the home would typically be occupied by people living there • Alex called the fire department to immediately report the fire and didn't behave in a "hostile" way. Wonka danced across the street from the site of the fire shouting, "Burn baby burn!" • There was a witness to the Chocolate Factory fire; there does not appear to have been a witness at Alex's home, other than Alex • There is no "innocent" reason why accelerants would have been present at the Chocolate Factory; Alex's "innocent" reason was that he always kept the charcoal and lighter fluid on the porch, where the fire started. • Wonka's potential motive for setting the fire was to obtain insurance money potentially to cover gambling losses and/or embezzlement from the Chocolate Factory. Alex did not appear to have a logical motive to set the fire

Again, some of these similarities and differences may seem inconsequential. However, including those details makes it easier to determine which case is more similar to the client's facts. This in turn, enables us to make a more accurate prediction of which case will have a greater impact on the client's question. For example, assume your client's facts are very similar to a pile of authorities (puzzle pieces) you've collected. When you put that pile together, an outcome becomes apparent (a picture of a sun). You then logically predict that your client's outcome will be similar to that contained in the authorities (in other words, your client has a picture of a sun, too). Small factual differences between the authorities and your client's facts call for small variations in the

outcome (an orange sun instead of a yellow one). Major factual differences between the authorities and your client's facts call for more dramatic variations in the outcome (a moon instead of a sun). You then need to decide if the difference is so dramatic that the authority does not apply, or that you must reach a conclusion opposite to that reached in the authority.

If you ask me, our client Wonka seems to be in some serious trouble! But this still isn't the complete story. Remember, the State has to prove all of the elements of a criminal statute beyond a reasonable doubt to obtain a conviction. Three out of four (fire, building, intent) is not enough. We still need to know how "without the other [building owner's] consent" means. We'd have to separately research how court decisions have defined, interpreted an applied "without the other's consent" in the arson statute. That means another round of micro-synthesis of court decisions, followed by another round of macro-synthesis. We might even need to find some secondary authorities (maybe some Wisconsin Jury Instructions?) to help us figure this out.

Once you've completed macro-synthesis of all the authorities relating to each element (or sub-question/sub-issue) that needs to be analyzed to answer the broad question relating to guilt or liability, you are ready to reach a conclusion about the client's broad question. The next step is to report your analysis.

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10: Legal Memos - Introduction

In the next several chapters, you will learn about drafting a legal research memorandum. The legal research memo is the culmination of your legal research and your legal synthesis. Drafting a legal memo involves some of the highest-level writing a legal practitioner may do. This is your chance to shine … take the time to do it right.

Purpose of a Legal Research Memo

Besides reporting the results of your legal research and demonstrating your analytical prowess, the primary purpose of the legal research memo is to provide a basis for making decisions relating to the reasons the client retained the attorney. Attorneys use legal research memos to make decisions regarding litigation strategies, offer legal advice to clients, and to ensure all necessary steps are taken to successfully complete the objective of the representation. Sometimes, the legal research memo may be used as the starting point for drafting a persuasive document such as an appellate brief, demand letter, or settlement offer.

Anatomy of a Legal Research Memo

If you Google "how to write a legal research memorandum" (don't do it!) you'll end up with a lot of different methods, structures and components. Each professor or attorney has his/her own preferred way of writing a legal research memo. For this class, we will use a simplified format designed to help you express your full legal and factual analysis of the client's question.

The legal research memo structure we will use in this class has 6 sections:

1. Memo heading
2. Introductory paragraph
3. Questions Presented
4. Answers
5. Facts
6. Discussion

Following is a brief description of each section.

Memo Heading

The top of the legal memo should have a conspicuous statement that the memo is work product – privileged and confidential. This will prevent the memo from inadvertently being shared outside the law office. The rest of the heading states the name(s) of the person(s) to whom the memo is addressed (typically the supervising attorney), your name as the author, and the date the final draft of the memo is being provided to the recipient. The RE: (regarding) line is one of the most important parts of the heading component. It should include:

- The name of the file/client to which the memo is related
- The identification of the file, using the firm's file numbering or other identification system
- The name and case number of the court action, if one has been filed
- A brief statement of the substantive legal question the memo addresses

Here is an example of a legal research memo heading.

WORK PRODUCT – PRIVILEGED AND CONFIDENTIAL
LEGAL RESEARCH MEMORANDUM

TO: Attorney Bob Barrister

FROM: Polly Paralegal

DATE: April 1, 2009

RE: Analysis of Likelihood of Arson Conviction
State v. Willy Wonka; Brown County Case No. 02-CF-1234
Our File: CF-Wonka-2002/98

Introductory Paragraph

This paragraph identifies the client's broad legal question and briefly summarizes the legal standards related to that question. It finishes with a brief description of how the questions raised in the legal standards will be answered in the memo, and a conclusion regarding the likely answer to the client's broad legal question.

Question(s) Presented

Here we explain the specific legal questions we are answering in our memo. The Question Presented is a combination of the legal standard being applied to our client (for example, the statutory language) and the client's legally significant facts related to that legal standard (the facts or circumstances to which the statutory language or other legal standard is being applied). The best way to write it is as a question.

Answer(s)

The Answer tells the reader how you think the Question Presented will be resolved. It starts with the basic answer ("yes," "no," "probably yes," or "probably no." Then, it provides a short explanation of the legal and factual analysis you provide in the Discussion section of the memo.

Facts

This is the place to tell the story of the client's legal matter. The facts tell us what happened to the persons involved in the legal matter – the Who, What, When, Where, Why, and How that are the basis of the reason the client has retained the attorney.

Discussion

This is the longest and most important section of the legal research memo. It is where you explain, in detail, your macro synthesis of all the legal authorities relating to each legal standard impacting the client.

The Memo Process – Suggested Steps for Drafting the Memo

Like case briefing, writing a legal research memorandum is one of those experiences that "you get out of it what you put into it." The more time you spend drafting and revising the memo, the better your understanding will be of your client's situation and the legal standards impacting your client. Here are some recommended steps for drafting a legal research memo:

1. Carefully review all of your micro- and macro-synthesis that you've performed so far
2. Carefully review the client's facts
3. Perform additional factual research, if necessary
4. Draft legal research memo heading
5. Draft the Statement of Facts
6. Draft Question Presented #1
7. Cross-check Question Presented #1 with the Statement of Facts; revise, if necessary
8. Draft Discussion Section #1
9. Cross check the content of Discussion Section #1 with the Statement of Facts and Question Presented #1; revise, if necessary
10. Repeat steps 5-8 for each additional legal standard to be addressed
11. Draft Answers for each Question Presented
12. Cross check content of each Answer with its Discussion section and the Statement of Facts; revise if necessary
13. Draft your Introductory Paragraph
14. Cross check the content of your Introductory Paragraph with your Questions Presented, Answers, and Discussion sections
15. Run spell-checker and dumb-checker; revise all parts as necessary

In the next several chapters, you'll learn how to draft each section of a legal research memorandum. For your reference, **here is what the final memo will look like.**

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11: Legal Memos - Facts Section

In this chapter, we are going to explore what goes into writing the Facts section of your legal research memo. Remember, although we are writing this section first, this is not the correct order in which this section should appear in your final draft.

FACTS

The legal memo is a neutral, objective, complete discussion of the client's facts and the law as it applies to those facts. You must include all facts – the good, the bad, and the ugly – even if it's not what your supervising attorney or client wants to hear. Attorneys use legal memos to aid in litigation decisions, or sometimes as a precursor to filing a complaint, motion or brief, so it's important that there not be any surprises.

The substantive facts tell us what happened to the persons involved in the client's legal matter; they are the who, what, when, where, why (sometimes) and how of the contract, accident, transaction, etc., that forms the basis of the client's question. As we saw in an earlier chapter, there are generally three different types of facts: legally significant, contextual (background) and irrelevant.

Legally significant facts are those facts that directly lead to or otherwise affect the legal outcome of the case. If the legally significant facts are changed, the outcome would likely change as well. Whether a fact is legally significant depends upon the legal issue in question. For example, the date of an accident would be legally significant if there was a question as to whether the statute of limitation had passed. In contrast, if there is no issue as to the statute of limitation, the date of the accident is merely background information.

Contextual facts provide you some background or "flavoring" of the case. Although such facts do not impact the legal issue, they do help us understand the issue better. Think of contextual facts as similar to supporting characters in a movie or book. Often, they help us to understand the main character and the plot, and their interaction with the main character adds interest.

Irrelevant facts are neither legally significant nor contextual. They really don't add to our understanding and simply take up space. Usually, irrelevant facts relate to minor details, such as the color of the car the defendant was driving, or the name of the hairstylist the plaintiff uses. If you always keep the legal issue in front of you, it's easy to determine which facts are irrelevant. If they don't directly affect the legal issue, or help you to understand it, they are irrelevant.

Writing the Facts Statement for Your Legal Memo

When you are getting ready to write the Facts section of your memo, there are several things you need to consider. You want as much relevant factual information as possible – if you're going to make a mistake when writing this section, it's better to include irrelevant facts that to exclude potentially legally significant facts. It's also better to include details that seem trivial than to exclude potentially important details. You also want to include favorable and unfavorable facts. The facts section should provide a complete and accurate picture of your client's legal matter, such that a person who knows nothing about it will know every fact that is important to the client's legal questions, just by reading your Facts section.

Step 1: Analyze the facts

Before drafting your Facts section, first gather together all of the facts relating to your client's legal matter, from all possible sources (interview notes, documents, discovery, reports, etc.). Then, based on the legal standards established in your micro- and macro-synthesis of the legal authorities relating to the client's questions, categorize each fact in terms of how it relates to each legal standard – is it legally significant, contextual, or irrelevant? Some facts may relate to multiple legal standards; not only that, but facts might be legally significant for one legal standard and contextual for another. Even if it seems repetitive, including the details will make it easier for you to write the Questions Presented section of your memo.

To illustrate, let's use this brief fact scenario: Suppose your client claims she suffered a severe neck injury in a car accident. Her new white Ford Excursion SUV was stopped at a red light. The defendant's old blue Geo Metro was stopped behind the client's car. The defendant admits he took his foot off the brake pedal and his Geo Metro, which has an automatic transmission, moved forward and collided with the client's vehicle. The client brought in pictures of her rear bumper that showed scratches and a small amount of blue paint. Your legal research revealed that a negligence claim has four legal standards (or elements) – existence of a legal duty,

a breach of that duty, compensable damages and a causal connection between the breach of duty and the damages. Here's how you might analyze those facts:

Fact categorization – LS = Legally Significant; C = Contextual; I=Irrelevant

Legal Duty	Breach of Legal Duty	Damages	Causation
• Defendant was driving his vehicle on a public roadway (LS) • Defendant was driving an old white Geo Metro (I - color, make and model of vehicle doesn't impact duty)	• Defendant's vehicle was behind the client's vehicle at a red light (LS) • Defendant's vehicle struck the client's vehicle (LS) • Defendant's vehicle has an automatic transmission (C – explains why his vehicle moved forward when he took his foot off the brake pedal) • The traffic light was red (LS)	• Client suffered a severe neck injury (LS) • Scratches and blue paint on the rear bumper of the client's car (LS)	• Defendant's vehicle struck the client's vehicle (LS) • Defendant's vehicle has an automatic transmission (C – explains why his vehicle moved forward when he took his foot off the brake pedal) • The vehicles were fully stopped at a red traffic light (C – may make it less likely the impact caused severe neck injury) • Defendant's vehicle is very small (Geo Metro) and client's vehicle is very large (Ford Excursion) (LS or C - may make it less likely the impact caused severe neck injury

When we write the facts statement, we will include all of the legally significant facts and most, if not all, of the contextual facts. It wouldn't necessarily be wrong to include the irrelevant facts (such as the age or color of the cars involved); keep in mind that later research may end up convincing us that what we thought was irrelevant really isn't (for example, a car's color could be important under certain conditions – it might be harder to see a white car in the middle of a snowstorm). Also, some supervising attorneys will want you to include all of the facts, no matter how trivial, so that they can make the judgment call about what is or is not relevant.

Step 2: Organize the facts

The order in which you present the facts in your Facts section definitely impacts the other portions of your legal memo. In most cases, you'll receive facts over time in a piecemeal fashion and it may be disjointed in terms of how each fact that comes in is related to facts you obtained previously. You must account for and keep track of clarifications, explanations, corrections, and disputes in the facts. You want the order of presentation in your Facts section to flow well and to logically lead toward how you will analyze each legal standard that forms the basis of the client's legal question(s).

There are basically three ways to organize facts: chronologically, by claims made, or by parties involved. Most of the time you'll write the facts as a chronological story about what happened. For simple car accidents, breach of contract cases, criminal cases, or simple transactions, it makes sense to present the facts chronologically, telling the story from beginning to end. One variation of the chronological presentation that some attorneys prefer to use starts with the "culminating fact" (the collision, injury, aftermath of the crime, etc.) and then goes back to the beginning of the story.

In some legal matters, one person makes several claims against the same party, involving different legal standards but arising from the same set of facts. For example, someone buys a house and discovers that the basement leaks. The seller failed to disclose the leaks. There are several causes of action against the seller arising from the failure to disclose: negligent misrepresentation, fraudulent misrepresentation and strict liability misrepresentation. Each claim has different elements, so different facts are legally significant (and you would have categorized the facts under each claim, as demonstrated above). One way to organize the

presentation of facts for this type of case would be to start with the seller listing the house for sale and the buyer attending the open house. From there, you would write about all of the non-disclosures and other factual circumstances that you categorized under the negligent misrepresentation claim; after that, those that you categorized under the fraudulent misrepresentation claim, and so on. If there are a lot of facts, you could even use a subtitle in your Facts section for each claim.

Other times, one person makes claims against several different parties involved in a complex transaction. For example, someone hires a general contractor to build a house. The general contractor hires subcontractors for framing, plumbing, electrical, etc. There are lots of problems with the house, so plaintiff sues the general contractor and all the subcontractors. Different facts relate to each party, and each party was working on the site at various times throughout the project. In that instance, it makes sense to start with facts related to the broad transaction (that is, to the contract with the general contractor) and write about everything relating to the claims against the general contractor. From there, you would choose a subcontractor (perhaps the first one to work on the house) and detail the facts relating to the claims against that subcontractor. All of the facts relating to the claims against each subcontractor would be detailed separately. Again, you could use subtitles in your Facts section for each party against whom the person is making claims.

Organize the facts section with separate headings (not numbers) for facts relating to each party being sued.

Step 3: Draft your Facts section

Now that you have a plan, it's time to start drafting! Use your own words and take care to use neutral and objective language throughout. Remember, the purpose is to tell the whole factual story and not to persuade anyone about the credibility, weight, or impact of the facts. Some pitfalls to avoid:

> ☹ using unnecessarily "emotionally charged" language. For example, going back to the car accident described above, it would be unnecessarily "emotionally charged" to describe the accident as having occurred with "great force and violence" (this is a favorite phrase of some personal injury lawyers with whom I've worked).
>
> ☹ overuse of adjectives and adverbs. Similar to "emotionally charged" language, adjectives and adverbs can result in an overstatement or exaggeration of what really happened. For example, describing the car accident described above as "a horrific (or tragic) accident" or describing the defendant as "callous" because he took his foot off the brake pedal. One way to avoid this pitfall and the one above is to ask yourself, "Is my bias showing?"
>
> ☹ including inferences and assumptions drawn from the facts. They may be perfectly logical, but inferences and assumptions don't belong in the statement of Facts. Inferences and assumptions are not facts – they are opinions or perceptions; moreover, inference and assumptions can be completely wrong, despite being logical. One way to avoid this pitfall is to look for documents or testimony to establish the existence (or non-existence) of each "fact" in each sentence you write. If you can't find any, the "fact" is likely an inference or an assumption.
>
> ☹ including legal conclusions drawn from the facts. Avoiding this pitfall can be particularly tricky because you've likely formed an opinion about how the legal authorities you've synthesized will apply to the client's facts and how you would answer the client's legal questions. One way to avoid this pitfall is to keep the legal standards in front of you as you write (or revise) your Facts section and make sure the word(s)/phrase(s) in the legal standard don't appear there. So, for the car accident case, we wouldn't want to find words such as "negligent," "breach of legal duty," or "cause" in our Facts statement.
>
> ☹ over summarizing the facts. Remember, you want as much relevant factual information as possible. It's better to include irrelevant facts that to exclude potentially legally significant facts. It's also better to include details that seem trivial than to exclude potentially important details. One way to avoid this pitfall is to have someone who knows nothing about the client's legal matter read your Facts statement and then describe to you what happened. If that's not feasible, pull out your fact analysis and make sure every single fact you listed there is included in your Facts statement.

Here are some additional tips for writing your Facts section:

- Confirm that you have checked all possible sources of facts – make sure you leave no stone unturned. Of course, you will interview the client and any other witnesses having knowledge about the case. Don't forget to review documents, reports,

photos, videos, statistical data and other physical evidence that might relate to your case. Follow up on all information provided by witnesses. Sometimes seemingly irrelevant facts can lead to the discovery of relevant facts.

- For each source of fact, be mindful of the logical limits of the information that source can provide. Remember, people sometimes make assumptions that are logical, but incorrect. Ask yourself
  - What are the logical limits of the eyewitness' ability to see, hear, or otherwise perceive the circumstances or events involved?
  - What are the logical limits of a person's ability to know about facts or documents (for example, the person's access to documents or other information, or the person's area of expertise)
  - What are the logical limits of documentary evidence to which you are referring? Documents and reports are limited by all sorts of things, including the purpose for which they were created or the ability to include details. For example, weather condition reports provide information about weather conditions in a general area; that doesn't mean the weather at the accident site was exactly the same as that described in the report (I've had the experience of watching pouring rain across the street from my house while my house stayed completely dry).
- Differentiate between uncontested and contested facts. If there is a dispute as to how something happened or whether something is true, state that the fact is "asserted" or "claimed" by one of the parties (and identify that party). Other words that show facts might be unclear include "apparently," "allegedly" and similar words.
- Note the source of each fact (a deposition, pleading, interrogatory answer, etc.) on a rough draft of the memo that you will keep. This will be helpful if the attorney is contemplating filing a motion, trial brief or appellate brief based on the issues discussed in your memo. Motion and appellate briefs require you to provide a citation to the official court record for each fact contained in the brief; keeping a draft of the memo that identifies the source of each fact means that you won't have to re-create this information months or even years down the road.

Step 4: Review and revise your Facts section

Once you've got a good first draft of your Facts section, set it aside (if you can) before reviewing and revising it. Things to consider when revising:

- Proofread carefully for grammar, punctuation, spelling, capitalization, and other writing mechanics
- Check for accuracy, especially when writing about dates, times, numbers, weights, or measurements
- Make sure your Facts statement is internally consistent in terms of names (including acronyms and "short forms" of names) and verb tenses (past or present tense)
- Determine whether you should include the current procedural status of your client's case. Some supervising attorneys want a description of the current status at the beginning or at the end of the Facts section. Has a complaint been filed? What discovery has taken place? Are we considering filing a motion? Including a detailed procedural status puts the rest of the memo in context. It can also provide a progressive history of the case, especially if several memos are written at different points in the case.

✔ Example of a Rough Draft Facts Section

Let's apply these skills to the Wonka arson case we've been discussing. Previously you saw a bulleted list of facts about an arson question. Following is that list, a fact analysis worksheet and a rough draft of the Facts section in a memo about Mr. Wonka's arson question:

Fact list:

- Fire set at the Chocolate Factory on January 30 at 1 a.m.
- Factory had been closed since 5 p.m. previous evening
- Factory unoccupied at time of fire
- $1 million damage
- Factory is insured by Safeco Ins. Company (policy number FA6660297-SW)
- Fire occurred at factory owned by Wonka and Charlie Bucket (joint tenants)
- Fire inspector found accelerants at several sites at factory

- Witness (Mary Worth) saw a man dancing across the street from the fire
  - Wearing camouflage
  - Shouting “burn baby burn”
  - She identified Willy Wonka from a photo lineup
- Bucket told police he didn’t know about a plan to set a fire and wouldn’t have consented to such a plan
- The investigating officer who first contacted Bucket about the fire testified that Bucket expressed “disbelief” that the Chocolate Factory had been set on fire and that Wonka was accused of setting it
- Bucket, as Chief Financial Officer for the Chocolate Factory is currently under investigation for improper business practices
  - Factory operating at a loss for 3 years
  - $1 million missing from the books
  - audit by Weegocha Auditing Company
  - both Bucket and Wonka have Preferred Player’s cards at LaCasino ($1 million dollar players only)

Wonka "intentionally" damaged the factory with fire	The factory was "owned by another"	Damage occurred "without the other owner's consent"
• Sometime after 1:00 a.m., a fire occurred at the factory (legally significant) • Fire inspector’s report revealed use of accelerants in several different sites (legally significant – shows intent) • A witness saw someone celebrating across the street from the fire (legally significant – shows intent) • The man dancing was dressed in camouflage clothing and yelling “burn baby burn” (contextual, possibly legally significant – shows intent) • The celebrating man was identified as Mr. Wonka • Corporate records reveal financial losses (contextual – shows motive or intent, if factory is insured) • Wonka has a preferred players card at the casino – may be related to intent if he has significant gambling losses that can be tied to missing $ at factory (contextual – shows motive or intent)	• Factory is jointly owned with Mr. Bucket (legally significant)	• Bucket’s statement to police states he did not consent (legally significant) • Bucket denied prior knowledge of the fire (legally significant) • The investigating officer who first contacted Bucket about the fire testified that Bucket expressed “disbelief” that the Chocolate Factory had been set on fire and that Wonka was accused (legally significant; perhaps contextual) • Factory was operating at a loss (contextual) • Bucket is under investigation for financial irregularities (possibly legally significant – may show that Bucket did consent and may have helped plan it) • Damage to factory is equal to amount of $ missing at the factory (possibly legally significant, possibly coincidental – may show Bucket’s consent to a plan) • Bucket has a preferred player’s card at the casino – may be related to intent if he has significant gambling losses that can be tied to missing $ at factory (contextual – may show consent)

FACTS

Sometime after 1 a.m. on January 30, 20xx, a fire occurred at the Chocolate Factory (Police Report). The factory had closed at 5 p.m. the evening prior to the fire, and no one occupied the factory at the time of the fire (Client interview, Bucket statement to police). The fire caused $1 million worth of damage (Insurance claim filed by Bucket).

The fire inspector’s report revealed the use of accelerants at several sites around the factory (Fire Inspector Report). A witness came forward (Mary Worth) and stated that at approximately 2 a.m., she was awakened by the sirens from fire trucks responding to

the fire (Police Report). She went outside her home, which is across the street from the Chocolate Factory, to watch the firefighters put out the fire (Police Report). At that time, she noticed a man dressed in camouflage clothing dancing near the curb, about 25 yards from where she was standing (Police Report). She could hear the man shouting, “Burn, baby, burn!” (Police Report) From a police photo lineup, Ms. Worth identified Mr. Wonka as the man she saw dancing across the street from the fire (Police investigation file, lineup report).

The Chocolate Factory is jointly owned by our client, Willy Wonka, and Charlie Bucket (Client interview, Bucket statement to police, Incorporation records, Real estate records). Bucket claimed in his statement to police he was surprised and upset by the fire and did not consent to someone setting a fire (Police Report, Bucket statement to police). The investigating officer who first contacted Bucket about the fire testified that Bucket expressed “disbelief” that the Chocolate Factory had been set on fire and that Wonka was accused of doing so. It does not appear that Bucket was present at the scene of the fire. Further investigation of Bucket and the Chocolate Factory reveals that Bucket is currently being audited by Weegocha Auditing Company for alleged improper business practices (Client interview, records from auditing company). Weegocha states that $1 million is unaccounted for in corporate record books (Audit report). Corporate record books also reflect that the factory has been operating at a financial loss for the last three years (Chocolate Factory financial records).

Both Willy Wonka and Bucket have Preferred Player’s Cards at LaCasino (Client interview; LaCasino Preferred Players roster). LaCasino policy is to issue Preferred Player’s Cards only to regular customers gambling at least $1 million (interview of LaCasino manager; LaCasino pamphlets). Both Wonka and Bucket admit that they have lost a substantial, though unknown, amount of money gambling at LaCasino over the last five years (Client interview, Audit report). However, Wonka and Bucket deny using corporate monies to gamble (Client interview, Audit report).

Willy Wonka has been charged in Brown County Circuit Court with arson. An arraignment is scheduled on [date], at which time Wonka must enter a plea to the charge. A request for a copy of the investigative file has been sent to the Brown County District Attorney and a response is pending.

With a detailed description of the facts that form the basis of the client’s legal matter, we are ready to move on to the next step, drafting the Questions Presented.

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12: Legal Memos - Questions Presented

In this chapter, we are going to explore what goes into writing the Questions Presented section of your legal research memo. Similar to the Questions Presented section of a case brief, the Questions Presented section in a legal memo contains the legal question(s) related to the client's legal matter (the reason the client retained our law office). The purpose of the Questions Presented section of your legal memo is to identify each legal question we are analyzing for our client.

A client's legal questions usually fall into one of the following categories (of course, there are others, but these are the most common):

- Does the client have a viable claim? (plaintiff)
- Does the client have a viable defense? (defendant)
- Does a particular statute/regulation/court decision apply to the client?
- How will the application of the statute/regulation/court decision affect the client?
- Is the client's proposed action legal/permissible/advisable?
- What documentation does the client need to make the client's wishes a reality (or) what should the documentation contain?

These broad legal questions led us to the specific legal standards we identified while researching and synthesizing statutes and case law. Each Question Presented will specify a narrow legal standard (such as the elements of a crime, a claim, or a defense) that needs to be analyzed in order to answer the client's broad legal question.

Components of the Questions Presented

Each Question Presented has two components that must be included. The first component is the legal standard. The second component consists of the legally significant client facts or circumstances related to the legal standard.

The Legal Standard

The first component of the Question Presented is the legal standard. The legal standard comes from the statutory language, precedent or other legal authority we identified as potentially applying to our client as a result of our micro- and macro-synthesis. Legal standards in Questions Presented often involve questions such as

- Did someone breach a legal duty? (element of a negligence cause of action)
- Did someone comply with/violate a statutory requirement?
- Does someone meet the definition of a legal standard? (For example, is the defendant an "employer" within the meaning of the statute? Did the defendant "use" his vehicle within the meaning of the insurance policy?)

It's important to continue writing your legal standards narrowly in your Questions Presented. Narrowly written Questions Presented, even if they seem repetitive, will lead to deeper and more focused analysis of the legal authorities and your client's facts in the Discussion sections of your legal memo. Resist the temptation to write a Question Presented based on the client's broad legal question. Following are some examples of poorly written legal standards:

☹ Was someone negligent?

☹ Is someone liable for xxx (negligence, breach of contract, etc.)?

☹ Is someone guilty of xxx (arson, homicide, etc.)?

☹ Did someone violate xxx statute?

All of these legal standards are too broad because answering each one requires analysis of two or more elements that must be proven/disproven or requirements that must be met to completely answer the question.

Remember our arson statute? This is how we synthesized it:

COMPLETE CITATION OF STATUTE: Wis. Stat. §943.02(1) (2005)

COMPLETE CITATION OF RELATED STATUTES: Wis. Stat. §943.02(2) (2005)

QUESTIONS	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
WHO:	any person	Wonka is a person
WHAT:	(1)(a) and (2) the action of **using fire** and **damaging another person's building.** It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building. **OR** (1)(b) the action of **using fire** to **damage any building and to fraudulently gain insurance money** The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire **OR** (1)(c) the action of **using explosives** to **damage another person's property**	(a) A fire was set and the Chocolate Factory was damaged ($1 million); Bucket is another person who owns the Chocolate Factory (b) at this time, we aren't sure if insurance fraud is involved; the facts do not tell us if Wonka tried to obtain insurance money after the fire (c) explosives were not used, only fire. The Chocolate Factory is a type of property and it was damaged. Bucket is another person who owns the Chocolate Factory
WHEN:	any time	January 30, 1 a.m.
WHERE:	in Wisconsin a building (a) and (b) property (c)	Fire occurred in Wisconsin, at the Chocolate Factory, which is a building and also is a type of property
WHY:	because the statute says so	n/a
HOW:	(a) or (c) **the action of setting the fire**/using the explosives **must be done intentionally.** (a) or (c) It **must also be done without the other person's consent** (b) the action of setting the fire must be done with the intent to defraud an insurance company. The insurance fraud can be shown if the actor recovered or attempted to recover on a policy of insurance by reason of the fire	(a) Accelerants used; Wonka seen dancing at scene of fire yelling "burn baby burn;" motive exists for setting fire ($ problems). These facts are evidence of intent (a) Bucket denies knowledge of plan or consent; no evidence that Bucket set the fire or otherwise participated in the plan; joint ownership is a legal right (under subsection (2) of statute) (b) this is not clear from the facts and hasn't been charged
EXCEPTIONS?	There are no "unless" or "except" statements in the statute	n/a

There is no question that "fire" was used to damage the Chocolate Factory, which is a "building" under the statute. Because Wonka did not use explosives, subsection (c) of the statute does not apply. Also, we are not overly concerned with subsection (b) of the statute, because Wonka is not charged with insurance fraud (although he probably could be, based on the facts provided). There is also no question that the Chocolate Factory is a "building of another;" it is jointly owned by Bucket as well as Wonka, and the statute expressly states that even if one of the owners is accused of arson, it is still considered a "building of another."

However, to secure an arson conviction the State will also need to prove beyond a reasonable doubt that the fire was "intentionally" set and was set "without the other person's consent." Even though Charlie Bucket's joint ownership of the Chocolate Factory has no impact on the question of whether it qualifies as "a building of another," the question of "consent" is subjective in the same way as the question of "intent." As such, it is a separate element that the State must prove beyond a reasonable doubt.

Based on the above, we have two **legal standards** to analyze:

1. Will the **State** be able to **prove beyond a reasonable doubt** that Wonka **"intentionally damaged"** the Chocolate Factory**?**
2. Will the **State** be able to **prove beyond a reasonable doubt** that the **damage** to the Chocolate Factory **occurred "without the other owner's consent?"**

There are a few important things to notice about these legal standards. First, each one specifies the level of the burden of proof (beyond a reasonable doubt, because this is a criminal matter) as well as the person having the burden of proof (the State, because this is a criminal matter). This information about the burden of proof is critical to a complete analysis of any litigation matter, whether it is criminal or civil. Second, each one separately identifies a narrow legal standard relating to one of the elements the State must prove to secure an arson conviction. Even though it seems repetitive and to include some overlap, each legal standard must be analyzed separately; thus, each one needs a separate Question Presented.

The Legally Significant Facts

The second component of the Question Presented, the legally significant facts, tells us what the client's case is really about. When you are deciding which legally significant facts to add to each Question Presented, think of it asking, "Why are we here?" It can be helpful to think of the following questions:

- What happened that is raising the legal question for the client?
- What did the parties do (or not do) that is making us question whether the legal standard has been met (or has been violated, or should be applied to the parties)
- What conduct or facts are the parties arguing about?

Previously, we wrote the Facts section of our legal memo, which contains all of the legally significant and contextual facts for the entirety of the client's legal matter. For each Question Presented, we want to pull out only the legally significant facts. Legally significant facts directly impact whether the Question Presented will be answered "yes" or "no." In other words, legally significant facts are those facts which, if they were changed, the outcome for the client would likely change as well. The statutory synthesis and the fact analysis we previously completed help us determine which facts to add to each Question Presented we drafted above.

1. Will the **State** be able to **prove beyond a reasonable doubt** that Wonka **"intentionally damaged"** the Chocolate Factory when the facts show:

    a. **A fire occurred at the Chocolate Factory several hours after the Factory had closed for the day; (legally significant fact)**
    b. **Accelerants were used at several locations around the Factory; (legally significant fact)**
    c. **Wonka was identified as the person dancing across the street from the fire shouting "Burn, baby, burn;" (legally significant fact)**
    d. **The Factory's records are being audited for financial irregularities; and (legally significant fact)**
    e. **Wonka owns a $1,000,000 Preferred Player's Card from LaCasino? (legally significant fact)**

2. Will the **State** be able to **prove beyond a reasonable doubt** that the **damage** to the Chocolate Factory **occurred "without the other owner's consent"** when the facts show:

    a. **The Chocolate Factory is jointly owned by Wonka and Charlie Bucket;**

b. **Bucket told the investigating officer that he had no knowledge of a plan to set the Chocolate Factory on fire;**
c. **Bucket told the investigating officer that he did not consent to a plan to set the Chocolate Factory on fire;**
d. **The Factory's records are being audited for financial irregularities; and**
e. **Bucket owns a $1,000,000 Preferred Player's Card from LaCasino?**

Notice that, just like we saw in our fact analysis worksheet, some facts are contained in more than one Question Presented. That's OK! Remember, we need to describe completely and in detail all facts, circumstances, and conduct that makes us wonder whether each legal standard has been met.

Additional Tips for Writing the Question Presented Section.

- **Choose a structure that you will consistently use in the memo**. There are a few different ways to structure your Questions Presented. Some people like to use Roman numerals (I, II, III) for the legal standard and capital letters (A, B, C) when listing the legally significant facts relevant to each legal standard. Other people like to use Arabic numerals (1, 2, 3) for the legal standard and lowercased letters (a, b, c) or bullets when listing the legally significant facts relevant to each legal standard. Still other people like to write the Question Presented in one sentence (this works best with short legal standards and only a few facts). Regardless of the structure you use, be sure to phrase each Question Presented as a question.
- **Use a formula when writing your Questions Presented**. I suggest using something similar to what you see below, to make sure you include both the legal standard and the legally significant facts:

  Is [legal standard, specifically described] met **when the facts show**: [legally significant facts relevant to the legal standard]?

- **Use your own words**. Don't simply regurgitate (or copy) legal standards you find in statutes or court decisions. Write them in your own words, so that you are certain you understand them.
- **Watch out for sentence fragments**. You should almost never start a sentence with the word "whether."

Review and revise your Questions Presented

Once you've got a good first draft of your Questions Presented, make sure to review and revise them. Things to consider when revising:

- Proofread carefully for grammar, punctuation, spelling, capitalization, and other writing mechanics
- Check for accuracy, especially when writing about dates, times, numbers, weights, or measurements
- Make sure your Questions Presented are internally consistent in terms of names (including acronyms and "short forms" of names) and verb tenses (past or present tense)
- Cross-check your Questions Presented against your Facts section. All facts listed in each Question Presented must also be contained in the Facts section of your legal memo.

On the next page is an example of what our legal research memo looks like at this point. The components we've drafted so far have been put in the correct order. An appropriate memo heading has also been added to the top.

WORK PRODUCT – PRIVILEGED AND CONFIDENTIAL LEGAL RESEARCH MEMORANDUM

TO: Supervising Attorney [insert the person's name]

FROM: Conscientious Legal Practitioner [insert your name]

DATE: April 1, 20xx [insert the date you are providing the final draft to your supervisor)

RE: Analysis of Likelihood of Arson Conviction

State v. Willy Wonka; Brown County Case No. 20xx-CF-1234

Our File: CF-Wonka-20xx-983

QUESTIONS PRESENTED

1. Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory when the facts show:

a. A fire occurred at the Chocolate Factory several hours after the Factory had closed for the day;
b. Accelerants were used at several locations around the Factory;
c. Wonka was identified as the person dancing across the street from the fire shouting “Burn, baby, burn;”
d. The Factory’s records are being audited for financial irregularities; and
e. Wonka owns a $1,000,000 Preferred Player’s Card from LaCasino?

2. Will the State be able to prove beyond a reasonable doubt that the damage to the Chocolate Factory occurred “without the other owner’s consent” when the facts show:

a. The Chocolate Factory is jointly owned by Wonka and Charlie Bucket;
b. Bucket told the investigating officer that he had no knowledge of a plan to set the Chocolate Factory on fire;
c. Bucket told the investigating officer that he did not consent to a plan to set the Chocolate Factory on fire;
d. The Factory’s records are being audited for financial irregularities; and
e. Bucket owns a $1,000,000 Preferred Player’s Card from LaCasino?

FACTS

Sometime after 1 a.m. on January 30, 20xx, a fire occurred at the Chocolate Factory (Police Report). The factory had closed at 5 p.m. the evening prior to the fire, and no one occupied the factory at the time of the fire (Client interview, Bucket statement to police). The fire caused $1 million worth of damage (Insurance claim filed by Bucket).

The fire inspector’s report revealed the use of accelerants at several sites around the factory (Fire Inspector Report). A witness came forward (Mary Worth) and stated that at approximately 2 a.m., she was awakened by the sirens from fire trucks responding to the fire (Police Report). She went outside her home, which is across the street from the Chocolate Factory, to watch the firefighters put out the fire (Police Report). At that time, she noticed a man dressed in camouflage clothing dancing near the curb, about 25 yards from where she was standing (Police Report). She could hear the man shouting, “Burn, baby, burn!” (Police Report) From a police photo lineup, Ms. Worth identified Mr. Wonka as the man she saw dancing across the street from the fire (Police investigation file, lineup report).

The Chocolate Factory is jointly owned by our client, Willy Wonka, and Charlie Bucket (Client interview, Bucket statement to police, Incorporation records, Real estate records). Bucket claimed in his statement to police he was surprised and upset by the fire and did not consent to someone setting a fire (Police Report, Bucket statement to police). Further investigation of Bucket and the Chocolate Factory reveals that Bucket is currently being audited by Weegocha Auditing Company for alleged improper business practices (Client interview, records from auditing company). Weegocha states that $1 million is unaccounted for in corporate record books (Audit report). Corporate record books also reflect that the factory has been operating at a financial loss for the last three years (Chocolate Factory financial records).

Both Willy Wonka and Bucket have Preferred Player’s Cards at LaCasino (Client interview; LaCasino Preferred Players roster). LaCasino policy is to issue Preferred Player’s Cards only to regular customers gambling at least $1 million (interview of LaCasino manager; LaCasino pamphlets). Both Wonka and Bucket admit that they have lost a substantial, though unknown, amount of money gambling at LaCasino over the last five years (Client interview, Audit report). However, Wonka and Bucket deny using corporate monies to gamble (Client interview, Audit report).

Willy Wonka has been charged in Brown County Circuit Court with arson. An arraignment is scheduled on [date], at which time Wonka must enter a plea to the charge. A request for a copy of the investigative file has been sent to the Brown County District Attorney and a response is pending.

The next several chapters will focus on the most important section of the legal research memo – the Discussion section.

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13: Introduction to IRAC Writing Structure

In Legal Research class, you learned to organize your research notes by issue, rather than by legal authority. One reason is to make the transition into IRAC structure easier. Think of it as assembling a puzzle: You won't get far just by staring at an individual puzzle piece (a case or a statute). Your chances for success are much greater if you group related puzzle pieces together, such as all of the edge pieces or all the pieces that have part of a tree on them (all cases or statutes related to a particular legal standard).

IRAC Components

IRAC is a paragraph-writing structure or framework. The letters stand for **I**ssue, **R**ule, **A**pplication, **C**onclusion. There are other ways to analyze a legal problem. But IRAC is easy to learn and is very effective in improving your ability to "apply the law to the facts," the essence of sound legal analysis.

The Issue.

The first step of your analysis is to state the issue. The issue defines the problem. It sets out the dispute between the parties. The issue is based upon the legal sgtandard you are analyzing.

The Rule(s).

After laying out the issue, you need to set out the applicable rule(s). The reader needs to know what law will be applicable to the problem. Rules can be taken from statutes, cases, regulations or any other appropriate authorities.

The Application.

The law is only important as it applies to your client's factual situation. So after you set out the rule, you need to show how the rule applies to your client's situation. In your application section, you will take the facts of your case, and connect them to your rule, to say why each piece of the rule is met/not met, or weighs in favor of your client.

The Conclusion.

In your conclusion, tie your points together to answer the question raised in the Issue. Show the reader where the application of the law to the facts has taken you. Your conclusion is short, but necessary.

Why Should You Use IRAC?

Using IRAC gives you the benefit of continuity and clarity of writing; helps to organize your discussion, focusing on the legal issues and rules, rather than authorities; and makes your writing consistent and predictable. More importantly, having a structure to follow can ease writer's block and ensure you have a complete discussion of the client's legal question.

Example

Another person's perspective on why IRAC is a great writing structure. This podcast transcript discusses law school exams, but it's equally applicable to the Discussion sections of a legal research memo.

Planning Your IRAC

Now that you know the IRAC components, the next step is to plan your IRAC for each Question Presented contained in your legal memo. Spending time planning what you are going to write before you begin drafting not only saves you time overall, but also makes it less likely you'll omit an important part of your IRAC analysis. Here are the recommended steps for planning your IRAC:

Step 1: Review the legal standard from your Question Presented.

The legal standard should always drive the discussion, so it's important to have that legal standard front and center as you begin planning your IRAC analysis. For your plan/outline, all you need is the "pure" legal standard from your Question Presented:

The State must prove beyond a reasonable doubt that Wonka "intentionally damaged" a building with fire.

Step 2: State your conclusion (the answer to the question you just wrote).

Knowing what your conclusion will be helps you to select appropriate authorities to examine in your Rule component, since you want to include the authorities that support your conclusion. The same is true for the client's facts that you will describe in your Application component.

Step 3: Review your micro- and macro-synthesis relating to the Question Presented. Then, re-read the legal authorities.

Take the time to re-familiarize yourself with the analysis you've completed so far. Sometimes you gain new knowledge or perspective when you review something. Think of all the times you've re-watched a movie or re-read a novel and said to yourself, "I never noticed [xxx] before!"

Step 4: Outline your Rule component.

Many times, people use an outline or bulleted list for this part of the planning. Start your list with the statute or other legal authority that contains the legal standard in your Question Presented. Then, list the court cases you found that interpreted/applied the legal standard. Make sure to include the cases that you determined were most similar to your client's facts when you did your macro-synthesis, especially the cases that are consistent with your conclusion regarding the likely outcome for the client.

Keep in mind that, when there are differences or conflicts between legal authorities of the same type, there are several rules of thumb for determining which legal authority is stronger:

- If two statutes conflict, the more specific statute is stronger than the general statute
- Supreme Court decisions are stronger than Court of Appeals decisions, regardless of the year of decision
- If the decisions are from the same level of court (for example, two decisions from the Court of Appeals), the more recent decision is usually stronger

Here's what an outline of the Rules for the **"intentionally damaged"** Question Presented might look like:

Rules

- Statute: Section 943.02(1)(a), Wis. Stat. (20xx): "Whoever … [b]y means of fire, intentionally damages any building of another without the other's consent" is guilty of arson.
- *State v. Johnson*, 349 Wis. 2d 894, 455 N.W.2d 338 (1988): explains how "intent" is proven. Facts are similar to Wonka's facts
- *State v. Rodriguez*, 548 Wis. 2d 293, 560 N.W.2d 81 (1993): clarifies what is needed to prove "intent." Facts are mostly different from Wonka's facts (do not use?)

It can also be helpful to include the cases you determined were not similar to your client's facts, or that had an outcome that is opposite to your conclusion about what the client's income should be. Even if you don't use that case in your IRAC, it's a good idea to document your decision not to use it – this will come in handy later.

You can also add some of the facts of the cases you include in your outline. Doing so will make it even easier to write the comparison of the caselaw facts and the client's facts in your Application component.

Step 5: Outline your Application component.

This can be as simple as copying and pasting the legally significant facts you listed as part of your Question Presented. Even if it seems repetitive, it's time well spent; it may even lead you to revise your Question Presented. Consider adding some of the contextual facts that you decided not to include in the Question Presented that are relevant to the legal standard.

Here's what an outline of the Application for the **"intentionally damaged"** Question Presented might look like:

Application/Client facts that support my conclusion

- A fire occurred at the Chocolate Factory at 1 a.m. on January 30, [year], eight hours after the Factory had closed for the day,
- No one was inside the Factory when the fire started,
- Accelerants were used at several locations around the Factory,
- Mary Worth, who lives across the street from the Factory, told police she saw a man dancing in front of her house, wearing camouflage clothing and shouting "Burn, baby, burn!" When she was shown a photo lineup by police, she identified Wonka identified as the man she saw.
- The fire caused $1,000,000 in damage to the Factory.
- Wonka is a co-owner of the Factory.
- The Factory's records are being audited for financial irregularities due to operating at a loss for three years. The audit noted that $1,000,000 is "missing from the books."
- Wonka owns a $1,000,000 Preferred Player's Card from LaCasino.

You can also include a separate list of facts that do not support your conclusion. Even though your IRAC analysis might not include those facts, they will come in handy later.

Step 6: Repeat steps 1-5 for each Question Presented.

Even if the Rules and Applications seem to overlap or be repetitive across Questions Presented, it's important to outline each one separately. Remember, you'll be writing a separate analysis of each Question Presented in the Discussion section of your legal research memo.

Next, you'll learn how to draft each IRAC component. Then, you'll learn how to use the IRAC writing structure in the Discussion section of a legal research memorandum.

13: Introduction to IRAC Writing Structure is shared under a CC BY 4.0 license and was authored, remixed, and/or curated by Beth R. Pless, J.D. (Northeast Wisconsin Technical College).

14: Using the IRAC Writing Structure

Now that you have your plan/outline for how you are going to write your IRAC analyses to discuss each of your Questions Presented, it's time to start writing! Once again, the recommended order of drafting each of your IRAC components is different from the order in which they will appear in your final draft. The correct order is **I**ssue, **R**ule, **A**pplication, **C**onclusion.

IRAC Issue

The **Issue** is presented in the first sentence of your first IRAC paragraph. Make your issue narrow, specific, and focuses on the legal standard identified in your Question Presented. Using the Question Presented you already drafted is a great starting point. After all, taking time to "reinvent the wheel" is not an efficient use of your time. Using what you've already written also helps to keep the language you use consistent across different sections of your legal memo.

Here's the first Question Presented we drafted for Willy Wonka:

1. Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory when the facts show:
   a. A fire occurred at the Chocolate Factory several hours after the Factory had closed for the day;
   b. Accelerants were used at several locations around the Factory;
   c. Wonka was identified as the person dancing across the street from the fire shouting "Burn, baby, burn;"
   d. The Factory's records are being audited for financial irregularities; and
   e. Wonka owns a $1,000,000 Preferred Player's Card from LaCasino?

We don't need (or want) all of this information at the beginning of our IRAC. We just need the legal standard and a few facts for context. Depending on your writing style, you can write your issue as a question or a statement. Regardless of whether you choose to write a question or a statement, make sure your issue is a complete sentence. Do ***not*** start your sentence with the word "whether" – it will nearly always result in a sentence fragment. Here's how we can pare it down to make it a better starting point for our IRAC:

✔ Example IRAC Issues

Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire?

The first element the State must prove beyond a reasonable doubt is that Wonka "intentionally damaged" the Chocolate Factory with fire.

The issue is whether the State will be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire.

When writing your issue, avoid the following pitfalls:

☹ writing the Issue too broadly. Instead, use the specific legal standard from your Question Presented. That means you don't want to write an issue asking whether someone will be held liable or found guilty, or whether someone will successfully prove a cause of action such as negligence or breach of contract. Doing so will result in IRAC analyses that contain too many Rules, which may come across as a list of authorities, and too many facts in the Application. Each legal standard requiring full analysis should have its own IRAC analysis.

☹ writing an Issue that does not need full analysis. Depending on the client's facts and circumstances, there may be some elements of proof required by a statute or a cause of action that don't need full analysis. For example, part of Wisconsin's arson statute requires the use of fire to cause damage. In Willy Wonka's case, there is no question that fire was used; thus, even though the use of fire is a required statutory element, we don't need a full analysis of whether Wonka used fire. Instead, it makes sense to include that element as a contextual part of a legal standard that does require full analysis, as you see in the examples above.

☹ including too much information in your Issue sentence. If you include every legally significant fact from your Question Presented in your Issue sentence, it's likely the sentence will be too long and difficult to read. Instead, include just enough facts to give the legal standard some context and leave the details for the Application component.

☹ combining the legal standards from two or more Questions Presented. This can be tempting to do, especially if you'll be using many of the same legal authorities and client facts when you discuss the legal standards. Keep in mind that, even if you repeat legal authorities and facts, the focus will be different for each legal standard.

IRAC Conclusion

By the time you're ready to draft your IRAC, you've already decided how, based on your synthesis, you would answer the question raised in the Issue. You write this answer in your **Conclusion**. Because these two components are so closely related, makes sense to write the Conclusion right atter you write the Issue.

Think of your Issue and Conclusion as matching bookends. The easiest way to write your Conclusion is to copy and paste your Issue and revise it so that it is a statement of what you think the outcome will be rather than question. Make sure to add a word to the beginning of the sentence to transition to the conclusion. For example:

✔ Example IRAC Conclusion

Therefore, the State will be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire.

If you prefer not to use the copy/paste/revise method, you can write the Conclusion from scratch; just make sure the Conclusion is directly related to the Issue. To test if your Conclusion is focused on the issue raised, read the Issue at the beginning of the IRAC sequence, then read the conclusion. If the Issue and the Conclusion read like a question and a reasoned answer that responds directly to the question raised, then you have stayed focused and adequately addressed the Issue.

One more thing to consider when writing your conclusion: because the conclusion logically flows from the Rule and Application components of your discussion, the words you use should reflect your level of certainty/confidence in the correctness of your conclusion. If the Rules are clear and consistent with one another and the client's legally significant facts are undisputed, it's appropriate to write that something "will" happen. However, if there is room for reasonable differences in opinion as to which legal authorities should apply and how they should apply, you should qualify your conclusion with words such as "likely," "unlikely" or even the phrase "most likely." The same is true if the legally significant facts are disputed, unclear, or subject to multiple reasonable inferences.

✔ Example IRAC Conclusion -- when the conclusion is not 100% certain

Therefore, the State will **likely** be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire.

Even though this seems simple, it's actually quite common for writers to forget to write a conclusion, perhaps because it's so obvious. To avoid this problem, make sure your conclusion starts with a good word, such as thus, therefore or hence. Then, make sure the last sentence has many of the same words as the Issue.

IRAC Rules

The next part of your IRAC analysis is the **Rule**. This is usually the longest part of your IRAC analysis, as it contains an in-depth explanation of your macro-synthesis and legal analysis. The Rule component should address the specific legal standard identified in

your Issue. Also, be sure to address each authority in proper hierarchical order – Constitutions, Statutes, Administrative Rules, Case law and secondary authority (if any).

As with the Reasoning section of a case brief, when writing the Rule component of your IRAC, I recommend using a formula similar to what you see in the steps below. This makes it less likely you'll omit important legal authorities or forget to discuss them in detail. Using the same structure repeatedly also helps with writer's block, and the consistency makes your writing more predictable and easier to follow.

Step 1: Specify the portion of the statute, administrative rule or common law containing the legal standard.

The first sentence in your Rule component should expressly refer to the statutory language that forms the basis for the legal standard identified in the Issue component along with its correct and complete *Bluebook* citation. By now, you've been working with the language long enough that you should feel comfortable paraphrasing it so that you're only including the part of the legal standard you are discussing (though you can certainly quote the statute directly). Add a transitional phrase at the beginning of this sentence to show a relationship to the Issue sentence.

Example IRAC Issue with Transition to the Rule (new items in boldface)

Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire? **To secure an arson conviction, §943.02(1)(a), Wis. Stat. (1996), requires proof that the accused "intentionally" damaged another person's building with fire.**

Of course, there are other ways to correctly write this sentence. The key is to make sure you include the specific language, you cite the statute involved, and you like the way the sentence sounds when you read it out loud.

Step 2: Briefly explain why analysis of the legal standard is necessary.

The explanation should be simple and brief – just enough to let the reader know why we're here, and what other authorities you will be using to analyze the legal standard. If the legal standard comes from a statute or administrative rule, usually the most common reasons are that the word or phrase that forms the basis of the legal standard is not defined in the statute or in related statutes, or the word or phrase that forms the basis of the legal standard was recently changed.

Once you've explained the reason your analysis is necessary, generally introduce the reader to the legal authorities you'll be discussing next. If there is more than one type of legal authority you'll be using, introduce them in the order in which you'll be discussing them (which should be the hierarchical order previously mentioned).

Example (new items in boldface)

Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire? To secure an arson conviction, §943.02(1)(a), Wis. Stat. (1996), requires proof that the accused "intentionally" damaged another person's building with fire**. Although Wisconsin's arson statute does not define the word "intent," Wisconsin Courts have interpreted the word "intentionally" as used in the statute.**

Step 3: Describe in detail your macro-synthesis/analysis of the legal authorities related to the legal standard.

Now it is time to fully discuss the court decision(s) you identified in your IRAC outline/plan as best supporting your conclusion as to how you would answer the question raised in the Issue. Don't over-summarize; instead, write as though your reader has no idea

what any of the court decisions say.

Most often, discussion of a court decision begins with the "rule of the case" – the Court's statement as to how it defined or interpreted the legal standard. If you are using the decision to define a word or phrase in the legal standard, start with that definition (for example, the *Miller* Court defined "procure for" as …). From there, explain what the decision says about how the requirements of the legal standard are met (or not met). Use the Reasoning section of your case brief to help you. Fully discuss what the decision says about the definition, interpretation, or requirements of the legal standard before moving on to an explanation of how the court decision applied the legal standard to the facts involved in the appeal.

Including the facts from the court decision is important. First, the facts place the legal standard and its definition, interpretation, or requirements in context, helping the reader to better understand what the court said without having to read the entire decision. Second, if you don't include the facts from the court decision, your analysis will be incomplete; you need the facts from the court decision to compare to the client's facts that you will write in your Application component. Without this comparison, there is no credible basis for your conclusion as to how the court decision will impact the client.

If you are discussing more than one court decision as part of your Rule component, make sure to

- Completely discuss each court decision before moving on to the next one.
- Start a new paragraph with each new court decision
- Use a transition to show how the court decisions relate to one other (Similarly, in contrast, the (Court of Appeals or Supreme Court) further explained (or clarified, or restricted, etc.) …
- Compare the court decisions to one another with respect to rules of law or factual similarities/differences. Again, write as though your reader has never read any of the decisions you are discussing.

Finally, if you are discussing multiple legal authorities in your Rule component, end the Rule component with a "wrap it up" statement (or paragraph, if necessary) that reflects your macro-synthesis of these authorities, explaining how they come together to form the "big picture" of what the legal standard means. There are a few ways to do this, depending on what flows the best with what you've already written. Many writers like to use a summative transitional phrase such as, "Based on these authorities …" This signals the reader that we are done writing about the Rules and the Application is coming soon.

Here's what the next paragraphs of our Rule component for the Wonka memo might look like:

Example

The Wisconsin Supreme Court, while not defining "intent" directly, described the type of proof that would support a determination that the accused "intentionally" damaged another person's building with fire: "Intent can be inferred from the following facts: use of an accelerant, the setting of the fire during a time of the day when the area is likely to be unpopulated, or any other facts tending to show hostility or intent to cause damage."

State v. Johnson, 349 Wis. 2d 894, 455 N.W.2d 338 (1988). In *Johnson*, the defendant. Randy Johnson, was accused of arson to a school. The school caught fire at 3 a.m. on Easter Sunday. A search of Randy's home yielded some clothes that smelled of smoke and gasoline. The fire inspector's report revealed the presence of gasoline in the area where the fire started. An empty gas can was found in the football field behind the high school. Witnesses also testified that Randy's Chemistry class was scheduled to take a big exam the following Monday. Randy's Chemistry teacher testified that Randy needed to earn an A on the exam or he would fail the class. The *Johnson* court held that this evidence was sufficient to prove that Randy intentionally set fire to the school, even though there was no evidence that he was seen in the area of the fire. As a result, Randy's conviction of arson was upheld.

In a later case, the Supreme Court clarified the quantity and quality of proof based on inferences that is needed to support a determination of "intent." *State v. Rodriguez*, 548 Wis. 2d 293, 560 N.W.2d 81 (1993). Specifically, the *Rodriguez* Court stated that more is required than just the presence of accelerants or vague suspicion. The Court clarified that proving "intent" beyond a reasonable doubt requires more than just evidence of the presence of accelerants at the site coupled with "vaguely suspicious" circumstances. In *Rodriguez*, a fire started on defendant Alex Rodriguez's back porch at 5 p.m. on a Saturday, causing damage to his home. At the time of the fire, due to a renovation project at the home, the door to the back porch had been boarded up, such that Rodriguez needed to go out the front door and around the home to

access the back porch. Rodriguez was at home when the fire started, and immediately called the fire department to report the fire. Several days later, Rodriguez made a claim with his insurance company, which denied the claim, calling the fire "suspicious" and noting that accelerants were present on the back porch where the fire started. Rodriguez testified that he always kept his grill, charcoal, and charcoal lighter fluid on the back porch. Witnesses for the insurance company were unable to describe any other evidence that the fire had been set intentionally. The *Rodriguez* Court held that this evidence was not sufficient to prove that he intentionally set the fire. As a result, Rodriguez's conviction of arson was overturned.

Based on the *Johnson* and *Rodriguez* cases, a determination of "intent" needs to be based on objective evidence in addition to use of accelerants. The evidence should support an inference that the defendant had motive and desire to set the fire. Additionally, any "innocent" explanations for the circumstances surrounding the fire must be considered and weighed with all other evidence relating to a defendant's intent to damage another person's building with fire.

When writing your Rule component, avoid the following pitfalls:

☹ omitting reference to the statute (or other legal authority) containing the legal standard

☹ Lack of transitions to show relationships between the legal authorities being discussed. You don't want your Rule component to be comprised of several disjointed paragraphs discussing legal authorities, or anything else that just looks like an authorities list

☹ insufficient discussion of the rules of law from the court decisions. Thoroughly and completely explain the definitions, interpretations, or requirements you detailed in the Reasoning section of your case brief.

☹ insufficient discussion of the facts from the court decisions. Include the legally significant facts from the court decision that you included in the Reasoning section of your case brief.

☹ excessive direct quotations from the legal authorities. Use your own words as much as possible.

☹ Injecting the client's facts in the discussion of the Rules. Save it for the Application component.

☹ improper citation format. Use complete Bluebook citation form for statutes, and for court decisions the first time you cite them. Italicize titles as required.

IRAC Application

Next comes the **Application** of the Rule to your client's facts. The Application is the bridge between the Rule and the Conclusion; it is where you detail the similarities/differences between the client's facts and circumstances and the facts and circumstances contained in the legal authorities you discussed in the Rule.

Because you have already written the Facts statement in your memo, this is a good starting point for your IRAC Application. Here are some suggested steps for drafting your Application component:

1. Start a new paragraph for your Application component.
2. Copy and paste what you previously wrote in the Facts Statement section of your memo.
3. Review the portion of your Macro-Synthesis worksheet where you compared the client's facts to the facts from the court decisions you used in your Rule.
4. Delete from your IRAC Application component any client facts that are not directly comparable to the facts from the court decisions you used in your Rule. Because you already tell the complete story in your Facts Statement section, you only need to tell part of the story in each IRAC Application.
5. Add a transition to the beginning of the Application paragraph that previews whether you think the client's facts are similar to or different from the facts from the court decisions you used in your Rule. Examples include
    1. "Our client's facts are similar to (or different from) the facts in [name of case]"
    2. "In contrast (or similarly), in our client's case …"

Once you've written your first draft of the Application component, it's important to review and revise it. Some tips to consider when revising:

- Use people's names (Willy Wonka, Charlie Bucket) rather than party designations (defendant, victim, plaintiff). If you really want to use party designations, use them in combination with names (Defendant Wonka).
- When using "short forms" of names, double-check for clarity. If multiple people have the same last name, using unique first names will make your writing clearer.
- Change the order in which you discuss the client's facts in your IRAC Application component to that they match the order in which you discussed similar/different facts from the court decisions you used in your Rule.
- Make sure you aren't missing any client facts that are legally significant to the legal standard you are discussing. Directly comparing side-by-side the facts from the court decisions you used in your Rule to your client facts in your Application can be helpful. Did the court decision mention accelerants? Make sure your Application component does too, even if it means writing in your Application component that a particular fact or circumstance existing in the court decision is missing (or different) in the client's situation. Include all of the client facts that support your conclusion that the client's result should be the same as/different from that of the court decision(s) you discussed in your Rule.
- Be careful not to get into a detailed discussion of legal authorities. While it's okay to mention the authority as part of your comparison, resist the temptation to rehash the authority's facts in your Application component.

Finally, it's useful to end the Application component with a "wrap it up" statement of how the client's facts and circumstances as a whole relate to the legal standard. There are a few ways to do this, depending on what flows the best with what you've already written. Many writers like to use a summative transitional phrase such as, "Based on these facts …" This signals the reader that we are done writing about the details and the conclusion is coming soon.

Example IRAC Application

In this case, similar to the *Johnson* case, Mr. Wonka's intent to destroy the factory can be inferred from many facts. The fire inspector's report noted use of accelerants in several sites. The fire started sometime after 1 a.m., long after the factory was closed. Finally, a witness testified that he saw Mr. Wonka dancing around across the street from the fire, yelling repeatedly, "Burn, baby burn!" Unlike *Rodriguez*, here there is ample evidence in addition to the presence of accelerants that tends to show intent. All of these facts -- and especially the witness' testimony – demonstrate Wonka's general hostility toward the factory, as well as his desire that the fire damage the factory.

TRANSITIONS AND SIGNPOSTING

Using transitional words and phrases as signposts in your writing will help guide the reader through your analysis. Remember that you want to make your writing as accessible as possible to your reader. The reader, using your transitions, can better follow your analysis because you have shown the reader how each sentence relates to the next. The reader will find your writing to be more credible because the reader will not struggle to understand your point.

You do not need to include a transition with every sentence! This will clutter your writing and make it more difficult to understand your analysis. Instead, use transitions when you want to signal that you are

1. Moving on to the next item in a list
2. Providing an example
3. Generalizing
4. Analogizing or comparing
5. Presenting an opposing viewpoint
6. Emphasizing a particular thought

7. Expanding to explain intricacies of a larger concept
8. Concluding a piece of analysis or argument

Below are lists with suggested words and phrases you can use to signpost in your writing.

Sequencing	Introducing an Example	Generalizing	Analogy/Comparison
• After • Finally • Initially • Before • First, second, etc., Last • During • Further • Later • Meanwhile • Subsequently • Until • Next • Then • Since • To begin with	• As in • In particular • Say • For Example • Like • Such as • For Instance • Namely • To demonstrate • Including • Notably • To illustrate	• As a rule • In general • Usually • For the most part • In most cases • Generally • On the whole	• Also • Here • Much like • And • Identically • On one hand • In comparison • Similarly • Comparatively • In like manner To • Compared to • In the same way • Together with • Compared with • Just as • Equally • Likewise

Contrast/Opposition	Emphasis	Explanation	Conclusion
• Alternatively • Despite • Notwithstanding • Although • Even though • On the contrary • At the same time • However • On the other hand • Besides • In contrast • Rather • But • Nevertheless • Regardless • By contrast • Nonetheless • Though • Conversely • Unlike	• Additionally • Especially • Indeed • Again • Even more • In effect • Apart from this • Explicitly • In fact • By analogy • Furthermore • Markedly • Certainly • Importantly • Moreover • Namely • Significantly • To emphasize • Particularly • Specifically	• Additionally • Frequently • Moreover • Also • Furthermore • More specifically • And • In detail • Namely • Another reason • In like manner • As well • In other words • To clarify • Besides • In particular • To explain • By the same token • In relation to	• Accordingly • As a consequence • Because • Finally • In conclusion • In summary • Lastly • On balance • Overall • So • Therefore • Thus • To conclude • To summarize • Ultimately

FINALIZE YOUR IRAC

After you've completed the process detailed on the previous pages, put your IRAC components in their correct order: **I**ssue, **R**ule, **A**pplication, **C**onclusion. Proofread carefully!

Example completed IRAC Analysis

Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire? To secure an arson conviction, §943.02(1)(a), Wis. Stat. (1996), requires proof that the accused "intentionally" damaged another person's building with fire. Although Wisconsin's arson statute does not define the word "intent," Wisconsin Courts have interpreted the word "intentionally" as used in the statute.

The Wisconsin Supreme Court, while not defining "intent" directly, described the type of proof that would support a determination that the accused "intentionally" damaged another person's building with fire: "Intent can be inferred from the following facts: use of an accelerant, the setting of the fire during a time of the day when the area is likely to be unpopulated, or any other facts tending to show hostility or intent to cause damage." *State v. Johnson*, 349 Wis. 2d 894, 455 N.W.2d 338 (1988). In *Johnson*, the defendant, Randy Johnson, was accused of arson to a school. The school caught fire at 3 a.m. on Easter Sunday. A search of Randy's home yielded some clothes that smelled of smoke and gasoline. The fire inspector's report revealed the presence of gasoline in the area where the fire started. An empty gas can was found in the football field behind the high school. Witnesses also testified that Randy's Chemistry class was scheduled to take a big exam the following Monday. Randy's Chemistry teacher testified that Randy needed to earn an A on the exam or he would fail the class. The Johnson court held that this evidence was sufficient to prove that Randy intentionally set fire to the school, even though there was no evidence that he was seen in the area of the fire. As a result, Randy's conviction of arson was upheld.

In a later case, the Supreme Court clarified the quantity and quality of proof based on inferences that is needed to support a determination of "intent." *State v. Rodriguez*, 548 Wis. 2d 293, 560 N.W.2d 81 (1993). Specifically, the *Rodriguez* Court stated that more is required than just the presence of accelerants or vague suspicion. The Court clarified that proving "intent" beyond a reasonable doubt requires more than just evidence of the presence of accelerants at the site coupled with "vaguely suspicious" circumstances. In *Rodriguez*, a fire started on defendant Alex Rodriguez's back porch at 5 p.m. on a Saturday, causing damage to his home. At the time of the fire, due to a renovation project at the home, the door to the back porch had been boarded up, such that Rodriguez needed to go out the front door and around the home to access the back porch. Rodriguez was at home when the fire started, and immediately called the fire department to report the fire. Several days later, Rodriguez made a claim with his insurance company, which denied the claim, calling the fire "suspicious" and noting that accelerants were present on the back porch where the fire started. Rodriguez testified that he always kept his grill, charcoal, and charcoal lighter fluid on the back porch. Witnesses for the insurance company were unable to describe any other evidence that the fire had been set intentionally. The *Rodriguez* Court held that this evidence was not sufficient to prove that he intentionally set the fire. As a result, Rodriguez's conviction of arson was overturned.

Based on the *Johnson* and *Rodriguez* cases, a determination of "intent" needs to be based on objective evidence in addition to use of accelerants. The evidence should support an inference that the defendant had motive and desire to set the fire. Additionally, any "innocent" explanations for the circumstances surrounding the fire must be considered and weighed with all other evidence relating to a defendant's intent to damage another person's building with fire.

In this case, similar to the *Johnson* case, Mr. Wonka's intent to destroy the factory can be inferred from many facts. The fire inspector's report noted use of accelerants in several sites. The fire started sometime after 1 a.m., long after the factory was closed. Finally, a witness testified that he saw Mr. Wonka dancing around across the street from the fire, yelling repeatedly, "Burn, baby burn!" Unlike *Rodriguez*, here there is ample evidence in addition to the presence of accelerants that tends to show intent. All of these facts -- and especially the witness' testimony – demonstrate Wonka's general hostility toward the factory, as well as his desire that the fire damage the factory. Therefore, the State will likely be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire.

Now you have a cohesive, thorough and complete legal analysis that is easy to read and understand.

Wash, rinse, repeat …

Repeat the writing process detailed above for each Question Presented, using the same numbering system you used for your Questions Presented. Even if the Rules and Applications seem to overlap or be repetitive, it's important to fully analyze each Question Presented separately, using IRAC structure for each one.

By now, you are deeply familiar with the legal standards, legal authorities, and legally significant client facts involved in answering the client's question. Resist the temptation to over-summarize! Legal analysis is meant to be detail-oriented; it's not meant to be a cliff-hanger murder mystery. That means there will likely be a fair amount repetition.

Next, you'll learn how to use the IRAC writing structure in the Discussion section of a legal research memorandum.

14: Using the IRAC Writing Structure is shared under a CC BY-SA 4.0 license and was authored, remixed, and/or curated by Beth R. Pless, J.D. (Northeast Wisconsin Technical College).

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15: Legal Memos - Discussion Section

In this chapter, we are going to explore what goes into writing the Discussion section of your legal research memo. This is perhaps the most important part of your memo, and it all starts with your IRAC paragraphs. From there, you will add some structural pieces to guide your reader, and counter-analysis (where appropriate) to complete the legal analysis.

DISCUSSION SECTION STRUCTURE

If your memo contains more than one Question Presented – and hence, more than one IRAC analysis, it will help the reader better understand and follow your analysis if you use subheadings/subtitles as guideposts before each one. Use the same numbering system that you used for your Questions Presented, and either a short statement or question reflecting the legal standard being analyzed, like this:

DISCUSSION

1. **Did Wonka "intentionally damage" the factory with fire?**

[IRAC Analysis follows]

2. **Did the damage occur "without consent" of the other owner?**

[IRAC Analysis follows]

The next step is easy: put your entire IRAC analysis beneath the appropriate subheading/subtitle. Resist the temptation to remove the IRAC Issue! Even though it's repetitive of the subheading/subtitle, it's a necessary part of the analysis.

Drafting Counter-Analysis

The purpose of your IRAC analysis is to show an in-depth explanation of your macro-synthesis and legal analysis, and your conclusions as to how the client's questions should be answered. If you stop here, however, your analysis is incomplete.

At this point, your analysis is one-sided. But, the law is anything but one-sided. You will never find yourself in a position where you can simply present your case and then "drop the mic." Instead, opposing counsel will try to poke holes in your case; so, you need to prepare for those responses by anticipating them. This is the purpose of counter-analysis.

There are two types of counter-analysis to consider including after each IRAC analysis:

- Factual counter-analysis (based on the client's facts and reasonable inferences supported by those facts
- Legal counter-analysis (based on differences between legal authorities – most often court decisions)

Factual counter-analysis

Very rarely are all of the legally significant facts undisputed. Facts are sometimes disputed, unclear, or subject to different interpretations/inferences. The purpose of factual counter-analysis is to anticipate an objective view of the facts that is different from what you wrote in the Application component of your IRAC analysis. Here are some suggested steps for writing factual counter-analysis:

Step 1: Review your Facts section in your legal memo. Remember, the Facts section of your legal memo contains all of the client facts, including the facts that don't support the conclusion you reached in your IRAC analysis. Look for signal words such as apparently, allegedly.

Step 2: Identify legally significant facts that are disputed, unclear or are subject to more than one interpretation. Use a highlighter to mark those facts in your Facts statement that are

- Disputed by the parties or witnesses (for example, one person says the traffic light was green, and another person says the traffic light was red). These would be "black and white" disputes, meaning that if one version is true, the other must be false.

- Unclear due to a lack of testimony/evidence or several different versions of the facts. The more witnesses you have, the more different versions there likely will be as to what happened, when it happened, how it happened, or why it happened. These are "gray" disputes, meaning that several different versions could be true, based on the vantage point and perception of the various witnesses.
- Able to support different assumptions, interpretations, or inferences that can be drawn from the fact. Sometimes a person's objective words or behaviors can reflect many plausible subjective motives, thoughts, or intents. For example, suppose you saw a person throw away a half-eaten apple. There are many logical inferences as to why: the person was no longer hungry; the person was going somewhere that didn't allow food; the person discovered a worm in the apple.

Once you've marked those facts, compile a list of legally significant facts that might be important enough to change the outcome of your client's legal matter. Your macro-synthesis worksheets (in which you listed client facts that were similar to or different from the facts of court decisions you briefed) can help with this.

Step 3: Determine how the facts identified in Step 2 would change the client's outcome. In the Application component of your IRAC analysis, you assessed the credibility, bias, and ability to perceive, with respect to witness statements, testimony and documents; you then decided which facts you believed were the strongest or most likely to be true. As part of this process, you also made some reasonable assumptions, interpretations and inferences based on your view of the facts. This step asks you to consider how someone else's assessment could be different from yours, and how that difference would impact the client's outcome.

Step 4: Write your factual counter-analysis. Once again, I recommend using a formula similar to what you see below for writing your factual counter-analysis. Using the same structure repeatedly also helps with writer's block, and the consistency makes your writing more predictable and easier to follow.

- Start with a transitional word or phrase that signals the reader you are about to explain your factual counter-analysis. Some possibilities include however, nevertheless, nonetheless, conversely, on the other hand, or "A different view of the facts could lead to a different outcome."
- State the general impact of the factual counter-analysis. For example, If the jury views the facts differently, our client might be held liable.
- Explain the counter-analysis factors in detail. Describe the black-and-white (or gray) dispute, and what the different resolutions of those disputes might be. Describe the different assumptions, interpretations, or inferences that can be drawn from the fact(s).
- Describe the specific impact that would occur if the jury viewed the facts differently from you, in the context of the legal standard analyzed in your IRAC analysis. For example, if the jury believes witness A's testimony rather than witness B's testimony, the jury might determine our client failed to stop for a red traffic light.
- End your factual counter-analysis with a conclusion regarding the impact on your IRAC conclusion. For example, Therefore, the plaintiff may be able to prove our client breached a duty of care.

Going back to our client, Willy Wonka, you might recall there were some pretty interesting facts relating to the question of whether the State would be able to prove beyond a reasonable doubt that Charlie Bucket, the "other" owner of the Chocolate Factory, did not consent to a plan to damage the factory with fire. Those facts are:

- Bucket claimed in his statement to police he was surprised and upset by the fire and did not consent to someone setting a fire.
- Bucket is currently being audited by Weegocha Auditing Company for alleged improper business practices. Weegocha states that $1 million is unaccounted for in corporate record books.
- Corporate record books reflect that the factory has been operating at a financial loss for the last three years.
- Bucket has a Preferred Player's Cards at LaCasino. LaCasino policy is to issue Preferred Player's Cards only to regular customers gambling at least $1 million.
- During our interview, Bucket admitted that he has lost a substantial, though unknown, amount of money gambling at LaCasino over the last five years. However, Bucket denies using corporate monies to gamble.

If we decide to believe Bucket's statement to police and his statement during our interview denying that he used corporate money to gamble, our IRAC might look like this:

Will the State be able to prove beyond a reasonable doubt that the fire occurred without the other owner's consent? Section 943.02(1)(a), Wis. Stat. (2006), requires proof that the owner, other than the accused, did not consent to the arson. "Without the owner's consent" requires that at least one owner is not involved in the crime. *State v. Jeeves*, 201 Wis. 2d 1, 399 N.W.2d 222 (1977). If all owners of record are involved in a plot to commit arson, conviction of one of the owners under §943.02(1) cannot stand. *Id.* In *Jeeves*, the other owner, Jackson, was also charged with a crime and confessed that both he and Jeeves had planned to set fire to the apartment building they co-owned so they could obtain insurance money.

In contrast, in our case, Bucket informed police that he neither had prior knowledge of nor consented to a plan to damage the factory with fire. There is no evidence to suggest that Bucket was being untruthful with the police; in fact, the investigating officer who first contacted Bucket about the fire testified that Bucket expressed "disbelief" that the Chocolate Factory had been set on fire and that Wonka was accused of doing so. Moreover, it does not appear that Bucket was present at the scene of the fire. Therefore, the State is likely to prove the fire occurred without Bucket's consent.

Of course, it's possible Bucket lied to the police about having no knowledge of a plan to set the Chocolate Factory on fire; he certainly has a motive to lie (he doesn't want to be charged criminally). Also, the objective facts about missing money and gambling debts would support an inference that Bucket lied to us about not gambling with corporate money. So, our factual counter-analysis might look like this:

Example Factual Counter-analysis

However, additional facts exist which may lead a jury to discount Bucket's statement to police and instead find that Bucket participated in the plan to damage the factory with fire. At the time of the fire, Bucket was under investigation for improper business practices. The factory had operated at a loss for three years, and $1 million was unaccounted for in corporate record books. The amount of missing money is equal to the amount of damage done to the factory. Additionally, Bucket admitted that he has lost a substantial amount of money gambling at LaCasino. While the amount of gambling loss is undetermined, Bucket stated that he has a Preferred Player's card, which is issued only to million-dollar gamblers. A jury could believe that the fire was set to obtain insurance money to cover the missing $1 million. Thus, the State may not be able to prove the fire occurred without Bucket's consent.

Legal counter-analysis

Often, there are several legal authorities relevant to the legal standard you discussed in your IRAC analysis. The purpose of legal counter-analysis is to anticipate an objective view of the legal authorities that is different from your own. Here are some suggested steps for writing legal counter-analysis:

Step 1: Review your case briefs and macro-synthesis worksheets.

In the Rule component of your IRAC analysis, you determined which court decisions were most applicable to the client's legal question based in large part on your view of factual similarities and differences. Now it's time to look more closely at the court decisions you determined were not applicable.

Step 2: Identify the differences in "rules of law" contained in the legal authorities.

Again, usually the differences arise in court decisions as opposed to conflicting statutes. While reviewing the court decisions, ask yourself these questions:

- Which court decisions have outcomes that are different from, or opposite to one another?
- Why are they different? There are several possibilities, such as
  - Differences in legally significant facts. Even a seemingly small difference in the facts can have a big impact on how the legal standard is applied.

- The legal standard has changed/evolved during the time gap between the court decisions. Statutes are amended or repealed; sometimes new statutes are enacted; common law evolves. Pay particular attention to portions of court decisions describing the history of the statute/legal standard.
- A new/different policy reason has emerged that supports a different outcome in the application of the legal standard. Courts sometimes describe the "why" behind a particular legal standard (who, or what, is being protected and why? Who is being held responsible and why?). Frequently, due to rules relating to precedent and *stare decisis*, later court decisions include an explanation of why they deviated from previous decisions.

Don't forget to consider the possibility that a court could conclude that the precedent you used in your IRAC Rule component might actually lead to an outcome opposite to your conclusion. That's why a thorough macro-synthesis includes a detailed list of all the ways in which the facts in the court decision are different from the client's facts. Again, even a seemingly small difference in the facts can have a big impact on how the legal standard is applied, if a court decides to give more weight to those differences than you did.

Step 3: Determine how the legal authorities identified in Step 2 would change the client's outcome.

Although this primarily involves looking at the different "rules of law" from those court decisions, it also involves looking at how a different view of the client's facts would support applying those court decisions to the client's facts. In your factual counter-analysis, you considered how someone else's assessment of the reasonable assumptions, interpretations and inferences based on the client's facts might differ from yours. How would that difference impact which court decision would apply to the client? How would that difference impact the client's outcome?

Step 4: Write your legal counter-analysis.

Once again, I recommend using a formula for writing your legal counter-analysis:

- Start with a transitional word or phrase that signals the reader you are about to explain your legal counter-analysis. Some possibilities include however, nevertheless, nonetheless, conversely, on the other hand, or "A different view of the legal authorities (or case law) could lead to a different outcome."
- State the general impact of the legal counter-analysis. For example, A court could determine that [other court decisions are more applicable, or a different interpretation/application of the legal standard is appropriate].
- Explain the counter-analysis factors in detail. Describe the other court decisions that could be applied, including the "rules of law" from those decisions and the legally significant facts. Describe how different assumptions, interpretations, or inferences that can be drawn from the client fact(s) could result in other court decisions being applied to the client, or how the same court decision you applied in your IRAC Rule component could be applied differently.
- Describe the specific impact that would occur if a court viewed the legal authorities differently from you, in the context of the legal standard analyzed in your IRAC analysis.
- End your legal counter-analysis with a conclusion regarding the impact on your IRAC conclusion. For example, Therefore, the plaintiff may be able to prove our client breached a duty of care.

Going back to our client, Willy Wonka, you might recall there were some notable differences in the facts of the *Jeeves* decision used in the IRAC Rule and our client's case. Unlike Bucket, the joint owner of the property in *Jeeves* was present at the scene of the fire and confessed to the police that he and Jeeves had planned to set the fire. While our view of the facts led us to believe Bucket had not consented to a plan to damage the Chocolate Factory with fire, we've already noted in our factual counter-analysis that it's also plausible that Bucket did consent. That possibility, coupled with the *Jeeves* Court's statement that there could be a presumption of consent based on joint ownership, could support a legal determination that Bucket consented. So, our legal counter-analysis might look like this:

Example Legal Counter-analysis

Additionally, there is language in *Jeeves* that suggests there could be a presumption of involvement in a crime against property on the part of Bucket a joint owner of the Chocolate Factory. Specifically, the *Jeeves* Court agreed that joint ownership of the property that was damaged could support a presumption of consent, particularly if all joint owners benefited from the damage. The Court chose not to determine whether this presumption should apply to Jackson, the other joint owner of the property, because Jackson was at the scene of the fire and confessed to planning with Jeeves to set the fire. Because Bucket apparently was not at the scene of the fire and did not confess to being part of a plan to set the fire, a court looking at the facts in our client's case would need to determine whether this presumption should apply to Bucket. Bucket certainly benefited from the payment of insurance money to cover the losses from the fire; that money could be used to replace the money missing from the corporate books that may have been used to feed Bucket's gambling habit. These facts tending to show a motive for Bucket to agree to the plan to burn the factory, coupled with the potential application of the presumption of consent by joint owners, could make it difficult for the State to prove the fire occurred without Bucket's consent.

Counter-Analysis Pitfalls to Avoid

When writing your counter-analysis, avoid the following pitfalls:

☹ Labeling your counter-analysis as "counter-analysis." Counter-analysis is part of the Discussion section, so it should not be labeled separately.

☹ Failing to include a transition to introduce the counter-analysis paragraph that indicates whether you are providing factual or legal counter-analysis. Consider using something similar to the following: However, a different view of the [client's facts OR the legal authorities/case law]. Here are some other "signal" words and phrases:

Factual counter-analysis	Legal counter-analysis
• Allegedly • Apparently • [someone] asserts … • [someone] claims … • [someone] states … • [someone] does not recall … • [someone] denies … • It is unclear whether … • The parties dispute whether … • It is unknown whether …	• In contrast … • However … • [case title] suggests … • [case title] could apply (or be applied) … • The case law is not settled … • Our exact fact scenario has not been addressed… • There are conflicts between multiple cases…

☹ Injecting factual or legal counter-analysis into your main IRAC analysis.

☹ Repeating your IRAC analysis in your counter-analysis paragraphs.

☹ Incomplete discussion of factors to counter-analyze. Assume your reader hasn't read any of the legal authorities you have synthesized.

- With factual counter-analysis, expressly state the reason the facts might be viewed differently (they are disputed, they are vague, there is more than one reasonable interpretation); then, explain in detail the different view
- With legal counter-analysis, expressly state the reason the legal authorities might be applied differently (the "rule of law" could be applied differently, a court might think the factual differences between the case law and the client's facts should

result in a different outcome for the client, a court might think a different precedent should be applied). Explain in detail the "rule of law" and the facts of the precedent, and then explain in detail the different view.

The Discussion Section: Putting it all Together

Once you have completed the entire process above for the discussion of your first Question Presented, repeat the process for each additional Question Presented. Keep in mind that not every discussion needs counter-analysis (but most of them do).

Following is an example of what our legal research memo looks like at this point. The components we've drafted so far have been put in the correct order.

WORK PRODUCT – PRIVILEGED AND CONFIDENTIAL LEGAL RESEARCH MEMORANDUM

TO: Supervising Attorney [insert the person's name]

FROM: Conscientious Legal Practitioner [insert your name]

DATE: April 1, 20xx [insert the date you are providing the final draft to your supervisor)

RE: Analysis of Likelihood of Arson Conviction

State v. Willy Wonka; Brown County Case No. 20xx-CF-1234

Our File: CF-Wonka-20xx-983

QUESTIONS PRESENTED

1. Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory when the facts show:

a. A fire occurred at the Chocolate Factory several hours after the Factory had closed for the day;
b. Accelerants were used at several locations around the Factory;
c. Wonka was identified as the person dancing across the street from the fire shouting "Burn, baby, burn;"
d. The Factory's records are being audited for financial irregularities; and
e. Wonka owns a $1,000,000 Preferred Player's Card from LaCasino?

2. Will the State be able to prove beyond a reasonable doubt that the damage to the Chocolate Factory occurred "without the other owner's consent" when the facts show:

a. The Chocolate Factory is jointly owned by Wonka and Charlie Bucket;
b. Bucket told the investigating officer that he had no knowledge of a plan to set the Chocolate Factory on fire;
c. Bucket told the investigating officer that he did not consent to a plan to set the Chocolate Factory on fire;
d. The Factory's records are being audited for financial irregularities; and
e. Bucket owns a $1,000,000 Preferred Player's Card from LaCasino?

FACTS

Sometime after 1 a.m. on January 30, 20xx, a fire occurred at the Chocolate Factory (Police Report). The factory had closed at 5 p.m. the evening prior to the fire, and no one occupied the factory at the time of the fire (Client interview, Bucket statement to police). The fire caused $1 million worth of damage (Insurance claim filed by Bucket).

The fire inspector's report revealed the use of accelerants at several sites around the factory (Fire Inspector Report). A witness came forward (Mary Worth) and stated that at approximately 2 a.m., she was awakened by the sirens from fire trucks responding to

the fire (Police Report). She went outside her home, which is across the street from the Chocolate Factory, to watch the firefighters put out the fire (Police Report). At that time, she noticed a man dressed in camouflage clothing dancing near the curb, about 25 yards from where she was standing (Police Report). She could hear the man shouting, "Burn, baby, burn!" (Police Report) From a police photo lineup, Ms. Worth identified Mr. Wonka as the man she saw dancing across the street from the fire (Police investigation file, lineup report).

The Chocolate Factory is jointly owned by our client, Willy Wonka, and Charlie Bucket (Client interview, Bucket statement to police, Incorporation records, Real estate records). Bucket claimed in his statement to police he was surprised and upset by the fire and did not consent to someone setting a fire (Police Report, Bucket statement to police). The investigating officer who first contacted Bucket about the fire testified that Bucket expressed "disbelief" that the Chocolate Factory had been set on fire and that Wonka was accused of doing so (Deposition of Officer X). It does not appear that Bucket was present at the scene of the fire. Further investigation of Bucket and the Chocolate Factory reveals that Bucket is currently being audited by Weegocha Auditing Company for alleged improper business practices (Client interview, records from auditing company). Weegocha states that $1 million is unaccounted for in corporate record books (Audit report). Corporate record books also reflect that the factory has been operating at a financial loss for the last three years (Chocolate Factory financial records).

Both Willy Wonka and Bucket have Preferred Player's Cards at LaCasino (Client interview; LaCasino Preferred Players roster). LaCasino policy is to issue Preferred Player's Cards only to regular customers gambling at least $1 million (interview of LaCasino manager; LaCasino pamphlets). Both Wonka and Bucket admit that they have lost a substantial, though unknown, amount of money gambling at LaCasino over the last five years (Client interview, Audit report). However, Wonka and Bucket deny using corporate monies to gamble (Client interview, Audit report).

Willy Wonka has been charged in Brown County Circuit Court with arson. An arraignment is scheduled on [date], at which time Wonka must enter a plea to the charge. A request for a copy of the investigative file has been sent to the Brown County District Attorney and a response is pending.

DISCUSSION

1. Did Wonka "intentionally damage" the factory with fire?

Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire? To secure an arson conviction, §943.02(1)(a), Wis. Stat. (1996), requires proof that the accused "intentionally" damaged another person's building with fire. Although Wisconsin's arson statute does not define the word "intent," Wisconsin Courts have interpreted the word "intentionally" as used in the statute.

The Wisconsin Supreme Court, while not defining "intent" directly, described the type of proof that would support a determination that the accused "intentionally" damaged another person's building with fire: "Intent can be inferred from the following facts: use of an accelerant, the setting of the fire during a time of the day when the area is likely to be unpopulated, or any other facts tending to show hostility or intent to cause damage." State v. Johnson, 349 Wis. 2d 894, 455 N.W.2d 338 (1988). In Johnson, the defendant, Randy Johnson, was accused of arson to a school. The school caught fire at 3 a.m. on Easter Sunday. A search of Randy's home yielded some clothes that smelled of smoke and gasoline. The fire inspector's report revealed the presence of gasoline in the area where the fire started. An empty gas can was found in the football field behind the high school. Witnesses also testified that Randy's Chemistry class was scheduled to take a big exam the following Monday. Randy's Chemistry teacher testified that Randy needed to earn an A on the exam or he would fail the class. The Johnson court held that this evidence was sufficient to prove that Randy intentionally set fire to the school, even though there was no evidence that he was seen in the area of the fire. As a result, Randy's conviction of arson was upheld.

In a later case, the Supreme Court clarified the quantity and quality of proof based on inferences that is needed to support a determination of "intent." State v. Rodriguez, 548 Wis. 2d 293, 560 N.W.2d 81 (1993). Specifically, the Rodriguez Court stated that more is required than just the presence of accelerants or vague suspicion. The Court clarified that proving "intent" beyond a reasonable doubt requires more than just evidence of the presence of accelerants at the site coupled with "vaguely suspicious" circumstances. In Rodriguez, a fire started on defendant Alex Rodriguez's back porch at 5 p.m. on a Saturday, causing damage to his home. At the time of the fire, due to a renovation project at the home, the door to the back porch had been boarded up, such that

Rodriguez needed to go out the front door and around the home to access the back porch. Rodriguez was at home when the fire started, and immediately called the fire department to report the fire. Several days later, Rodriguez made a claim with his insurance company, which denied the claim, calling the fire "suspicious" and noting that accelerants were present on the back porch where the fire started. Rodriguez testified that he always kept his grill, charcoal, and charcoal lighter fluid on the back porch. Witnesses for the insurance company were unable to describe any other evidence that the fire had been set intentionally. The Rodriguez Court held that this evidence was not sufficient to prove that he intentionally set the fire. As a result, Rodriguez's conviction of arson was overturned.

Based on the Johnson and Rodriguez cases, a determination of "intent" needs to be based on objective evidence in addition to use of accelerants. The evidence should support an inference that the defendant had motive and desire to set the fire. Additionally, any "innocent" explanations for the circumstances surrounding the fire must be considered and weighed with all other evidence relating to a defendant's intent to damage another person's building with fire.

In this case, similar to the Johnson case, Mr. Wonka's intent to destroy the factory can be inferred from many facts. The fire inspector's report noted use of accelerants in several sites. The fire started sometime after 1 a.m., long after the factory was closed. Finally, a witness testified that he saw Mr. Wonka dancing around across the street from the fire, yelling repeatedly, "Burn, baby burn!" Unlike Rodriguez, here there is ample evidence in addition to the presence of accelerants that tends to show intent. All of these facts -- and especially the witness' testimony – demonstrate Wonka's general hostility toward the factory, as well as his desire that the fire damage the factory. Therefore, the State will likely be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire.

2. Did the damage occur "without consent" of the other owner?

Will the State be able to prove beyond a reasonable doubt that the fire occurred without the other owner's consent? Section 943.02(1)(a), Wis. Stat. (2006), requires proof that the owner, other than the accused, did not consent to the arson. "Without the owner's consent" requires that at least one owner is not involved in the crime. *State v. Jeeves*, 201 Wis. 2d 1, 399 N.W.2d 222 (1977). If all owners of record are involved in a plot to commit arson, conviction of one of the owners under §943.02(1) cannot stand. *Id.* In *Jeeves*, the other owner, Jackson, was also charged with a crime and confessed that both he and Jeeves had planned to set fire to the apartment building they co-owned so they could obtain insurance money.

In contrast, in our case, Bucket informed police that he neither had prior knowledge of nor consented to a plan to damage the factory with fire. There is no evidence to suggest that Bucket was being untruthful with the police; in fact, the investigating officer who first contacted Bucket about the fire testified that Bucket expressed "disbelief" that the Chocolate Factory had been set on fire and that Wonka was accused of doing so. Moreover, it does not appear that Bucket was present at the scene of the fire. Therefore, the State is likely to prove the fire occurred without Bucket's consent.

However, additional facts exist which may lead a jury to discount Bucket's statement to police and instead find that Bucket participated in the plan to damage the factory with fire. At the time of the fire, Bucket was under investigation for improper business practices. The factory had operated at a loss for three years, and $1 million was unaccounted for in corporate record books. The amount of missing money is equal to the amount of damage done to the factory. Additionally, Bucket admitted that he has lost a substantial amount of money gambling at LaCasino. While the amount of gambling loss is undetermined, Bucket stated that he has a Preferred Player's card, which is issued only to million-dollar gamblers. A jury could believe that the fire was set to obtain insurance money to cover the missing $1 million. Thus, the State may not be able to prove the fire occurred without Bucket's consent.

Additionally, there is language in *Jeeves* that suggests there could be a presumption of involvement in a crime against property on the part of Bucket a joint owner of the Chocolate Factory. Specifically, the *Jeeves* Court agreed that joint ownership of the property that was damaged could support a presumption of consent, particularly if all joint owners benefited from the damage. The Court chose not to determine whether this presumption should apply to Jackson, the other joint owner of the property, because Jackson was at the scene of the fire and confessed to planning with Jeeves to set the fire. Because Bucket apparently was not at the scene of the fire and did not confess to being part of a plan to set the fire, a court looking at the facts in our client's case would need to determine whether this presumption should apply to Bucket. Bucket certainly benefited from the payment of insurance money to cover the losses from the fire; that money could be used to replace the money missing from the corporate books that may have been

used to feed Bucket's gambling habit. These facts tending to show a motive for Bucket to agree to the plan to burn the factory, coupled with the potential application of the presumption of consent by joint owners, could make it difficult for the State to prove the fire occurred without Bucket's consent.

The legal research memo is almost complete! In the next chapter, you'll learn how to put in the finishing touches – the Answers to the Questions Presented and an introductory paragraph.

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16: Legal Memos - Final Draft

Answers, Introductory Paragraph and the Final Draft

In this chapter, we are going to explore what goes into writing the last two parts of your legal research memo – the Answers section and an introductory paragraph. Once you have written those, you are ready to finalize it! This chapter contains some suggested steps and, at the end, a checklist for making your final draft the best it can be.

REVIEW AND REVISE WHAT YOU'VE WRITTEN SO FAR

Before you start drafting the Answers section and the introductory paragraph, proofread, edit and revise the existing sections of your memo to make sure they look exactly the way you want them to look. Here are some suggested steps for this process:

Step 1: Check the existing sections of your legal memo for accuracy and completeness

Revision is an important part of excellent legal writing. Review each section of your legal memo to make sure what you wrote accurately reflects your legal synthesis and analysis. Some *common errors to avoid in each component*:

- **Questions Presented**

  ☹ writing the legal standard too broadly (is someone liable, guilty, responsible, etc.) rather than focusing on the word or phrase being interpreted and applied.

  ☹ failing to include a list of legally significant client facts related to the legal standard.

  ☹ including facts in the Questions Presented section that are not also included in the Facts section.

- **Facts**

  ☹ omitting legally significant facts or over-summarizing and leaving out small, but important, details.

  ☹ omitting contextual facts that help the reader understand what happened to the parties involved in the client's legal matter.

  ☹ failing to use "signal" words to let the reader know which facts are disputed or subject to more than one reasonable interpretation.

  ☹ including legal conclusions (don't answer the question in the legal standard or make a statement that the legal standard's requirements were met or not met).

- **Discussion**

  ☹ failing to use subheadings/subtitles that match each Question Presented being discussed.

  ☹ failing to include all of the IRAC components, in the correct order, for each Question Presented being discussed (review the chapters regarding IRAC for more detail).

  ☹ failing to include a complete and detailed counter-analysis as necessary after your IRAC analysis of each Question Presented (review the chapter regarding the Discussion section).

THE ANSWERS SECTION

The Answers section goes right after the Questions Presented section. The purpose, of course, is to tell the reader how you answered each Question Presented, with a brief summary as to why you answered it that way. Although it seems logical to draft the Answers right after you draft the Questions Presented, it's actually easier to draft them after you've drafted your Discussion sections. Think of the Answers as a synopsis of what your detailed analysis contained in your Discussion sections. Any writer will tell you it's easier – and more logical – to write a synopsis of a document after you've written the actual document.

Once you've got the other sections of your research memo finalized, writing the Answers section is relatively easy. Here are the steps:

Step 1: Copy and paste the legal standard from your Questions Presented into the Answers section.

After you title the Answers section, this really is the next step! Then make sure that the main numbering system of the Answers matches the main numbering system of the Questions Presented.

Step 2: Add one of the following to the beginning of each Answer: "Yes." "Probably yes." "No." "Probably No."

How did you answer each Question Presented? If you included counter-analysis, you need a "probably" answer so the reader knows up front there could be an alternative answer. If counter-analysis wasn't necessary, then writing "Yes" or "No" suffices.

Step 3: Revise the grammar and punctuation in each Answer to a statement.

You wrote your Question Presented as a question. The Answer needs to be a statement. That means you'll need to change some words or word order and change the final punctuation from a question mark to a period. Here is what our Answers would look like so far:

ANSWERS

1. Probably yes. The State will likely be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory.
2. Probably yes. The State will likely be able to prove beyond a reasonable doubt that the damage to the Chocolate Factory occurred "without the other owner's consent."

Step 4: Add a brief summary of the legal authorities and legally significant facts that support each Answer.

Review the Rule and Application components of the Discussion section in which you analyzed the Question Presented related to the Answer. Then, generally summarize, at a high level, what the legal authorities say about the legal standard. After that, write one to two sentences about the most important legally significant client facts that support your Answer. Finish with a concluding sentence. Here is what the final draft of our Answers would look like:

✔ Example Answers

ANSWERS

1. Yes. The State will very likely be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory. Wisconsin case law identifies several facts that tend to show intent, such as use of accelerants, a fire occurring at a time when the area is likely to be unpopulated, and other facts that can be interpreted as showing hostility. All of these facts are present in the Wonka case. Therefore, the State will prove that Wonka intentionally damaged the factory with fire.

2. Probably yes. The State will likely be able to prove beyond a reasonable doubt that the damage to the Chocolate Factory occurred "without the other owner's consent." According to Wisconsin case law, consent must be proven with objective facts. The owner's statement that he or she did not consent to commission of the crime, in the absence of strong evidence to the contrary, is sufficient. Bucket, the other owner of the Chocolate Factory, informed police that he neither had prior knowledge of nor consented to a plan to damage the factory with fire. If the jury believes Bucket's statement to police and discounts theories involving insurance fraud, the State will likely be able to prove that Bucket neither knew about nor consented to a plan to set the factory on fire.

Notice that there are no citations contained in the Answers. It would be fine to cite the arson statute if you choose; if you do, make sure to use complete and proper *Bluebook* citation form!

Writing the Introductory Paragraph.

At this point, your legal research memo begins with the Questions Presented. It seems like some part of the context is missing, doesn't it? If you read the rest of your memo, nowhere does it come right out and say that the purpose of the memo is to provide advice to Wonka regarding whether he is likely to be convicted of arson. Enter the introductory paragraph.

The introductory paragraph states the client's broad legal question, identifies the legal standards, and states the potential outcomes for each legal standard. It gives the reader a roadmap of the Discussion section and a sneak preview of what's to come. Think of it as being similar to a movie trailer: it hits the high points without too many "spoilers," enticing the reader to read further and learn more.

Once again, I recommend using a formula similar to what you see below for writing your introductory paragraph. This makes it less likely you'll forget an important part of the paragraph.

- Start with the client's broad legal question. In this case, Wonka's broad legal question is whether he is likely to be convicted of arson.
- State generally the legal standards identified in each Question Presented, as well as other issues that do not need full analysis. When the legal standards come from a statute, this is simply writing the elements of the statute that must be proven. For Wonka, those elements are that fire was used to intentionally damage the building of another, without the other owner's consent.
- State generally your answers to/analysis of the legal standards/elements you identified in the previous sentence. For Wonka, it is undisputed that fire was used to damage the building of another. It is likely that the State will prove the element of intent based on the facts provide. It is also likely that the State will prove lack of consent by the other owner if the jury believes Bucket's statement to the investigating officer.
- Finish with your conclusion regarding the broad legal question. In this case, we've concluded that Wonka will likely be convicted of arson.

Here's how the introductory paragraph might look:

Example Introductory Paragraph

> This memo will address the issue of whether our client, Willy Wonka, is likely to be convicted of arson. To secure an arson conviction, the State must prove beyond a reasonable doubt that Wonka used fire to intentionally damage the building of another, without the other owner's consent. It is undisputed that fire was used to damage the Chocolate Factory, and that the Chocolate Factory, jointly owned by Wonka and Charlie Bucket, is a building of another; thus, these elements will not be analyzed. Based on the facts provided, the State will likely be able to prove Wonka intended to damage the Chocolate Factory. The only element the State may have difficulty proving is that Bucket did not consent to the arson. While some facts may suggest a motive for Bucket to consent to the arson, a jury might discount those facts in light of Bucket's statement to police that he neither knew about nor consented to a plan to burn the factory. Therefore, the State is likely to prove all the required elements of arson and secure a conviction.

Now the reader knows what will be analyzed, the points of contention, and the potential result. There's even a little cliffhanger regarding the question of consent to pique the reader's interest.

REVIEW, REVISE, AND FINALIZE YOUR MEMO

The final draft of your legal research memo should reflect not only your legal and factual analysis, but also your professionalism as a writer. Don't let things like improper citation form, errors in writing mechanics (including grammar, punctuation, capitalization), or spelling errors ruin an otherwise great memo! Run spell-checker – slowly and carefully! Then put the memo aside for a while (at least an hour); after that, run "dumb-checker" – consider slowly and carefully reading your memo out loud.

Some additional items for your revision checklist:

- Make sure you have all of the required sections, in the correct order; label only those sections that are required to be labeled (Questions Presented, Answers, Facts, Discussion)
- Make sure your IRAC analyses are complete with the IRAC components in the correct order

- Make sure your memo is internally consistent across all components
  - Do you have the same number of Questions Presented, Answers, and IRAC analysis sections?
  - Is there a one-for-one correlation between each Question Presented, Answer, and IRAC analysis Section (that is, do Question Presented 1, Answer 1, and IRAC 1 all address the same legal standard)?
  - Is the content of your Questions Presented, Answers and Discussion consistent?
  - Are all the facts contained in your Questions Presented and Discussion section also contained in the Facts section?
  - Are the verb tenses consistent across all Questions Presented, Answers, and IRAC analysis sections (past tense or present tense)?
  - Are the names/nouns/pronouns consistent across all Questions Presented, Answers, and IRAC analysis sections (plural nouns or singular nouns, for example)?
  - Do the legal standards at the beginning of each IRAC analysis section match the Question Presented to which they relate?
  - Do the conclusions at the end of each IRAC analysis section match the yes/no in the Answer to which they relate?
  - Did you include complete and detailed counter-analysis as required?
  - Do the Answers relating to discussions requiring counter-analysis begin with “probably” yes or no?

Writing a legal research memo might not come easily to you at first. That’s OK! Your comfort level with the skills involved in will increase the more you practice them.

CHECKLIST FOR DRAFTING THE LEGAL RESEARCH MEMO, FINAL DRAFT

Use this checklist to help you write your legal research memo final draft. Or access the interactive version - Checklist for Drafting the Legal Research Memo Final Draft.docx

MAKE SURE ALL SECTIONS ARE INCLUDED AND PROPERLY LABELED (IF REQUIRED TO BE LABELED)

__ Are you using the correct Memo heading format?

__ Do you have a work product heading?

__ Do you have a RE line that describes the broad question, identifies our file number and includes the court case name and number (if any)?

__ Do you have an introductory paragraph?

__ Do you have Questions Presented?

__ Do you have Answers – one for each Question Presented?

__ Do you have a Facts section?

__ Do you have a Discussion section – one IRAC analysis for each Question Presented?

__ Are the sections in the correct order and properly labeled (if a label is required)?

MAKE SURE EACH SECTION IS COMPLETE

Note: this is the order in which I usually check each section.

FACTS:

__ Do you have all of the legally significant and contextual client facts described?

__ Did you write your facts in logical order (chronological, or by issue, or by party – whichever is simplest and flows best)?

__ Is it clear which facts are disputed (use words like appears, claims, apparently, etc.)

__ Are your facts written in narrative form (not bulleted lists or sentence fragments, but like a story)?

QUESTIONS PRESENTED:

Does each Question Presented have a narrow Legal Standard? Briefly identify each legal standard below		Does each Question Presented contain client facts relevant to the legal standard – what behavior or circumstances cause us to wonder whether the legal standard applies?
1.		__ Yes __ No -- REVISE
2.		__ Yes __ No -- REVISE
3.		__ Yes __ No -- REVISE

DISCUSSION:

IRAC Analysis #1:

Explain whether the legal standard will be proven, using IRAC Format

Issue	Legal standard from Question Presented #1	
Rule	Words of the statute(s) being interpreted and applied in issue #1, above	
	Citation of the statute(s) being interpreted and applied in Question Presented #1, above	
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this	
	Use a transition to introduce the Court decisions interpreting the statute __ What did the Court say the statute/words mean? __ Why did the Court interpret the way it did (what tools did it use) __ Are the case law facts discussed, so you can compare them to your client's facts? __ How did the Court apply the law to the facts in front of it?	
Application	Use a transition to introduce the Client facts __ Do all of the facts you have written here relate only to the legal standard you identified in your issue, above? __ Do all of the facts you have written here appear in your Facts section, above?	
Conclusion	Answer the question above (Therefore ….)	

__ The IRAC components are in proper order

Is counter-analysis required? __ No. The facts and law are undisputed and clear	
__ Yes. There are disputed, unclear or missing facts; or there are facts subject to multiple reasonable inferences/interpretations	__ Disputed, unclear or missing facts are described __ Multiple reasonable inferences/interpretations of facts are described __ Impact (opposite conclusion) of viewing the facts in this way is described
__ Yes. The law is unclear or subject to multiple reasonable interpretations/applications; or, the legal issue is fact-intensive and none of the cases discussed in IRAC has facts identical to our client	__ Other court decisions that could be applied are described __ Other reasonable interpretations/applications of case law are described __ Impact (opposite conclusion) of viewing the law in this way is described

IRAC Analysis #2:

Explain whether the legal standard will be proven, using IRAC Format

Issue	Legal standard from Question Presented #2	
Rule	Words of the statute(s) being interpreted and applied in issue #2, above	
	Citation of the statute(s) being interpreted and applied in Question Presented #2, above	
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this	
	Use a transition to introduce the Court decisions interpreting the statute __ What did the Court say the statute/words mean? __ Why did the Court interpret the way it did (what tools did it use) __ Are the case law facts discussed, so you can compare them to your client's facts? __ How did the Court apply the law to the facts in front of it?	
Application	Use a transition to introduce the Client facts __ Do all of the facts you have written here relate only to the legal standard you identified in your issue, above? __ Do all of the facts you have written here appear in your Facts section, above?	
Conclusion	Answer the question above (Therefore ….)	

__ The IRAC components are in proper order

Is counter-analysis required? __ No. The facts and law are undisputed and clear	
__ Yes. There are disputed, unclear or missing facts; or there are facts subject to multiple reasonable inferences/interpretations	__ Disputed, unclear or missing facts are described __ Multiple reasonable inferences/interpretations of facts are described __ Impact (opposite conclusion) of viewing the facts in this way is described
__ Yes. The law is unclear or subject to multiple reasonable interpretations/applications; or, the legal issue is fact-intensive and none of the cases discussed in IRAC has facts identical to our client	__ Other court decisions that could be applied are described __ Other reasonable interpretations/applications of case law are described __ Impact (opposite conclusion) of viewing the law in this way is described

IRAC Analysis #3:

Explain whether the legal standard will be proven, using IRAC Format

Issue	Legal standard from Question Presented #3	
Rule	Words of the statute(s) being interpreted and applied in issue #3, above	
	Citation of the statute(s) being interpreted and applied in Question Presented #3, above	
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this	
	Use a transition to introduce the Court decisions interpreting the statute __ What did the Court say the statute/words mean? __ Why did the Court interpret the way it did (what tools did it use) __ Are the case law facts discussed, so you can compare them to your client's facts? __ How did the Court apply the law to the facts in front of it?	
Application	Use a transition to introduce the Client facts __ Do all of the facts you have written here relate only to the legal standard you identified in your issue, above? __ Do all of the facts you have written here appear in your Facts section, above?	
Conclusion	Answer the question above (Therefore ….)	

__ The IRAC components are in proper order

Is counter-analysis required? __ No. The facts and law are undisputed and clear	
__ Yes. There are disputed, unclear or missing facts; or there are facts subject to multiple reasonable inferences/interpretations	__ Disputed, unclear or missing facts are described __ Multiple reasonable inferences/interpretations of facts are described __ Impact (opposite conclusion) of viewing the facts in this way is described
__ Yes. The law is unclear or subject to multiple reasonable interpretations/applications; or, the legal issue is fact-intensive and none of the cases discussed in IRAC has facts identical to our client	__ Other court decisions that could be applied are described __ Other reasonable interpretations/applications of case law are described __ Impact (opposite conclusion) of viewing the law in this way is described

ANSWERS:

	Your answer as to whether each question presented will be proven (yes, no, probably yes, probably no)	Legal standards to prove	Did you briefly explain the law and facts that support your answer?
1.			__ Yes __ No -- REVISE
2.			__ Yes __ No -- REVISE
3.			__ Yes __ No -- REVISE

INTRODUCTORY PARAGRAPH:

Broad issue (liability, guilt, etc.?)		
	Legal standards to prove	Your answer as to whether each will be proven (yes, no, probably yes, probably no)
1.		
2.		
3.		
Broad Conclusion (liability, guilt, etc.?)		

MAKE SURE THE MEMO IS INTERNALLY CONSISTENT

Is the legal issue identified consistent? (briefly identify each issue and make sure it's consistent in all #1s, #2s, #3s)	**Intro Paragraph**	**Questions Presented**	**Answers**	**IRAC Analyses**
1.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE
2.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE
3.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE

Is the legal conclusion identified consistent? (briefly identify each issue and make sure it's consistent in all #1s, #2s, #3s)	**Intro Paragraph**	**Answers**	**IRAC Analyses**	**Counter-Analyses**
1.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE
2.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE
3.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE

MAKE SURE THE MEMO USES GOOD WRITING MECHANICS

__ Did you run spell-checker?

__ Did you run dumb-checker (carefully proofread everything you wrote)?

Voilà! Your memo is complete! Access **the final draft of our Wonka Legal Research Memo.**

16: Legal Memos - Final Draft is shared under a CC BY 4.0 license and was authored, remixed, and/or curated by Beth R. Pless, J.D. (Northeast Wisconsin Technical College).

17: Appendices

APPENDIX A - EXCERPTS FROM *MILLER v THOMACK*

555 N.W.2d 130, 204 Wis.2d 242

Court of Appeals of Wisconsin.

Rhonda MILLER, Richard Miller and Kay Miller, Plaintiffs–Appellants, v.

Craig J. THOMACK, Defendant,

State Farm Mutual Automobile Insurance Company, a Foreign Corporation, Defendant–Co–Appellant, James D. Thomack, ABC Insurance Company, as Insurer of James Thomack, Michelle

Melberg, DEF Insurance Company, as Insurer of Michelle Melberg, Defendants, Kimberly Ransom, Defendant–Respondent,

Fire Insurance Exchange, Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., United Fire & Casualty

Company, a Foreign Corporation, Waupaca County, as Agent for the State of Wisconsin, Brian Clary, GHI Insurance, as Insurer of Brian Clary, John Doe, Susan Roe, Defendants, Karen Miller, Defendant–Respondent,

NOP Insurance, as Insurer of Karen Miller, Defendant, Craig J. Thomack, Third Party Plaintiff–Co–Appellant, and

James D. Thomack, Third Party Plaintiff, Jason Beattie, Third Party Defendant–Respondent,

Lee Beattie, Carol Beattie and KLM Insurance Company, as Insurer of Jason Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

Rhonda MILLER, Richard Miller, and Kay Miller, Plaintiffs–Respondents, v.

Craig J. THOMACK, Defendant–Appellant,

State Farm Mutual Automobile, James D. Thomack, ABC Insurance Company, Michelle Melberg, DEF Insurance Company, Kimberly Ransom, Fire Insurance Exchange, Waupaca County, Brian Clary, GHI Insurance Company, John Doe, Susan Roe, Karen Miller, and NOP Insurance Company, Defendants, Craig J. THOMACK, and James D. Thomack, Third Party Plaintiffs,

Kurt D. Pamperin, Sr., Kurt Pamperin, Jr., and United Fire & Casualty Company, Defendants–Appellants, v.

Jason BEATTIE, Lee Beattie, Carol Beattie, and KLM Insurance Company, an Insurer of Jason Beattie, Lee Beattie and Carol Beattie, Third Party Defendants.

|

Opinion Filed Aug. 29, 1996.

VERGERONT, Judge.

This appeal involves the interpretation and application of §§ 125.07(1)(a) and 125.035, STATS., which relate to civil liability for injuries caused by an underage person who has consumed alcohol. Rhonda Miller was injured in an automobile accident when the automobile in which she was a passenger went off the road. Craig Thomack, the driver of that automobile, and Rhonda Miller had consumed beer before the accident occurred. Thomack was sixteen and Rhonda Miller was fifteen. They had consumed beer on property leased by Kurt Pamperin Sr., and Curt Pamperin, Jr., who operated Pamperin's Bear Lake Bar & Hall on that property. However, the beer was not purchased at Pamperin's Bear Lake Bar & Hall.

The Pamperins and their insurer, United Fire & Casualty Company, appeal the trial court's denial of their motion for summary judgment, raising a number of issues. We address only the issue of their liability under § 125.07(1)(a) 3, STATS., because that is dispositive. We conclude that there are no issues of fact concerning whether the Pamperins violated the statute and that they are entitled to judgment as a matter of law. We therefore reverse the trial court's denial of their motion for summary judgment.

Rhonda Miller and her parents appeal from the trial court order granting summary judgment to Kimberly Ransom, Karen Miller, Jason Beattie and their insurers, all of whom contributed money to purchase the beer. They were all under twenty-one at the time. Rhonda contends that the trial court erred as a matter of law in ruling that these three did not violate § 125.07(1)(a) 1, STATS., which provides that "no person may procure for, sell, dispense, or give away" any alcohol beverages to an underage person. She contends that the court also erred in ruling that their negligence, if any, was less than hers. We conclude that contributing money to the purchase of alcohol under the circumstances presented by this record violates the statute and is therefore negligence per se. We also conclude that the issue of comparative negligence should be decided by the jury. Finally, we conclude that Karen, Ransom and Beattie are not immune from liability under § 125.035, STATS. We therefore reverse the grant of summary judgment to these defendants.

BACKGROUND

For purposes of this appeal, these facts are not disputed. Early in the evening of June 12, 1990, Thomack picked up Rhonda and her cousins, Karen and Ransom. There was discussion among the four about getting beer and they drove to a parking lot where young people were gathered. Brian Clary, who was twenty-one, said he would buy beer for them. He bought either a twelve pack or a case of beer for them at a local liquor store. Karen and Ransom contributed money for the purchase of the beer, as did Beattie. The beer was put in Thomack's car and Thomack drove Rhonda, Karen and Ransom to a nearby unoccupied cabin, where they consumed some of the beer. No one served anyone else beer.

From the cabin, Thomack drove the other three to the parking lot of Pamperin's Bear Lake Bar & Hall on Bear Lake. The beer either remained in the back of the car, was placed beside it, or on the trunk, and any of the group who wanted a beer took one. No one distributed or passed the beer purchased by Clary to others, and consumption was voluntary. Thomack, Rhonda and others consumed beer on the beach area. None of the alcohol consumed by Thomack or Rhonda was purchased from Pamperin's Bear Lake Bar & Hall. The Pamperins leased the tavern from a relative of the person who owns the Bear Lake Campground, which is located next to the tavern. The leased property includes the tavern building, the parking lot to the east of the building and "outback." "Outback" means the area between the building and the lake, which includes a block of lake frontage. The lake shore is approximately 300 feet from the tavern.

Rhonda left Bear Lake in the early morning of June 13 as a passenger in Thomack's car. While passing another car, Thomack lost control of his car and it went off the road and struck a tree. Rhonda was seriously injured. She was not wearing a seat belt and was not then in the habit of wearing a seat belt.

Rhonda and her parents sued Thomack, Karen, Ransom, the Pamperins and their respective insurers. Thomack joined Beattie, his parents and their insurer, alleging that Beattie aggravated Rhonda's injuries when he extricated her from the vehicle. There were various cross-claims among the defendants. Karen, Ransom, Beattie and the Pamperins moved for summary judgment. The court ruled that contributing money to purchase the beer did not constitute furnishing alcohol to a minor in violation of §§ 125.035 or 125.07, STATS. It determined as a matter of law that Rhonda Miller was more negligent than Karen Miller or Kimberly Ransom and dismissed them from the action. It dismissed Beattie because there was no evidence that he caused, exacerbated or contributed to Rhonda's injuries. The trial court denied the Pamperins' motion for summary judgment, concluding that there were disputed issues of fact as to whether the consumption of alcohol took place on premises owned by the Pamperins or under their control and whether they had knowledge as required by § 125.07(1)(a)3.

Rhonda appealed from the grant of summary judgment to Karen, Ransom and Beattie. We granted the Pamperins' petition for leave to appeal the denial of their motion for summary judgment, and consolidated the two appeals.

We review summary judgments de novo, employing the same methodology as the trial court. *Green Spring Farms v. Kersten*, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). Summary judgment is proper where there are no genuine issues of material fact and

one party is entitled to judgment as a matter of law. Sections 802.08(2) and (6), STATS.

LIABILITY UNDER § 125.07(1)(a) 3, STATS.

…

The statute the Pamperins are alleged to have violated is § 125.07(1)(a) 3, STATS., which provides

No adult knowingly may permit or fail to take actions to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This subdivision does not apply to alcohol beverages used exclusively as part of a religious service.

The Pamperins first argue that this statute does not apply to them because § 125.02(14m), STATS., defines "premises" as "the area described in a license or permit" and their license states: "Pamperin's Bear Lake –R1–Manawa, WI. 54949– Sec 4 -State Hwy 22–110. Bar, Hall, backporch & Concession Stand." It is undisputed that Thomack and the others did not consume alcohol in these areas. Rhonda responds that the trial court correctly concluded that "premises" was not limited to the area described in the license but includes any area which the adult owns or controls. Assuming without deciding that "premises" has this broader definition, we nevertheless conclude that the trial court erred in denying the Pamperins' motion for summary judgment. We reach this conclusion because we are unable to find evidence, including reasonable inferences drawn in Rhonda's favor, that creates a genuine factual issue that the Pamperins knew of the underage drinking occurring in the parking lot and the beach area that evening.

There was evidence that Clary and his uncle asked the person bartending that evening, Kurt Pamperin, Jr., for permission for Clary and his friends to swim because there was a sign saying "No swimming after dark." According to Clary, Pamperin agreed. Since Pamperin testified he did not recall this, or recall that anyone was on the beach area that evening, there is a genuine factual issue as to whether Pamperin knew young people were on the beach area swimming that night. The court reasoned that a reasonable inference could be drawn from this evidence that Pamperin knew that "something that teenagers do was likely to occur, one of which is consumption of alcoholic beverages." However, the statute requires that Pamperin "*knowingly* permitted or failed to prevent the consumption of alcohol." [Emphasis added.] We conclude that in order to meet this standard, there must be evidence, or a reasonable inference from evidence, that Pamperin actually knew underage drinking was occurring or going to occur that evening. His knowledge that young people were swimming on the beach does not, in itself, give rise to a reasonable inference that he actually knew they were or would be drinking.

Pamperin testified that he did not go outside that evening, did not see any young people and did not know about any drinking that evening. There is no evidence, or reasonable inferences from evidence, that disputes this. There was testimony from some of the young people that they were being loud and were afraid someone would complain. But Clary testified that when he was inside the tavern having a beer with his uncle at the bar, he could not hear the others outside. It is undisputed that none of the group went inside the tavern except Rhonda, Karen and Ransom, who used the bathroom. They could be seen from the bar, and their clothes were wet, but there is no evidence that anything about their behavior in the tavern suggested they were drinking alcohol.

We have also considered whether there is evidence or reasonable inferences from evidence that Pamperin, from inside the tavern, saw young people drinking, or saw the beer cans on the picnic table near the beach area. There are windows in the tavern facing the lake and Pamperin testified that when he is serving at the bar he can see the lake. Rhonda testified that "you can see from the bar where the beach is." But Clary, who was sitting at the bar that night, testified that you could not see the beach from the bar at night unless you went right up to the window. Since neither Pamperin nor Rhonda testified that the beach area could be seen from the bar at night, their testimony does not permit a reasonable inference that Pamperin saw beer cans on the picnic table or young people on the beach drinking alcohol that night. Thomack's testimony that he saw "the owner" in the bar through the window when he, Thomack, was outside also does not give rise to a reasonable inference that Pamperin saw Thomack or others through the windows and, more particularly, saw them do anything that indicated alcohol consumption.

Rhonda suggests that her testimony that an older man with white hair opened the gate for them is some evidence that the Pamperins saw them, and, by implication, were outside and saw the beer cans on the picnic table or in the parking lot or in the young people's hands. However, there is no evidence linking this person to the Pamperins. Kurt Pamperin, Jr. was the only licensee or employee present that evening, and the description of the older man is inconsistent with Pamperin's age and appearance.

Rhonda points to Pamperin's testimony that he knew there "was the potential" for underage drinking on the beach. He testified he had such problems three times in the past four years. On those occasions, he simply told the people to leave and that he would lock the gate if there were continuing problems. There is no evidence that the beach area had a reputation as a place underage persons could drink or that any of the underage persons drinking there that evening had done so before. Pamperin denied that he knew any of these particular young people before the accident, and no evidence suggests otherwise. The most that can be reasonably inferred from this evidence is that Pamperin knew underage persons might drink on the beach. But the evidence does not give rise to a reasonable inference that he knowingly permitted or failed to prevent consumption of alcohol by these underage persons on that night.

….

LIABILITY UNDER § 125.07(1)(a) 1, STATS., FOR CONTRIBUTING TO PURCHASE

Rhonda contends that the trial court erred in concluding that Karen, Ransom and Beattie did not violate § 125.07(1)(a) 1, STATS., by contributing to the purchase of the beer. The statute provides: "No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

….

In this case, we focus on the term "procure for." "Procure" is not defined in the statute. We therefore construe the word according to its ordinary and accepted meaning, and we may consult a dictionary for that purpose. In the Interest of Christopher D., 191 Wis.2d 680, 704, 530 N.W.2d 34, 43 (Ct.App.1995).

WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976) lists the following pertinent definitions of "procure": 1a(1) to get by possession: obtain, acquire ... especially to get possession of by particular care or effort ... and sometimes by devious means ... 2a(1) to cause to happen or be done: bring about: effect....We conclude that when an individual contributes money for the sole purpose of purchasing alcohol knowing that it will be consumed by an underage person, that individual is procuring alcohol for the underage person. Applying the first dictionary definition, that individual is obtaining alcohol for the underage person, with particular effort, and by devious means. Applying the second definition, which is perhaps even more apt, that individual is bringing about the consumption of alcohol by the underage person.

Clary was willing to purchase the beer for the underage persons in the car, but he needed money, and a reasonable inference from the undisputed facts is that he was not going to use his own. For purposes of this appeal, it is undisputed that when Karen, Ransom and Beattie contributed the money, they knew Clary was going to use it to purchase beer for the persons in the car, including Thomack, and they knew Thomack was underage. We conclude this constitutes a violation of § 125.07(1)(a) 1, STATS., and is therefore negligence per se.

Karen and Ransom argue that cases from other jurisdictions support their position that underage persons who do nothing more than contribute to a common fund for the purchase of alcohol do not "furnish" alcohol to other underage persons. However, because the statutory language and controlling precedent in those cases differ from our own, we do not find them persuasive. The attempt to distinguish the conduct of underage persons drinking with friends from the conduct of adults is not, in our view, a viable distinction after Kappell. And we do not view contributing money for the purchase of the beer as somehow less significant in making the beer available than the act of handing a beer to a friend, which was the conduct found to violate the statute in Kappell.

…..

Judgment reversed.

***Miller v. Thomack*, 204 Wis.2d 242, 555 N.W.2d 130 (Ct. App. 1996).**

PROCEDURAL HISTORY

In the first appeal, Plaintiff-Appellants, Rhonda Miller, Richard Miller & Kay Miller (the Millers), and Defendant-Co-Appellant, Craig Thomack, appeal the Trial Court's grant of Summary Judgment dismissing the Millers' claims against Kimberly Ransom, Karen Miller and Jason Beattie. In the second appeal, Defendants-Appellants, Kurt D. Pamperin, Sr., Kurt Pamperin Jr., and United Fire & Casualty Company (the Pamperins), appeal the Trial Court's refusal to grant Summary Judgment dismissing the Millers' claims made against them in the Complaint.

APPLICABLE STATUTES

Section 125.07(1)(a)1., Wis. Stat. (1996): "No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age."

Section 125.07(1)(a)3., Wis. Stat. (1996): "No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control."

ISSUES

1. Does a person "procure" alcohol for an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show:

- The person contributed money toward a fund that the person knew would be used to purchase alcohol;
- The person knew that underage persons would consume the alcohol purchased with the funds toward which the person contributed money; and
- The person knew the alcohol would be consumed by underage persons outside the presence of a parent, guardian or spouse who could legally consume alcohol?
-

2. Does a person "knowingly" permit or fail to take action to prevent the illegal consumption of alcohol by underage persons in violation of §125.07(1)(a)3., Wis. Stat., when the undisputed facts demonstrate:

- Underage persons consumed alcohol outdoors on the person's tavern premises;
- Underage persons went into the tavern building to use restroom facilities;
- Underage persons could see into the tavern building, but no one inside the tavern building could see or hear the underage persons outside the building; and
- No underage persons purchased alcohol from the tavern nor consumed alcohol purchased from the tavern?

HOLDINGS

1. Yes. A person does "procure" alcohol for an underage person in violation of § 125.07(1)(a)1., Wis. Stat. (1996) when the facts show:

- The person contributed money toward a fund that the person knew would be used to purchase alcohol;
- The person knew that underage persons would consume the alcohol purchased with the funds toward which the person contributed money; and
- The person knew the alcohol would be consumed by underage persons outside the presence of a parent, guardian or spouse who could legally consume alcohol.

2. No. A person does not "knowingly" permit or fail to take action to prevent the illegal consumption of alcohol by underage persons in violation of §125.07(1)(a)3., Wis. Stat., when the undisputed facts demonstrate:

- Underage persons consumed alcohol outdoors on the person's tavern premises;
- Underage persons went into the tavern building to use restroom facilities;
- Underage persons could see into the tavern building, but no one inside the tavern building could see or hear the underage persons outside the building; and
- No underage persons purchased alcohol from the tavern or consumed alcohol purchased from the tavern.

FACTS

On the night of the accident which injured Rhonda Miller, Rhonda arranged for Brian Clary, who was 21 years old, to buy beer for her, her cousins Kimberly Ransom and Karen Miller, her friend Craig Thomack and her friend Jason Beattie, all of whom were minors under the age of 18 and could not purchase beer legally. Kimberly contributed $5.00 toward the purchase; it is assumed that Karen and others also contributed money. Clary bought the beer and placed it in Craig's car.

After the group drank some of the beer at an unoccupied cabin, Craig drove Rhonda, Karen and Kimberly to the parking lot of Pamperin's Bear Lake Bar and Hall. Rhonda, Craig, Karen, Kimberly and Jason drank more beer on the beach area behind the tavern. No one distributed or served the beer to anyone; they all helped themselves.

Testimony indicated that one of the members of the group of underaged persons may have asked the bartender if the group could swim at the lake, and that one or more of the girls may have used the tavern's restroom. None of the underaged persons purchased any alcohol from the tavern; all of the beer they consumed was purchased by Brian Clary at a liquor store. Several underaged persons testified that they could see into the bar that evening. However, testimony from persons inside the tavern that evening, including Brian Clary, indicated that the group of underaged persons could not be seen or heard from inside the bar.

Rhonda and Craig later left the beach area behind Pamperin's Bear Lake Bar & Hall in Craig's car, with Craig driving. Rhonda was not wearing her seat belt. At some point, Craig lost control of the vehicle in a rainstorm, resulting in an accident that severely injured Rhonda.

REASONING

1. Has a person who contributed money toward the purchase of alcohol that the person knew would be consumed by underage persons illegally procured alcohol for underage persons? Wisconsin Statutes provide in relevant part, "No person may procure … any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age." Section 125.07(1)(a)1., Wis. Stat. (1996). The word "procure" is not defined in this statute; thus, the word is given its plain and ordinary meaning. The Court referred to Webster's Dictionary, which defines "procure" as follows: "To get by possession: obtain, acquire ... especially to get possession of by particular care or effort ... and sometimes by devious means ... to cause to happen or be done: bring about: effect...." Contributing money toward purchase of alcohol necessarily involves an effort to cause that purchase to happen so that a person can obtain or acquire alcohol. Giving the money to another person who can legally purchase the alcohol and who is willing to provide that alcohol illegally to underage persons as a way to get around statutory prohibitions, certainly appears "devious."

In this case, Karen, Ransom and Beattie all contributed money toward the purchase of the beer. At the time they contributed the money, they all knew and intended that the beer would be consumed by underage persons – themselves, Thomack and Rhonda. They also knew they could not legally purchase beer themselves. Instead, they provided the money to someone who could purchase the beer legally from a liquor store and was willing to give the beer to them. This demonstrates both "particular effort' and "devious means." As such, they caused underage persons to obtain beer illegally. Therefore, by contributing money toward the purchase of beer, knowing it would be consumed by underage persons, a person "procures" alcohol in violation of §125.07, Wis. Stat. (1996).

2. Whether the Pamperins "knowingly permitted or failed to prevent" illegal underage drinking on their premises in violation of §125.07, Wis. Stat. (1996), depends on the application of the word "knowingly" to the undisputed facts. Section 125.07(1)(a)3., Wis. Stat. (1996), provides in part, "No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol … by an underage person on premises owned by the adult or under the adult's control." The statutes are silent regarding what is required to prove someone "knowingly permitted or failed to prevent" underage drinking on their premises. The Court determined that in this statute, "knowingly" requires proof of "actual knowledge" that underage drinking was occurring or definitely going to occur at that time on the person's premises. The evidence must be such that the evidence itself, or a reasonable inference drawn from the evidence, leads to the conclusion that there was actual knowledge of underage drinking. Knowledge that underage people are on the premises is itself insufficient, even if the person in control of the premises is aware that underage persons may consume alcohol on the premises or have done so in the past. Rather, the evidence must demonstrate that the person in control of the premises actually knew that underage drinking was occurring at the time it was occurring.

In this case, the Pamperins' testimony that they were unaware that underage drinking was occurring on the night of the accident that injured Rhonda is uncontradicted. Persons inside the tavern building that evening testified that they did not see or hear anything indicating that underage drinking was occurring outside the tavern building. None of the beer the group of underaged persons consumed was purchased from the tavern. Rhonda presented evidence of what persons outside the tavern could see or hear, and also evidence that one or more underage persons used the tavern's restroom facilities. However, Rhonda's speculation about what persons inside the tavern building could see or hear does not support a reasonable inference of actual knowledge in the face of testimony of persons inside the tavern to the contrary. Thus, there is no direct or inferential evidence that the Pamperins actually knew or were aware that Rhonda and her group of underage persons were consuming alcohol on their premises. Therefore, the Pamperins did not knowingly permit or fail to prevent underage drinking on their premises in violation of §125.07, Wis. Stat. (1996).

DISPOSITION

The Court of Appeals reversed the Trial Court's grant of Summary Judgment in favor of Karen, Ransom and Beattie, and ordered the Millers' claims against those parties reinstated. The Court of Appeals also reversed the Trial Court's denial of Summary Judgment to the Pamperins and ordered that the Millers' claims against the Pamperins be dismissed.

APPENDIX C - CASE BRIEF CHECKLIST

 Checklist for Drafting The Case Brief.docx

CHECKLIST FOR DRAFTING THE CASE BRIEF

Use the checklist below to help you write your case brief. Or use access the interactive version. Checklist for Drafting The Case Brief.docx

Citation of case:

PROCEDURAL HISTORY:

Court that decided the case:	__ WI Court of Appeals	__ WI Supreme Court
Name of Appellant		N/A
Name of Respondent		
Name of Person who Petitioned Supreme Court for Review	N/A	

What was appealed from?

__ Trial Court Order granting:

__ Trial Court Order denying:

__ Judgment in favor of:

What was the result of the Trial Court's action on the case (dismiss complaint, refuse to dismiss, someone is held liable or not liable, etc.):

If this case is in the Supreme Court, did the Appellate Court: __ Affirm __ Reverse the Trial Court

DISPOSITION:

The reviewing court (Court that decided the case): (See what you checked in Procedural History, above)	__ WI Court of Appeals	__ WI Supreme Court

Did the reviewing court: __ Affirm __ Reverse the Trial Court?

What was the result of the Trial Court's action on the case (dismiss complaint, refuse to dismiss, someone is held liable or not liable, etc.):

APPLICABLE STATUTE(S):

Citation of Statute(s)	**Words/Phrases being interpreted/applied (or entire statute, with emphasis on words being interpreted/applied)**

__ Make sure you only have the words of the statute(s) in this section. Don't include any of the Court's interpretation or any facts here.

FACTS:

__ Check the "background or "Facts" section of the Court decision

__ Read through the rest of the Court decision, to see if there are more facts mentioned, or certain facts repeated

__ Double-check your facts:

- __ Do you have enough facts so you can make a comparison to the client's facts?
- __ Do you have any facts that aren't relevant to the specific parts of the statute being interpreted? If so, consider taking them out

ISSUE(S):

Narrow Legal Standard from Statute – use the words/phrases you listed above	Case law facts relevant to the legal standard – what behavior or circumstances cause us to wonder whether the statute applies?
1.	
2.	
3.	

__ Double-check your legal standards against the Applicable statutes

__ Double-check the facts you have listed here against your Facts section, above. Do all of the facts you have written here appear in your Facts section?

REASONING:

Reasoning Section #1:

Explain how and why the Court interpreted and applied the statute the way it did, using IRAC Format.

Issue	Legal standard only from Issue #1, above
Conclusion	Answer the question above (Therefore ….)
Rule	Words of the statute(s) being interpreted and applied in issue #1, above
	Citation of the statute(s) being interpret and applied in issue #1, above
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this
	Use a transition to introduce the tools the Court used in its Decision to interpret the statute Discuss the tools the Court used in its Decision __ Dictionary? __ Other related statutes? __ Secondary sources (such as Restatement of the law)? __ Other case law interpreting this statute or similar statutes?
Application	Case law facts the Court used when it applied the statute that it interpreted __ Do all of the facts you have written here appear in your Facts section, above? __ Do you have enough facts here to help you compare the case to our client in your analysis section, below?

Reasoning Section #2:

Explain how and why the Court interpreted and applied the statute the way it did, using IRAC Format.

Issue	Legal standard only from Issue #2, above
Conclusion	Answer the question above (Therefore ….)
Rule	Words of the statute(s) being interpreted and applied in issue #2, above
	Citation of the statute(s) being interpret and applied in issue #2, above
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this
	Use a transition to introduce the tools the Court used in its Decision to interpret the statute Discuss the tools the Court used in its Decision __ Dictionary? __ Other related statutes? __ Secondary sources (such as Restatement of the law)? __ Other case law interpreting this statute or similar statutes?
Application	Case law facts the Court used when it applied the statute that it interpreted __ Do all of the facts you have written here appear in your Facts section, above? __ Do you have enough facts here to help you compare the case to our client in your analysis section, below?

Reasoning Section #3:

Explain how and why the Court interpreted and applied the statute the way it did, using IRAC Format.

Issue	Legal standard only from Issue #3, above
Conclusion	Answer the question above (Therefore ….)
Rule	Words of the statute(s) being interpreted and applied in issue #3, above
	Citation of the statute(s) being interpret and applied in issue #3, above
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this
	Use a transition to introduce the tools the Court used in its Decision to interpret the statute Discuss the tools the Court used in its Decision __ Dictionary? __ Other related statutes? __ Secondary sources (such as Restatement of the law)? __ Other case law interpreting this statute or similar statutes?
Application	Case law facts the Court used when it applied the statute that it interpreted __ Do all of the facts you have written here appear in your Facts section, above? __ Do you have enough facts here to help you compare the case to our client in your analysis section, below?

Check your entire Reasoning section:

__ Does the content of each the reasoning section match up with the content of your issues (1 matches 1, 2 matches 2, 3 matches 3, etc.)?

Review and revise what you have so far

__ Is it complete?

__ Does it make sense?

__ Is it internally consistent (does everything match up correctly)?

HOLDING(S):

Do not write these until you're finished revising the rest of your brief!

__ Copy and paste your issue(s)

__ Start with "Yes" or "No" depending on how the Court answered the question

__ Make changes to grammar, sentence structure and punctuation as needed to change the question to a statement.

Did you add any words or explanations that are not in your issue? __ Yes __ No

If yes, why? __ I need to revise my issue. __ My issue is fine, I just couldn't resist adding more (and I will take it out now)

Finalize your case brief!

__ Put Case Brief Components in Proper Order

__ Run spell-checker (make sure it checks words in all caps)

__ Run dumb-checker (carefully proofread everything you've written)

__ Is it complete?

__ Does it make sense?

__ Is it internally consistent (does everything match up correctly)?

APPENDIX D - SAMPLE LEGAL RESEARCH MEMORANDUM

WORK PRODUCT – PRIVILEGED AND CONFIDENTIAL LEGAL RESEARCH MEMORANDUM

TO: Supervising Attorney [insert the person's name]

FROM: First name Last name, job title [insert your name and job title]

DATE: April 1, 20xx [insert the date you are providing the final draft to your supervisor)

RE: Analysis of Likelihood of Arson Conviction

State v. Willy Wonka; Brown County Case No. 20xx-CF-1234

Our File: CF-Wonka-20xx-983

This memo will address the issue of whether our client, Willy Wonka, is likely to be convicted of arson. To secure an arson conviction, the State must prove beyond a reasonable doubt that Wonka used fire to intentionally damage the building of another, without the other owner's consent. It is undisputed that fire was used to damage the Chocolate Factory, and that the Chocolate Factory, jointly owned by Wonka and Charlie Bucket, is a building of another; thus, these elements will not be analyzed. Based on the facts provided, the State will likely be able to prove Wonka intended to damage the Chocolate Factory. The only element the State may have difficulty proving is that Bucket did not consent to the arson. While some facts may suggest a motive for Bucket to consent to the arson, a jury might discount those facts in light of Bucket's statement to police that he neither knew about nor consented to a plan to burn the factory. Therefore, the State is likely to prove all the required elements of arson and secure a conviction.

QUESTIONS PRESENTED

1. Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory when the facts show:

a. A fire occurred at the Chocolate Factory several hours after the Factory had closed for the day;

b. Accelerants were used at several locations around the Factory;

c. Wonka was identified as the person dancing across the street from the fire shouting "Burn, baby, burn;"

d. The Factory's records are being audited for financial irregularities; and

e. Wonka owns a $1,000,000 Preferred Player's Card from LaCasino?

2. Will the State be able to prove beyond a reasonable doubt that the damage to the Chocolate Factory occurred "without the other owner's consent" when the facts show:

a. The Chocolate Factory is jointly owned by Wonka and Charlie Bucket;

b. Bucket told the investigating officer that he had no knowledge of a plan to set the Chocolate Factory on fire;

c. Bucket told the investigating officer that he did not consent to a plan to set the Chocolate Factory on fire;

d. The Factory's records are being audited for financial irregularities; and

e. Bucket owns a $1,000,000 Preferred Player's Card from LaCasino?

ANSWERS

1. Yes. The State will very likely be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory. Wisconsin case law identifies several facts that tend to show intent, such as use of accelerants, a fire occurring at a time when the area is likely to be unpopulated, and other facts that can be interpreted as showing hostility. All of these facts are present in the Wonka case. Therefore, the State will prove that Wonka intentionally damaged the factory with fire.

2. Probably yes. The State will likely be able to prove beyond a reasonable doubt that the damage to the Chocolate Factory occurred "without the other owner's consent." According to Wisconsin case law, consent must be proven with objective facts. The owner's statement that he or she did not consent to commission of the crime, in the absence of strong evidence to the contrary, is sufficient. Bucket, the other owner of the Chocolate Factory, informed police that he neither had prior knowledge of nor consented to a plan to damage the factory with fire. If the jury believes Bucket's statement to police and discounts theories involving insurance fraud, the State will likely be able to prove that Bucket neither knew about nor consented to a plan to set the factory on fire.

FACTS

Sometime after 1 a.m. on January 30, 20xx, a fire occurred at the Chocolate Factory. The factory had closed at 5 p.m. the evening prior to the fire, and no one occupied the factory at the time of the fire. The fire caused $1 million worth of damage).

The fire inspector's report revealed the use of accelerants at several sites around the factory). A witness came forward (Mary Worth) and stated that at approximately 2 a.m., she was awakened by the sirens from fire trucks responding to the fire. She went outside her home, which is across the street from the Chocolate Factory, to watch the firefighters put out the fire. At that time, she noticed a man dressed in camouflage clothing dancing near the curb, about 25 yards from where she was standing. She could hear the man shouting, "Burn, baby, burn!" From a police photo lineup, Ms. Worth identified Mr. Wonka as the man she saw dancing across the street from the fire.

The Chocolate Factory is jointly owned by our client, Willy Wonka, and Charlie Bucket. Bucket claimed in his statement to police he was surprised and upset by the fire and did not consent to someone setting a fire. The investigating officer who first contacted Bucket about the fire testified that Bucket expressed "disbelief" that the Chocolate Factory had been set on fire and that Wonka was accused of doing so. It does not appear that Bucket was present at the scene of the fire. Further investigation of Bucket and the Chocolate Factory reveals that Bucket is currently being audited by Weegocha Auditing Company for alleged improper business

practices. Weegocha states that $1 million is unaccounted for in corporate record books. Corporate record books also reflect that the factory has been operating at a financial loss for the last three years.

Both Willy Wonka and Bucket have Preferred Player's Cards at LaCasino. LaCasino policy is to issue Preferred Player's Cards only to regular customers gambling at least $1 million. Both Wonka and Bucket admit that they have lost a substantial, though unknown, amount of money gambling at LaCasino over the last five years. However, Wonka and Bucket deny using corporate monies to gamble.

Willy Wonka has been charged in Brown County Circuit Court with arson. An arraignment is scheduled on [date], at which time Wonka must enter a plea to the charge. A request for a copy of the investigative file has been sent to the Brown County District Attorney and a response is pending.

DISCUSSION

1. Did Wonka "intentionally damage" the factory with fire?

Will the State be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire? To secure an arson conviction, §943.02(1)(a), Wis. Stat. (1996), requires proof that the accused "intentionally" damaged another person's building with fire. Although Wisconsin's arson statute does not define the word "intent," Wisconsin Courts have interpreted the word "intentionally" as used in the statute.

The Wisconsin Supreme Court, while not defining "intent" directly, described the type of proof that would support a determination that the accused "intentionally" damaged another person's building with fire: "Intent can be inferred from the following facts: use of an accelerant, the setting of the fire during a time of the day when the area is likely to be unpopulated, or any other facts tending to show hostility or intent to cause damage." State v. Johnson, 349 Wis. 2d 894, 455 N.W.2d 338 (1988). In Johnson, the defendant, Randy Johnson, was accused of arson to a school. The school caught fire at 3 a.m. on Easter Sunday. A search of Randy's home yielded some clothes that smelled of smoke and gasoline. The fire inspector's report revealed the presence of gasoline in the area where the fire started. An empty gas can was found in the football field behind the high school. Witnesses also testified that Randy's Chemistry class was scheduled to take a big exam the following Monday. Randy's Chemistry teacher testified that Randy needed to earn an A on the exam or he would fail the class. The Johnson court held that this evidence was sufficient to prove that Randy intentionally set fire to the school, even though there was no evidence that he was seen in the area of the fire. As a result, Randy's conviction of arson was upheld.

In a later case, the Supreme Court clarified the quantity and quality of proof based on inferences that is needed to support a determination of "intent." State v. Rodriguez, 548 Wis. 2d 293, 560 N.W.2d 81 (1993). Specifically, the Rodriguez Court stated that more is required than just the presence of accelerants or vague suspicion. The Court clarified that proving "intent" beyond a reasonable doubt requires more than just evidence of the presence of accelerants at the site coupled with "vaguely suspicious" circumstances. In Rodriguez, a fire started on defendant Alex Rodriguez's back porch at 5 p.m. on a Saturday, causing damage to his home. At the time of the fire, due to a renovation project at the home, the door to the back porch had been boarded up, such that Rodriguez needed to go out the front door and around the home to access the back porch. Rodriguez was at home when the fire started, and immediately called the fire department to report the fire. Several days later, Rodriguez made a claim with his insurance company, which denied the claim, calling the fire "suspicious" and noting that accelerants were present on the back porch where the fire started. Rodriguez testified that he always kept his grill, charcoal, and charcoal lighter fluid on the back porch. Witnesses for the insurance company were unable to describe any other evidence that the fire had been set intentionally. The Rodriguez Court

held that this evidence was not sufficient to prove that he intentionally set the fire. As a result, Rodriguez's conviction of arson was overturned.

Based on the Johnson and Rodriguez cases, a determination of "intent" needs to be based on objective evidence in addition to use of accelerants. The evidence should support an inference that the defendant had motive and desire to set the fire. Additionally, any "innocent" explanations for the circumstances surrounding the fire must be considered and weighed with all other evidence relating to a defendant's intent to damage another person's building with fire.

In this case, similar to the Johnson case, Mr. Wonka's intent to destroy the factory can be inferred from many facts. The fire inspector's report noted use of accelerants in several sites. The fire started sometime after 1 a.m., long after the factory was closed. Finally, a witness testified that he saw Mr. Wonka dancing around across the street from the fire, yelling repeatedly, "Burn, baby burn!" Unlike Rodriguez, here there is ample evidence in addition to the presence of accelerants that tends to show intent. All of these facts -- and especially the witness' testimony – demonstrate Wonka's general hostility toward the factory, as well as his desire that the fire damage the factory. Therefore, the State will likely be able to prove beyond a reasonable doubt that Wonka "intentionally damaged" the Chocolate Factory with fire.

2. Did the damage occur "without consent" of the other owner?

Will the State be able to prove beyond a reasonable doubt that the fire occurred without the other owner's consent? Section 943.02(1)(a), Wis. Stat. (2006), requires proof that the owner, other than the accused, did not consent to the arson. "Without the owner's consent" requires that at least one owner is not involved in the crime. *State v. Jeeves*, 201 Wis. 2d 1, 399 N.W.2d 222 (1977). If all owners of record are involved in a plot to commit arson, conviction of one of the owners under §943.02(1) cannot stand. *Id.* In *Jeeves*, the other owner, Jackson, was also charged with a crime and confessed that both he and Jeeves had planned to set fire to the apartment building they co-owned so they could obtain insurance money.

In contrast, in our case, Bucket informed police that he neither had prior knowledge of nor consented to a plan to damage the factory with fire. There is no evidence to suggest that Bucket was being untruthful with the police; in fact, the investigating officer who first contacted Bucket about the fire testified that Bucket expressed "disbelief" that the Chocolate Factory had been set on fire and that Wonka was accused of doing so. Moreover, it does not appear that Bucket was present at the scene of the fire. Therefore, the State is likely to prove the fire occurred without Bucket's consent.

However, additional facts exist which may lead a jury to discount Bucket's statement to police and instead find that Bucket participated in the plan to damage the factory with fire. At the time of the fire, Bucket was under investigation for improper business practices. The factory had operated at a loss for three years, and $1 million was unaccounted for in corporate record books. The amount of missing money is equal to the amount of damage done to the factory. Additionally, Bucket admitted that he has lost a substantial amount of money gambling at LaCasino. While the amount of gambling loss is undetermined, Bucket stated that he has a Preferred Player's card, which is issued only to million-dollar gamblers. A jury could believe that the fire was set to obtain insurance money to cover the missing $1 million. Thus, the State may not be able to prove the fire occurred without Bucket's consent.

Additionally, there is language in *Jeeves* that suggests there could be a presumption of involvement in a crime against property on the part of Bucket a joint owner of the Chocolate Factory. Specifically, the *Jeeves* Court agreed that joint ownership of the property that was damaged could support a presumption of consent, particularly if all joint owners benefited from the damage. The Court chose not to determine whether this presumption should apply to Jackson, the other joint owner of the property, because Jackson was at the scene of the fire and confessed to planning with Jeeves to set the fire. Because Bucket apparently was not at the scene of

the fire and did not confess to being part of a plan to set the fire, a court looking at the facts in our client's case would need to determine whether this presumption should apply to Bucket. Bucket certainly benefited from the payment of insurance money to cover the losses from the fire; that money could be used to replace the money missing from the corporate books that may have been used to feed Bucket's gambling habit. These facts tending to show a motive for Bucket to agree to the plan to burn the factory, coupled with the potential application of the presumption of consent by joint owners, could make it difficult for the State to prove the fire occurred without Bucket's consent.

APPENDIX E - LEGAL RESEARCH MEMORANDUM CHECKLIST

 Checklist for Drafting the Legal Research Memo Final Draft.docx

CHECKLIST FOR DRAFTING THE LEGAL RESEARCH MEMO, FINAL DRAFT

Use this checklist to help you write your legal research memo final draft. Or access the interactive version - Checklist for Drafting the Legal Research Memo Final Draft.docx

MAKE SURE ALL SECTIONS ARE INCLUDED AND PROPERLY LABELED (IF REQUIRED TO BE LABELED)

__ Are you using the correct Memo heading format?

__ Do you have a work product heading?

__ Do you have a RE line that describes the broad question, identifies our file number and includes the court case name and number (if any)?

__ Do you have an introductory paragraph?

__ Do you have Questions Presented?

__ Do you have Answers – one for each Question Presented?

__ Do you have a Facts section?

__ Do you have a Discussion section – one IRAC analysis for each Question Presented?

__ Are the sections in the correct order and properly labeled (if a label is required)?

MAKE SURE EACH SECTION IS COMPLETE

Note: this is the order in which I usually check each section.

FACTS:

__ Do you have all of the legally significant and contextual client facts described?

__ Did you write your facts in logical order (chronological, or by issue, or by party – whichever is simplest and flows best)?

__ Is it clear which facts are disputed (use words like appears, claims, apparently, etc.)

__ Are your facts written in narrative form (not bulleted lists or sentence fragments, but like a story)?

QUESTIONS PRESENTED:

Does each Question Presented have a narrow Legal Standard? Briefly identify each legal standard below		Does each Question Presented contain client facts relevant to the legal standard – what behavior or circumstances cause us to wonder whether the legal standard applies?
1.		__ Yes __ No -- REVISE
2.		__ Yes __ No -- REVISE
3.		__ Yes __ No -- REVISE

DISCUSSION:

IRAC Analysis #1:

Explain whether the legal standard will be proven, using IRAC Format

Issue	Legal standard from Question Presented #1	
Rule	Words of the statute(s) being interpreted and applied in issue #1, above	
	Citation of the statute(s) being interpreted and applied in Question Presented #1, above	
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this	
	Use a transition to introduce the Court decisions interpreting the statute __ What did the Court say the statute/words mean? __ Why did the Court interpret the way it did (what tools did it use) __ Are the case law facts discussed, so you can compare them to your client's facts? __ How did the Court apply the law to the facts in front of it?	
Application	Use a transition to introduce the Client facts __ Do all of the facts you have written here relate only to the legal standard you identified in your issue, above? __ Do all of the facts you have written here appear in your Facts section, above?	
Conclusion	Answer the question above (Therefore ….)	

__ The IRAC components are in proper order

Is counter-analysis required? __ No. The facts and law are undisputed and clear	
__ Yes. There are disputed, unclear or missing facts; or there are facts subject to multiple reasonable inferences/interpretations	__ Disputed, unclear or missing facts are described __ Multiple reasonable inferences/interpretations of facts are described __ Impact (opposite conclusion) of viewing the facts in this way is described
__ Yes. The law is unclear or subject to multiple reasonable interpretations/applications; or, the legal issue is fact-intensive and none of the cases discussed in IRAC has facts identical to our client	__ Other court decisions that could be applied are described __ Other reasonable interpretations/applications of case law are described __ Impact (opposite conclusion) of viewing the law in this way is described

IRAC Analysis #2:

Explain whether the legal standard will be proven, using IRAC Format

Issue	Legal standard from Question Presented #2	
Rule	Words of the statute(s) being interpreted and applied in issue #2, above	
	Citation of the statute(s) being interpreted and applied in Question Presented #2, above	
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this	
	Use a transition to introduce the Court decisions interpreting the statute __ What did the Court say the statute/words mean? __ Why did the Court interpret the way it did (what tools did it use) __ Are the case law facts discussed, so you can compare them to your client's facts? __ How did the Court apply the law to the facts in front of it?	
Application	Use a transition to introduce the Client facts __ Do all of the facts you have written here relate only to the legal standard you identified in your issue, above? __ Do all of the facts you have written here appear in your Facts section, above?	
Conclusion	Answer the question above (Therefore ….)	

__ The IRAC components are in proper order

Is counter-analysis required? __ No. The facts and law are undisputed and clear	
__ Yes. There are disputed, unclear or missing facts; or there are facts subject to multiple reasonable inferences/interpretations	__ Disputed, unclear or missing facts are described __ Multiple reasonable inferences/interpretations of facts are described __ Impact (opposite conclusion) of viewing the facts in this way is described
__ Yes. The law is unclear or subject to multiple reasonable interpretations/applications; or, the legal issue is fact-intensive and none of the cases discussed in IRAC has facts identical to our client	__ Other court decisions that could be applied are described __ Other reasonable interpretations/applications of case law are described __ Impact (opposite conclusion) of viewing the law in this way is described

IRAC Analysis #3:

Explain whether the legal standard will be proven, using IRAC Format

Issue	Legal standard from Question Presented #3	
Rule	Words of the statute(s) being interpreted and applied in issue #3, above	
	Citation of the statute(s) being interpreted and applied in Question Presented #3, above	
	Is there more than one statute? If so, how are they related? Use a transition sentence or phrase to show this	
	Use a transition to introduce the Court decisions interpreting the statute __ What did the Court say the statute/words mean? __ Why did the Court interpret the way it did (what tools did it use) __ Are the case law facts discussed, so you can compare them to your client's facts? __ How did the Court apply the law to the facts in front of it?	
Application	Use a transition to introduce the Client facts __ Do all of the facts you have written here relate only to the legal standard you identified in your issue, above? __ Do all of the facts you have written here appear in your Facts section, above?	
Conclusion	Answer the question above (Therefore ….)	

__ The IRAC components are in proper order

Is counter-analysis required? __ No. The facts and law are undisputed and clear	
__ Yes. There are disputed, unclear or missing facts; or there are facts subject to multiple reasonable inferences/interpretations	__ Disputed, unclear or missing facts are described __ Multiple reasonable inferences/interpretations of facts are described __ Impact (opposite conclusion) of viewing the facts in this way is described
__ Yes. The law is unclear or subject to multiple reasonable interpretations/applications; or, the legal issue is fact-intensive and none of the cases discussed in IRAC has facts identical to our client	__ Other court decisions that could be applied are described __ Other reasonable interpretations/applications of case law are described __ Impact (opposite conclusion) of viewing the law in this way is described

ANSWERS:

	Your answer as to whether each question presented will be proven (yes, no, probably yes, probably no)	Legal standards to prove	Did you briefly explain the law and facts that support your answer?
1.			__ Yes __ No -- REVISE
2.			__ Yes __ No -- REVISE
3.			__ Yes __ No -- REVISE

INTRODUCTORY PARAGRAPH:

Broad issue (liability, guilt, etc.?)		
	Legal standards to prove	Your answer as to whether each will be proven (yes, no, probably yes, probably no)
1.		
2.		
3.		
Broad Conclusion (liability, guilt, etc.?)		

MAKE SURE THE MEMO IS INTERNALLY CONSISTENT

Is the legal issue identified consistent? (briefly identify each issue and make sure it's consistent in all #1s, #2s, #3s)	**Intro Paragraph**	**Questions Presented**	**Answers**	**IRAC Analyses**
1.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE
2.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE
3.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE

Is the legal conclusion identified consistent? (briefly identify each issue and make sure it's consistent in all #1s, #2s, #3s)	**Intro Paragraph**	**Answers**	**IRAC Analyses**	**Counter-Analyses**
1.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE
2.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE
3.	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE	__ Yes __ No -- REVISE

MAKE SURE THE MEMO USES GOOD WRITING MECHANICS

__ Did you run spell-checker?

__ Did you run dumb-checker (carefully proofread everything you wrote)?

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