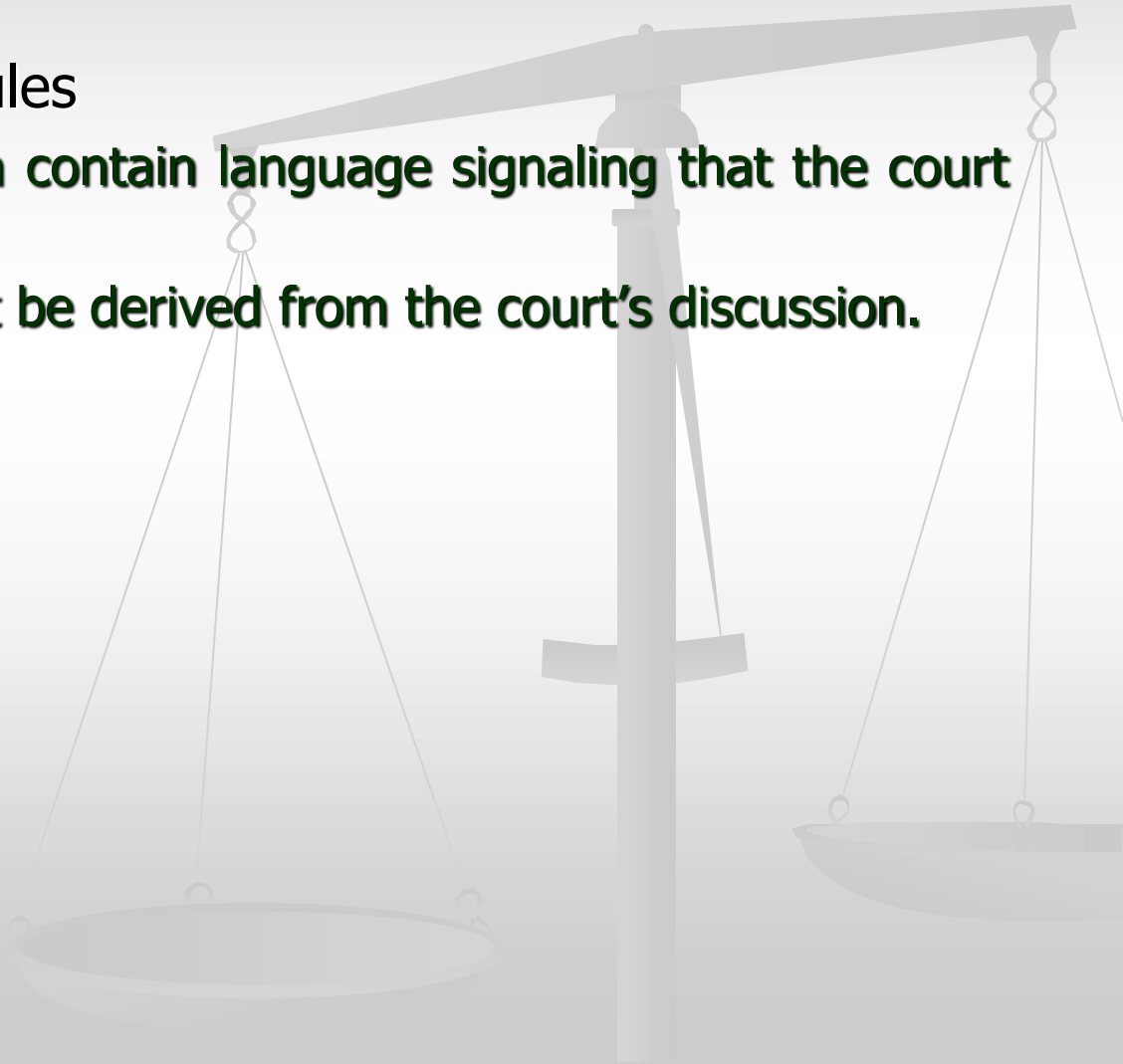
Identifying and Synthesizing Rules

- **Rules come from a variety of sources**
  - Constitution, statutes, regulations
- **Hierarchy of Authority**
  - Binding vs. Persuasive authorities
  - Evaluating persuasive authorities
    - The issuing court
    - Date of decision
    - Power of the court's reasoning
    - Centrality of the language to the holding
    - Number of judges/ reputation of authoring judge
    - Subsequent treatment of the opinion

Identifying and Synthesizing Rules

- **Finding the Rule**
  - Explicit vs implicit rules
    - **Explicit rules often contain language signaling that the court is stating a rule.**
    - **Implicit rules must be derived from the court's discussion.**



Identifying and Synthesizing Rules

- **Synthesizing rules**
  - You often need to draw on multiple cases to get a full picture of the applicable law. Each case, by itself, contains incomplete rules.
  - Sometimes multiple cases that are binding seem to have rules that conflict. How can you resolve the tension?
  - See synthesis example on p. 17

Working Towards an Outline – Long or Scholarly Papers

- **State purpose; after you've**
  - Obtained a topic/assignment
  - Gathered research information
  - Developed a theme/thesis
- **Freewrite/dump stage**
  - Just write; don't worry about syntax or style. Just write ideas and let them flow.
    - **Authorities can be cited in shorthand at this point**
- **Pull an outline from the draft**
  - May be out of order

What an outline looks like

- **Introduction (not necessary in court documents)**
  - Introduce the topic
  - Summarize background information
  - Convey the organization
- **Background**
  - Lead the reader to the status of the area now
- **Statement of the case**
  - Facts, procedure, history, etc.
    - **Include courts' holdings at each level**
- **Analysis of each issue**
- **Conclusion**

Using Paradigms

- This means using a consistent method of analysis in looking at the various issues involved.
- State the thesis statement up front for each discussion.
- Paradigms in comparing cases or scenarios:
  - Alternating Pattern
  - Divided Pattern
  - Problem-solution pattern
  - Cause and effect pattern

Writing the Draft

- **Begin anywhere. It's not necessary to start with the beginning or the facts or any particular point.**
  - Don't be afraid to skip around in your writing to whatever you feel like researching or writing about at the moment.
  - Your outline should be good enough so that you can use it as a basis to move around everything you've written into the appropriate places.
- **Can write in "order of ease."**
- **Introduction (or even the facts) can be written last to conform better to what you say in the analysis.**
  - If you put the facts first, re-visit it later to make sure it conforms to your analysis.
    - **Make sure the facts you put in are relevant in light of your analysis.**

Basic Steps in Drafting

- Learn and note the facts
- Identify the key issues
- Narrow the key issues so they can be researched properly
- Research
- Distill the research to what is relevant and can be used
- Analyze your research and its relation to the facts
- Organize how your paper is going to look
- Write an outline
- Write the paper
- Rewrite (further drafts)

Know Your Audience

- If you are writing to a judge, you must be more deferential than you would to an opponent.
- If you're writing to a client, you do not need to cite your authorities (although on a key issue, it may make sense to do so).
- If you're writing to a co-worker, you don't need to focus as much on being persuasive.
  - However, even if writing to a co-worker, don't waffle! If you want to argue both sides of the issue, do it as separate ideas, in separate paragraphs, etc.

Principles of Writing to a Legal Audience

- Assume skepticism on the part of the reader. Be prepared to prove anything you write
- Be concise and clear
- You can assume your reader understands basic principles of law and legal citations, but do not assume that your reader knows anything about the case at hand. Set up whatever you say with background and facts!

Steps in Drafting 1

- **These are generally the same as the principles we've been discussing throughout the course. These principles include:**
  - State the conclusion to set up your analysis
  - State your conclusions in the same terms established by your issue and rule
    - **Keep your language in framing the discussion as consistent as possible throughout the discussion.**
  - Describe the relevant law
  - Explain, for each sub-issue, why the law supports your conclusion.

Steps in Drafting 2

- **Describe any reasonable counterarguments!**
  - You can write a full blown IRAC analysis to explain why each argument is unpersuasive. However, you can also treat counterarguments as asides, depending on how serious the challenges are.
  - Describe how the law supports your counterargument for each issue
  - Explain why the counterargument does not change your conclusion
- **Edit your discussion, wherever possible, to include signposts, as discussed in the last chapter.**