

Basic Fact Categories

- Relevant Facts: Essential facts
- Explanatory Facts: Clarify relevant facts
 - Note: “Explanatory” Facts may become the most “essential fact” upon which a legal rule stands.
- Legally Unimportant Facts: No true role

Factual Comparisons: Critical for Case Law Analysis Because of Precedent

- Factual Similarities
 - Are the similarities relevant?
- Factual Differences
 - Are the differences relevant?
- Factual Unknowns

Identify the Legal Issues

- Legal issues are questions that will ultimately be presented to the court for resolution
- In filed cases, legal issues can be found in the pleadings
 - Causes of action
 - Affirmative defenses
- In non-filed cases, issues have to be discerned through client interviews or memos, and review of his relevant files and documents

Identify Legal Issues in *Analogous Case Law*

- In reported cases, legal issues are often found in headnotes
- In reported cases, issues are often found following the factual discussion and judicial history of the case

Writing Issue Statements

- A properly written issue statement contains:
 - The legal question *and*
 - Pertinent facts related to the legal question
- Seek to present a prima facie case, or defense, with a properly written issue or issues

Prima Facie Case

- A *prima facie* case is the establishment of a legally required rebuttable presumption. It is generally understood as an evidentiary or pleading standard that measures the effect of evidence (or allegations of fact) as meeting the proponent's burden of proof on a given issue. In that sense, a *prima facie* case is a cause of action or defense that is, or could be, sufficiently established by a party's evidence, or allegations of fact, to justify a verdict in his or her favor, provided such evidence is not rebutted by the other party.
- [Adapted from: https://www.law.cornell.edu/wex/prima_facie]

Prima Facie Case

- EXAMPLE: Under CPLR 5242(b) (allowing a N.Y. court to order a payroll deduction to pay overdue alimony or child support), [p]roof of default establishes a *prima facie* case against the debtor, which can be overcome only by proof of the debtor's inability to make the payments. Failure of the debtor to overcome [rebut] this *prima facie* case will result in an income deduction order for support enforcement to be entered by the court.

[From: N.Y. Prac., Enforcing Judgments and Collecting Debts § 7:533 in WestlawNext]

- SIGNIFICANCE: Motion to Dismiss: Insufficiency of pleadings; failure to state cause of action supported by facts that would constitute a *prima facie* case

Introduction to Advocacy (Hames)

- Published by Harvard Law School
- Designed for first year law students
- A how-to manual for how to think and formulate legal arguments.
- Appendix D: Bell-Wesley v. O'Toole

IRAC v. CRuPAC

- IRAC (Method generally used in Hames)
 - an acronym that generally stands for a standard methodology for legal analysis : Issue, Rule, Application, and Conclusion.
- CRuPAC (Method advocated in Introduction to Advocacy Ch. 1)
 - Conclusion first, then how you got there
 - Articulation of the Rule
 - Proof of the rule
 - Application of rule to facts
 - Conclusion- Reassertion of Conclusion

Approaching a Case as An Advocate- Persuasive Writing

- Read the record
 - Including transcripts of lower court case
- Research the Rules (law)
- Chronology or diagram, where applicable
- Narrow the issues
 - Especially in an appeal
- Connect the facts to the issues

Develop a Core Theory

- See Chapter 5 of Introduction to Advocacy
- “A core theory, or theory of the case, is central to the persuasiveness of a brief. A core theory is a concise theme or story that weaves together the favorable legal, factual, and policy elements at play in the case.”

Developing a Core Theory

- Facts
 - Thorough understanding is always necessary
 - Not all facts will be relevant, but they all have the potential to help or hurt
- Legal research
 - Necessary to develop core theory because you can only make “stick” what you can back up.
- Core theory will be the concise story that describes the issues at play in your case.
 - Legal
 - Factual
 - Policy

Importance of a Core Theory

- It can include policy considerations, consistency with other cases, etc.
- This doesn't mean that you can't make more than one argument.
 - But they should all be consistent with each other.
 - Or you can make “alternative” arguments

Putting Facts in Context

- Even a statement of facts can vary wildly from perspective to perspective.
- Facts should not be misrepresented, taken out of context or misapplied.
 - They should, however, be presented in the light most favorable to your side.

Ways to make your argument

- Predictive Writing (Introduction to Advocacy Part I) v. Persuasive Writing (Introduction to Advocacy Part II)
- Memoranda or Correspondence
 - Can be an internal “neutral” examination of the issues, but may propose course of action
- Memoranda of Law and Appellate Brief
 - Persuasive writing to a court
- Oral Argument
 - At a trial court, to referee, or appeals hearing

Final Thoughts

- Review the file or record, keeping an eye out for pitfalls
- If an appeal, consider the standard of review that will be applied.
- Present strongest arguments first
- Connect the arguments to the facts
- Develop core theory
- Consider possible opposing arguments and how to combat them, and even preempt them.