



Association of Legal
Writing Directors

Analysis Drills: A Legal Writing Classroom Lab
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I created four hour-long workshops designed to be taught over the course of one L spring semester. However, I present this curriculum not based on this time schedule, as it can be presented in a variety of different structural formats, but as a series of exercises. The goal of this curriculum was to enhance student mastery of the reading, analysis and synthesis of case law—skills that were introduced in the first semester of Legal Writing. Although these skills figure significantly in the writing of legal memoranda, they are skills that students should be using across the curriculum. And, students who gain some mastery of these skills and see the connection between those skills and the work that they are doing in their doctrinal courses tend to do better in their first year of law school.

Using Cognitive Learning Theory, (“CLT”) the workshop employed four techniques derived from this model: sequential learning, review, active in-class tasks, and explanations as to why each of these skills are important to lawyers. Each skill was introduced in the context of material that students have already covered in one of their first-year doctrinal courses. Context plays a key role here because student learning of what is called the “focal point” is understood best within a particular context. Thus, focal point in these exercises involve mastering a set of skills that culminate in effective legal analysis. However, these skills can be challenging to grasp if students are also trying to master the knowledge domain of the context in which they are taught—i.e. it is difficult to comprehend legal reading, for example, as a skill, when the student does not have domain knowledge of the contextual item that they are reading, such as the law of torts or contracts. Thus, the timing of when and what context these skills are introduced can be quite important.

The purpose in relying on cases covered in the first-year curriculum is twofold. First, students can situate these skills within the context of material already familiar to them after their first semester of law school. Second, the student can make connections regarding how the skills acquired in

legal writing work across the curriculum, regardless of the subject. Often, once students receive their grades from the first semester, the necessity of these skills are put into sharp relief.

In addition, students will employ a visual diagram method to master and build on these skills. Using visual imagery has been shown to assist in both expressing concrete and abstract processes and ultimately helps students in decision-making. Specifically, a key component of legal analysis is the ability to answer this question: what is important in a case?

Finally, the visual imagery is not just the presentation of an image, but the process of creating the image. Here, I draw on multimedia learning theory, which states that students learn best from dual-coding. That is, we have a finite capacity to process information delivered from words and the same is true for images. Thus, relying on both types of processes increases our learning capacity, as auditory and visual processes do not work in a mutually exclusive fashion, but rather complement each other and enhance more efficient learning. Moreover, this micro-theory asserts that learning is an active process of filtering, selecting, organizing, and integrating information based upon prior knowledge. I created these workshop exercises relying on the thesis that students who may have a difficult time mastering the skills associated with legal writing are having to split their cognition between comprehending the context as well as the focal points within the context and need more direct multimedia instruction on how to conduct the process of filtering, selecting, organizing and integrating information. After all that is precisely what legal analysis requires.

Exercise one

I begin with a review of the concepts that serve as the building blocks for legal analysis. This process is step one in sequential learning. I use a context outside of the law so students can connect the concepts back to something that they have significant familiarity with such as music. The key concepts we are working with in this exercise are general rules and legally significant facts. Our starting point is making sure everyone is familiar with the definition of these terms.

After we agreed on the definition of general rules and legally significant facts, we applied those concepts to the “legal” question of what makes a good musical performing artist? Each artist became a “case” to study and explore for general rules and legally significant facts. Students suggested some artists and then we broke up into small groups based on student preference. Specifically, using the definition of general rules as the guidance or set of regulations that determine how a judge will decide whether a musical performing artist is “good,” each group created those rules based on their analysis of an artist’s talents and characteristics. They determined what skills innately fell into this category of good musical performance. Next, students had to identify legally significant facts, or the factual evidence to which the general rules would be applied to demonstrate whether an artist was “good.” In other words, the students had to identify and describe detailed examples of how any or all of the general rules were met for this artist. Students think of legally significant facts as evidence.

Here is an example of what this initial exercise might look like:

Case: Bruce Springsteen

General Rules:

1. At a minimum, the performer must have a great singing voice.
2. He/she must create a memorable performance.
3. The performance should appeal to as many senses as possible.
4. The artist must demonstrate her/his passion for his/her music.

Legally Significant Facts:

1. Sings on key, can belt out when needed, has controlled voice, good pitch, strong vocal cords.
2. Sings for hours, talks to the audience, tells stories about the song to connect with the audience experience, tries to bring audience on stage to share special moments.

3. Uses imagery from video, clothing choices are quite specific to each member of the band, movement on stage, touching the hands of audience members, dancing with them, singing with them and interacting with band members.
4. You can see the physical exertion in his body language and facial expressions, movement across the stage and into the audience.

The key is for students to understand the distinction between general rules and legally significant facts, and to see an order to what matters and what does not in determining whether the element of “good” is met. An essential goal here is to make sure students can articulate the purpose of these different concepts and recognize how they are distinct. In general, rules are more abstract ideas while legally significant facts are concrete manifests of those rules (or sometimes the lack of manifestation.) Finally, playing some video examples of these performances to create the visual memory helps round out the multimedia theory of learning.

Exercise two

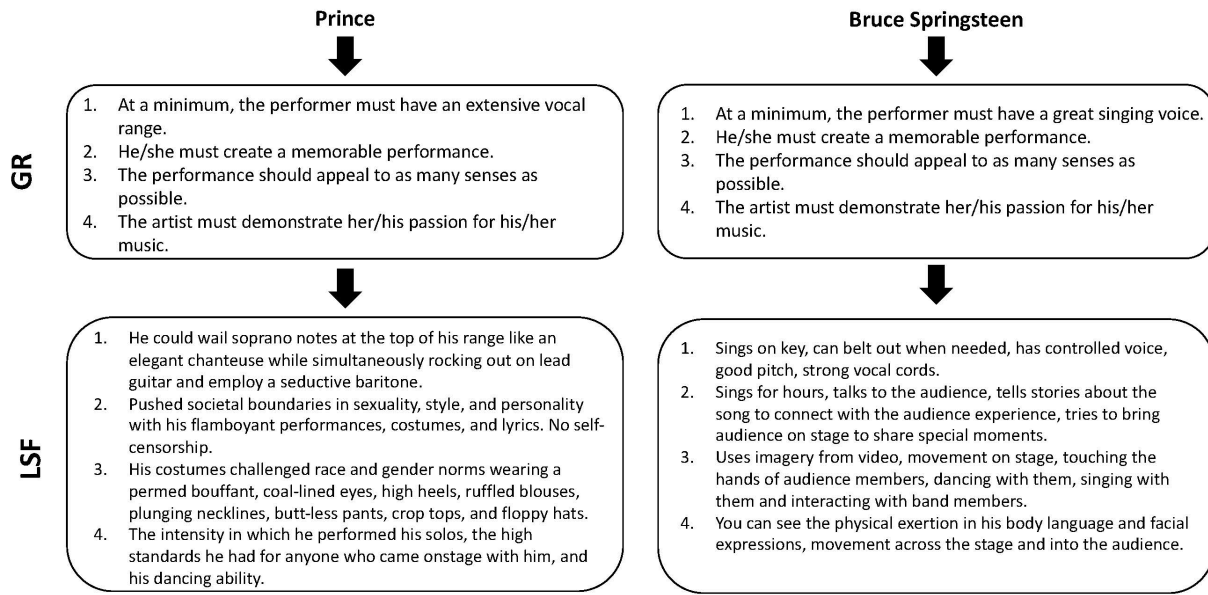
Review the terms discussed in the first exercise. Review the purpose of these concepts. Review why these concepts matter to the process of legal analysis. In all cases, it is important that the students articulate this review, not the professor. Build on exercise one, with sequential learning. Look across the “cases” to find similar themes. The idea here is to introduce a third concept: principles. Still relying on the context of musical performance artists, we add this third concept and start to build the visual process of synthesis. Again, we work together to come up with an agreed upon understanding of what a principle is. Using the definition that a principle is a theme from one case or more than one case that is extracted from across the legally significant facts, we review the legally significant facts for each artist (aka case) to identify these principles. Again, it is important to explain the purpose of extracting principles and why they are essential to analysis and argument construction.

For lack of a more imaginative name, I call the synthesis process in a visual form, a connect-a-box. Here’s an example of what it might look like across musical artists. I color code so students

can see similar GR across the cases, if they exist, and also color code for similar LSFs so students see clearly the visual connections across the cases.

Figure 1.

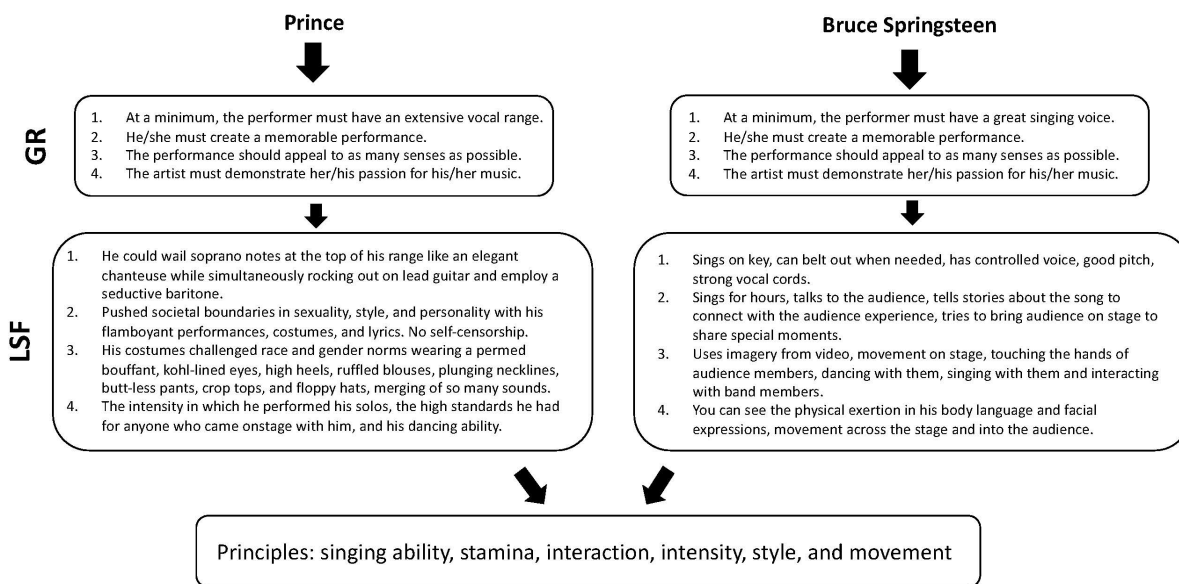
How does a performing artist qualify as good?



By examining the LSFs across the cases, we look for similarity in themes that we can then characterize as principles. We then add to the connect-a-box as follows:

Figure 2.

How does a performing artist qualify as good?



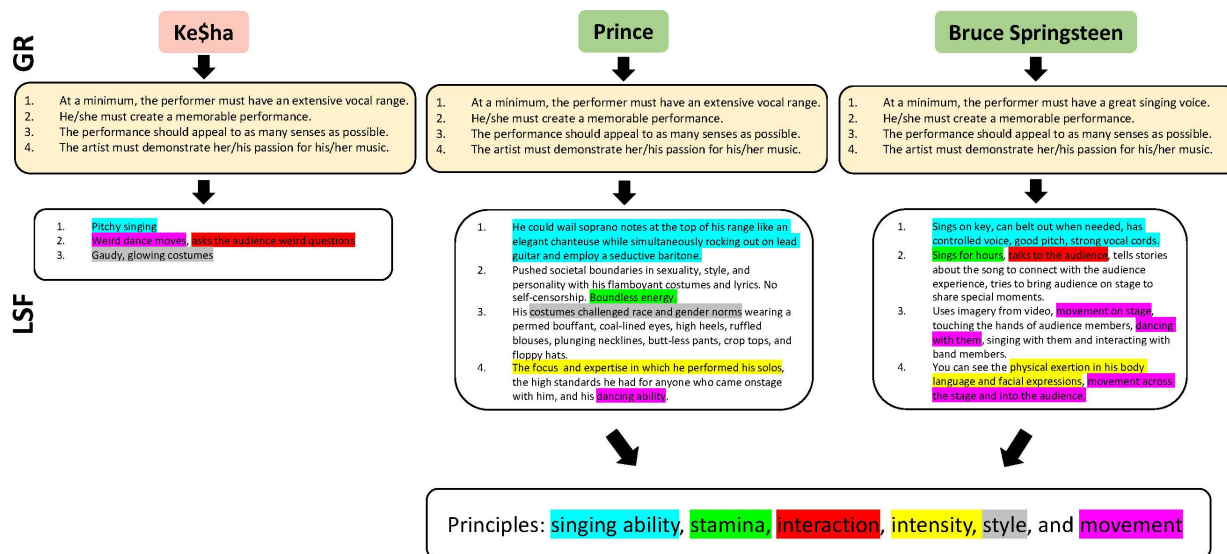
At this point, it is also a good idea to show where these concepts appear in an actual legal memorandum. You can write up a legal memorandum about musical performance or use a real legal memorandum. For the purposes of these workshops, I wrote up a memo about whether an up and coming musical performer could be counted as “good” but I mirrored the structure with an actual memo so that students could see our example within the context of an actual legal memorandum. This portion of the memo would only have a general rules paragraph and a case law section.

Exercise Three

In this exercise, the goal is to introduce a slightly more sophisticated connect-a-box in which not all cases are successful at meeting the legal question or element. So, we add to the connect-a-box with one or more musical artists who are classified as not good performers. We add more color coding here so students can see at a quick glance which cases meet the element and which ones do not.

Figure 3.

How does a performing artist qualify as good?



Once we have cases that both fail and succeed to meet the general rules, we revisit the task of synthesizing the cases and determining if we need to extract more principles now that we have failed cases. In others, do the same themes apply or do new ones emerge for the failed cases?

Exercise four

After completing our performance artist exercises, it is a good idea to introduce one more visual graph in which students create a spectrum of what LSFs contribute to a good artist and which do not. That way, when they are provided a hypothetical to analyze, they can see where on the spectrum the hypothetical facts fit. You can ask a student to suggest a singer, pull up a video of the performance, and ask students to consider LSFs from the performance and place them on the spectrum. For example, you could add Cold Play:

LSFs:

Chris Martin punches the air and skips a lot rather than dances and/or dances like a fool

Songs are rather tepid and unimaginative

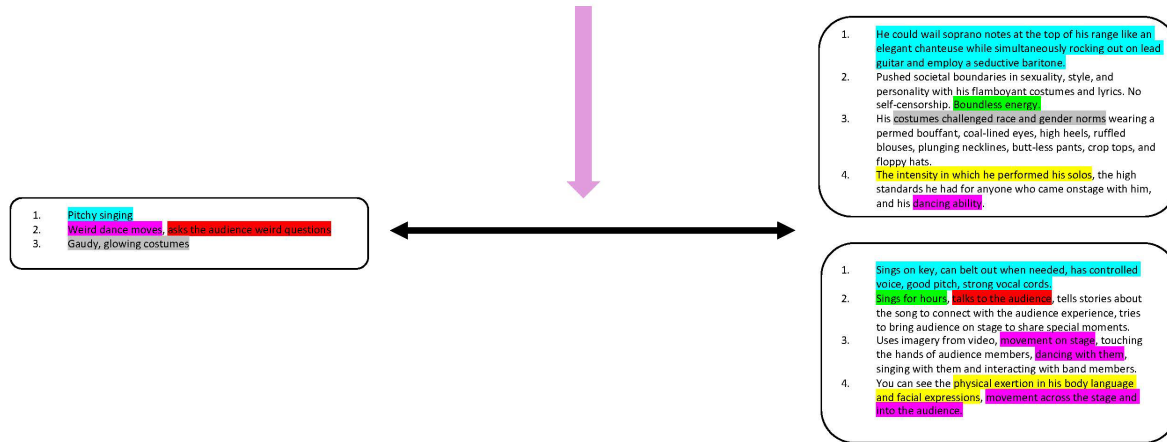
Very charismatic on stage with a big smile and optimistic interactions with audience

Poorly dressed

Demonstrates care for audience by playing for hours but also preaches to audience about donating

Figure 4.

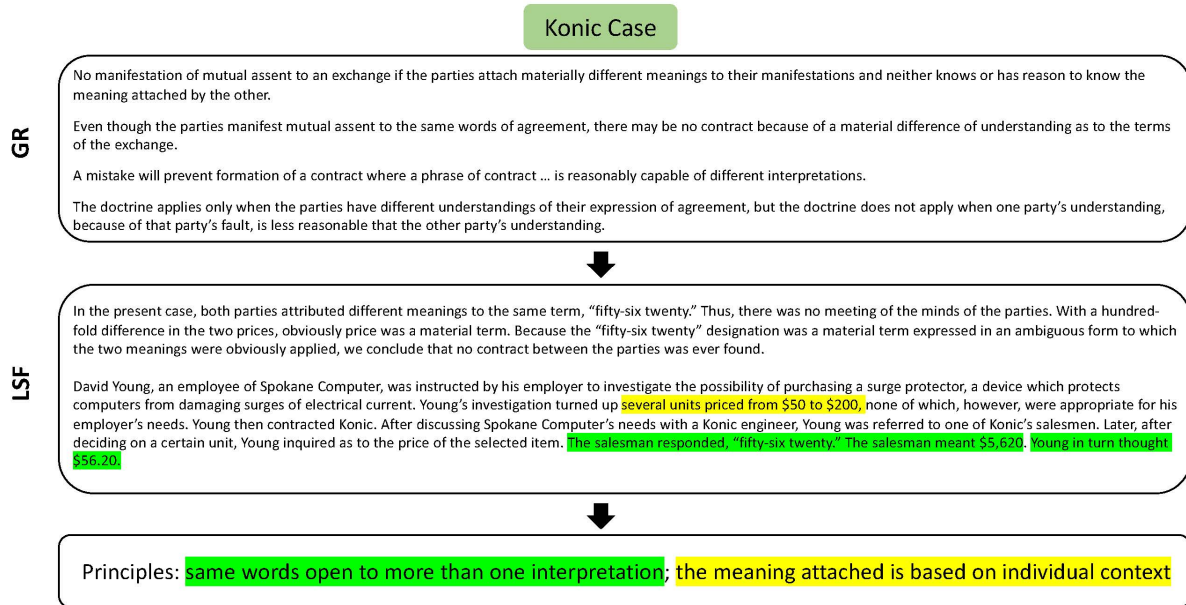
Where do my facts fit in?



Exercise five

With these basic concepts tackled, we move on to reading actual cases. The first task is to learn the detective work of reading cases strategically and efficiently. To introduce these skills, I chose a contract case known as *Konic Intern. Corp. v. Spokane Computer Services, Inc.*, which closely follows the famous *Peerless* case. This case involves a dispute over the meaning of the term, “fifty-six twenty.” We began with a particular legal question: When does a lack of mutual agreement to the terms of a contract invalidate that contract? Using this question as our guiding focus, the students reviewed the headnotes to find the most strategic starting point for attacking the case. We identified the portion of the case to read first—any articulation of general rules. From there, we looked for legally significant facts that were used in the application of the general rules, and then we added one more skill: extracting additional legally significant facts that were not used in the rationale portion of the opinion, but could be inferred as applicable from the statement of facts. Again, we added more color coding to create a visual distinction between inferred LSFs and concrete LSFs as we fill out the connect-a-box. And finally, we extract principles from this case and add them to the connect-a-box. Our color coding also includes highlighting the case as a failure or a success.

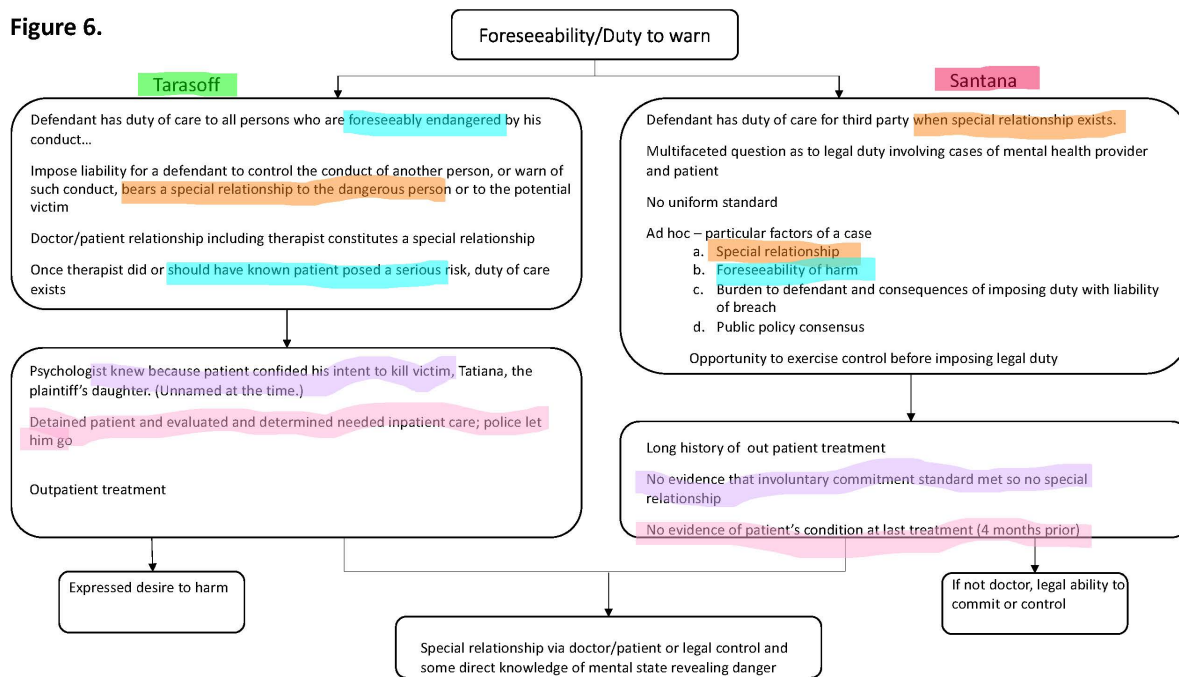
Figure 5. When is there a lack of mutual agreement that invalidates a contract?



Exercise six

We build on this singular case exercise, but creating a connect-a-box with two cases so that we can synthesize across cases. The students are assigned to read two tort cases: *Tarasoff* and *Santana*. We review the steps from the previous exercises. What are GRs? What are LSFs? How are they important to the court's rationale supporting its holding? Why do we need them for legal analysis? What is a principle? Walk me through the steps of strategic reading? What can I learn from reading the statement of facts? Our next step is to jump into the cases and start our detective work of finding the GRs and LSFs whether clearly articulated or inferred. We do this exercise for both cases. Then after completing our color coding looking for similarities in GRs or LSFs across the cases, we begin the process of extracting abstract themes that seem to matter to the across that may exist across the cases. Again, those will serve as our principles. Such a connect-a-box would look like this one:

Figure 6.



Exercise Seven

The goal now is to have students see how the connect-a-box is a useful tool in writing a memo and creating arguments. So, I provide a template for a memo and have them put the GR in the appropriate place, have them construct principle-based topic sentences from the principles extracted and then add case law LSFs that connect to that principle in the case law section where the memo educates the reader on the law. Finally, you can add a hypothetical set of facts to reinforce how the GRs and LSFs serve as focusing tools in analyzing which of the hypothetical facts are relevant to the legal question at hand.

Conclusion

The response to these workshops was overwhelmingly positive. A survey at the end of the workshop revealed that on a scale of one to five for helpfulness of the workshops, 85% of the students ranked them as either a four or a five, with 60% ranking them at five. The students found the workshops useful because they were getting ready to write timed memos. The most interesting and oft-repeated comment was that the workshops should have been presented to them during orientation. However, a cognitive learning theorist would argue that orientation would be an ineffective time to introduce these skills precisely because the students have neither the domain knowledge nor the context to understand this information then. In addition, legal writing professors also observed that after the workshops, students demonstrated a better ability to read efficiently and strategically, identify GRs and LSFs and understanding the difference between the two, and make better connections across cases and organize these them around principles. And, in fact, the need for visuals becomes even more crucial for processing information in the age of distance learning.