



Teaching Case Synthesis in Living Color

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Teaching legal writing to first-semester law students is in large part teaching case synthesis. In the relatively simple problems these students write on, they have to use precedent cases to predict how a court would decide their client's case. To figure out what "law" the court would apply to the client's case, and how the court would apply it, the students have to understand what these cases are saying *as a group*. Many students have difficulty looking at cases as a group in part because in their subject courses the focus tends to be on one case at a time. This makes students lean toward case briefing as opposed to case synthesizing.

Over the many years that we at B.C.L.S. have taught together, we have used a terminology that helps the students see the cases important more as a group than as individual documents. Rather than discuss cases in terms of "rules" and "holdings," most of us discuss cases in terms of the following parts of legal analysis: facts, the court's decision on an issue in a case (or "result"), explicit reasoning, and implicit reasoning. The pot of gold at the end of the case synthesis rainbow is, of

course, the implicit reasoning that accounts for the result in each of the precedent cases, as well as for the result that the memo predicts for the problem case.

To get to the pot of gold, a student has to use all the parts of legal analysis. The explicit reasoning—what the court actually *says*—together with the facts and results in the cases, leads to an understanding of what is implicit in the cases, that is, what is really going on in the cases as a group. When the analysis of the law in an objective memo omits one or more of these parts of legal analysis, the reasoning is superficial or mechanical. This kind of reasoning is evidence of incomplete case synthesis, and thus of a prediction that is not well supported.

I use highlighters in four colors to identify the parts of students' analysis so they can see where their analysis is incomplete. I do this in an "interim" assignment about three weeks into the first semester. The first objective memo assignment has three subissues. After working in class with the synthesis of the cases on one of the issues, I assign a draft of the analysis of the law on that issue and the application of that law to the facts of the client's case. As I read the papers, I highlight explicit reasoning in blue, implicit reasoning in yellow, facts in pink, and results in orange. When I hand back the drafts, I include a color key to the highlighting along with the usual margin notes and end comment. Students report that the visual impact of the different colored highlighting helps them see what they are missing in analyzing the law and applying it to their client's case. For example, this fall a

student came to my office and said, "I didn't get any yellow on my "use" assignment. Now I see what steps I was missing." And throughout the year I see papers that organize the analysis around ideas instead of around cases and support the analysis effectively with explicit reasoning, implicit reasoning, facts, and results.

Teaching case synthesis

Steven D. Jamar
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I use two exercises to teach case synthesis. The first involves simplifying cases to their factual and legal essences. The second involves issue synthesis by using a simple grid.

1. Case Handles.

I suggest to the students that each case is like a bag or box with two handles, one fact and one law. The handles are compact single sentences which call to mind what the case was about. Ideally the handle will bring a cascade of ideas and connections, but at least it should remind one of the facts, rules, and holding of the case. These handles make cases easier to carry around and manipulate mentally. Requiring students to dramatically simplify cases like this forces them to think about them and articulate their meaning.

2. Synthesis Workshop.

When I do the exercise in class (I call it a workshop), I put a grid on the board (or on an overhead - especially a computer generated one so one can type in responses). Across the top I put the names of cases. On the lefthand side I put the issues to be addressed. (This assumes the synthesis is aimed at

something, like a client problem that needs to be addressed.) Then I have the students articulate two things about each case - a fact, and a rule of law - which relates to the particular issue. I continue this process until we have a number of facts and rules for each issue for each case. (Sometimes a case will not address a particular issue, and sometimes there are few rules in a given case.)

After this, I ask the students to compose two things: a list of facts to look for with respect to a particular issue (taken from the facts mentioned in the cases); and a rule which combines all of the rules from the cases with respect to each issue. The fact list becomes helpful in analogizing and distinguishing cases and in ensuring that the rule takes into account these facts. The rule developed through this process is the rule to be used to apply to the facts in the hypothetical situation to solve the problem.

This process must be kept artificially simple to be effective. It does not capture all that we do, but it does capture some of it and makes it more accessible to some students. It does not reach all students. Often the brightest students find it irritatingly restrictive - which it is, if one is already seeing the depths. But for the weak to strong students it seems effective. It tends to be over the heads of the weakest students, unless it is done much more slowly than I will take time for it in a general class.



Teaching Methods



Need a Career Change? Try Modeling.

David D. Walter
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To effectively teach legal research, analysis, writing, and oral advocacy skills, most law teachers use a wide array of classroom teaching methods. To name a few, we use lecture, discussion, role play, and even the Socratic method.

One underused method is modeling, which has also been referred to as “demonstration,” “observational learning,” and “teaching by example.” Alas, while a teaching method such as modeling may not be quite as exciting (or pay quite as well) as a modeling career, it can certainly spice up a law teaching career.

Psychologists describe modeling in broad terms to include any learning or imitation that results from observing others. Applied to legal skills teaching, we use modeling techniques when we distribute examples of good writing, when we show drafts of good student-written memos in class using an overhead projector, and when we show a videotape of a good oral argument.

Modeling significantly benefits the student because the good example paints a vivid picture and allows the student to easily visualize what the student is expected to do for the next memo or oral argument.

The students can gain even greater benefits from modeling when law teachers take modeling one step further and as serve as the models themselves, explicitly laying out THEIR thought processes and THEIR reasoning. For example, in teaching my Legal Writing I students to analyze full text opinions, I talk them through an opinion (which is displayed on the overhead and provided to them in hard copy) and detail my thoughts as I do so. I include the expected information about the value and limitations of headnotes and syllabi, but I also explain my case reading method (which involves jumping from headnotes to the legal discussion, back to the case facts, and then proceeding through the full opinion) and my reasoning for such a reading method. I also offer the students my substantive impression about the court’s reasoning, the depth of the court’s discussion, and the arguments that can be generated for our legal writing memo problem based on the case. I encourage the students to ask questions about my thought process and my method, and I frequently include phrases in my comments that indicate to the students my doubts, questions, and concerns about the case.

There are several benefits when the law teacher serves as the model. The student directly receives the benefit of the teacher’s years of experience in performing the particular task — although I have taught legal writing for only six years, I have been reading and analyzing cases for almost twenty years. Modeling is particularly helpful to the student when the teacher points out the pitfalls and mistakes that the teacher has made during those years of trial and error. Second, modeling also gives