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## **CONTENT & OPINIONS**

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## **FROM THE EDITOR**

### **Business Law and Ethics: Foundational to Business Education**

Business law and ethics continue to be relevant and necessary components of business education. Knowledge and understanding of business law and ethics is foundational to business education and for all business professionals as they perform their work. An absence or a disregard law and ethics can undermine excellence in other areas of a business, resulting in scandals at the least, and potentially the end of the business from legal judgments and bankruptcy.

Interest in business law has been consistent over the years, and attention to business ethics has increasingly been emphasized since the Enron fraud and demise in 2001. Substantial increases in litigation threats and costs, in addition to the rise of emotional and unpredictable social media campaigns and controversies, make these disciplines more important than ever.

This journal is a vehicle for the sharing of teaching information and excellence, as well as a venue for sharing and archiving valuable and relevant pedagogical ideas, research, and analysis. The quality of the articles is high, and the dedication and hard work of our authors, editors, and reviewers is outstanding.

This issue includes four articles worthy of your consideration. First, Professor Nancy White shares a legal analysis template to help students break down law into elements, and then add them to the template for the purpose of applying the law to factual situations in order to reach a legal conclusion. She generously includes a wealth of examples for each step along the way.

In the second article, Professor Rachel Spooner shares her intriguing ethics service-learning project, "Do Better, Be Better." The project includes concepts and tools important in business education today – corporate social responsibility, experiential learning, and service learning. This project is particularly valuable because it can be incorporated into a variety of business classes across the business curriculum. Her detailed explanations and experience-tested development facilitate easy implementation.

Next, Professor Sandra Benson utilizes a courtroom simulation exercise to strengthen business law knowledge and to help students develop critical thinking skills, communication skills, and civility when dealing with differing perspectives. This classroom-tested experiential learning exercise includes detailed instructions, as well as feedback from students and evidence of student learning.

Finally, Professor Daniel Herron studies the ethical concept of stakeholder theory and explains how the theory can be used as a basis for collaborative decision-making in the business world. This excellent in-depth analysis connects the theoretical ethical concepts to government's legal regulations and alternative dispute resolution.

As these papers illustrate, this journal successfully provides strong and valuable educational innovation for business law and ethics disciplines to benefit students, educators, the business community, and society as a whole.

Linda Christiansen

EDITOR IN CHIEF

# Legal Analysis: There's a Template for That!

Nancy J. White\*

## ABSTRACT

Legal analysis is an important and difficult skill to teach students. The relationships between the law and facts, and the use of the facts to support a legal conclusion, require practice. This paper introduces a technique called the "Legal Analysis Template" which helps students breakdown the law into elements, and then apply the facts to the law in order to support a legal conclusion. Students fill in the section of the template to reach a conclusion supported by both facts and law.

**KEY WORDS:** LEGAL ANALYSIS, LEGAL FRAME WORKING, LEGAL ANALYSIS TEMPLATE, LEGAL STUDIES EDUCATION, CRITICAL THINKING, PROBLEM SOLVING

## I. Introduction

Legal analysis is one of the more difficult skills to teach undergraduate business students. However, the ability to use the law to make informed management decisions is a valuable skill for business professionals. James E. Holloway's paper, *A Primer on the Theory, Practice, and Pedagogy Underpinning a School of Thought on Law and Business Jurisprudence*, discusses the need for business executives to make decisions based on jurisprudence. He writes, "Undervaluing public policy, ignoring law in business thinking, and avoiding legal analysis in business decision making will lead to more regulation and litigation."<sup>1</sup> This paper describes a simplified method, called the Legal Analysis Template, for introducing the skill of legal analysis to undergraduate business law students and first-year law students.

The Legal Analysis Template is related to what is known as "legal frame working" in law school and is needed by law students and lawyers to analyze legal issues. It requires a detailed understanding of the law. This same level of knowledge is not taught at the undergraduate level, but a basic understanding helps business students comprehend how the law is used. It also enhances critical thinking skills by requiring them to evaluate and choose which law to apply; simultaneously examining whether the facts support the application of that law.

Teaching legal analysis is often a challenge and many students struggle with such analysis. Susan E. Provenzano and Lesley S. Kagan say "Grading novice writers' papers and exams can leave even the most seasoned professors dismayed and disheartened. Legal writing professors are no exception, often discovering

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<sup>1</sup> James E. Holloway, *A Primer on the Theory, Practice, and Pedagogy Underpinning a School of Thought on Law and Business*, 38 U. MICH. J.L. REFORM 587, 589 (Spring 2005).

that their students' work has gone astray in unexpected ways.”<sup>2</sup> Susan Douglas identified challenges in the teaching of introductory business law courses and developed a strategy for teaching the doctrine of precedent as a case study in a business law course.<sup>3</sup>

Legal frame working is usually taught in law school via the reviewing of major cases on a particular topic over several weeks. David J. Herring<sup>4</sup> gives an example of teaching the legal framework of personal jurisdiction in a civil procedure law class. This one topic, personal jurisdiction, is a five-week unit, comprised of fifteen class sessions. A dozen United States Supreme Court decisions are reviewed.

Wilson R. Huhn provides a pluralistic model of reasoning to teach the skills of legal analysis. He suggests first determining whether a particular legal analysis problem is in one of five argument categories: text, intent, precedent, tradition, and policy. Each judge or lawyer may have a preferred way of looking at what the law is, based on their interpretations of the category of evidence involved. However, an understanding of the different types of arguments will allow those who make and use the law to better support their arguments, and also better understand the arguments of others.<sup>5</sup>

Several books and papers exist on the topic of teaching legal analysis.<sup>6</sup> All are geared to teaching law students who are taught to master this skill over weeks and years of training. V. Kazmierski does write about the need to teach legal research in legal studies programs<sup>7</sup> and argues that learning about legal research and doctrinal analysis is an important element of legal education outside professional law schools. This article addresses the teaching of legal research methods and doctrinal analysis within a legal studies program. The amount of time and the level of skill required for law students is not necessary in an undergraduate business law curriculum. However, it will benefit the average businessperson to have this basic skill of critical thinking and analysis. In addition, even first-year law students benefit from the exercises discussed in this article as a foundational first step toward a more comprehensive legal frame working later in the law school curriculum.

Problem-based learning has long been the bulwark of legal training and incorporating it into the legal studies class in a business school environment improves business students' problem-solving skills.<sup>8</sup> Business school literature has long called for critical thinking and problem-solving skills in the curriculum. Nora M. Braun said, “Business educators are charged with accomplishing the task of improving critical thinking in business school graduates.” In her study she investigated methods used by educators to improve critical

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<sup>2</sup> Susan E. Provenzano and Lesley S. Kagan, *Teaching in Reverse: A Positive Approach to Analytical Errors in IL Writing*, 39 LOY. U. CHI. L.J. 123, 123 (Fall 2007).

<sup>3</sup> Susan Douglas, *Student Engagement, Active Learning and Teaching Law to Business Students*, 6 THE E-JOURNAL OF BUS. EDUC. & SCHOLARSHIP OF TEACHING, 33 (2012).

<sup>4</sup> David J. Herring, *Teaching Legal Frameworks: Supplementing Socrates* (UNM School of Law, Research Paper No. 2015-04 (2015), <https://ssrn.com/abstract=2574346> (forthcoming).

<sup>5</sup> Wilson R. Huhn, *Teaching Legal Analysis Using a Pluralistic Model of Law*, 36 GONZ. L. REV. 433, 439 (2000).

<sup>6</sup> E.g., Steven M Barkan, Barbara Bintliff & Mary Whisner, FUNDAMENTALS OF LEGAL RESEARCH ( 10<sup>th</sup> ed. 2015); William H. Putman & Jennifer Albright, *LEGAL RESEARCH, ANALYSIS, AND WRITING*,(3d ed. 2013); Cassandra L. Hill & Katherine T. Vukadin, *LEGAL ANALYSIS: 100 EXERCISES FOR MASTERY, PRACTICE FOR EVERY LAW STUDENT*, 1<sup>st</sup> ed., LexisNexis (2012);, David S. Romant & Kathleen Elliott Vinson, *LEGAL ANALYSIS: THE FUNDAMENTAL SKILL* (2d. ed., 2009); Paul D. Callister, *Time to Blossom: An Inquiry into Bloom's Taxonomy as a Hierarchy and Means for Teaching Legal Research Skills*, 102 LAW LIBR. J. 191 (2010) and Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369 (2006).

<sup>7</sup> V. Kazmierski, *How Much “Law” in Legal Studies? Approaches to Teaching Legal Research and Doctrinal Analysis in a Legal Studies Program*, 29 CAN. J. L. & SOC’Y 297 (2014).

<sup>8</sup> For an overview of problem-based learning, see Andrew Walker, et.al., *Essential Readings in Problem-Bases Learning*, (2015).

thinking.<sup>9</sup> These included case studies, guided questions, classroom discussions and debates, and in class group exercises.

Critical thinking approaches must teach students to identify the underlying characteristics of problem structures.<sup>10</sup> The legal argument template introduced in this paper is an in-class method that helps students identify the underlying characteristics of a problem: the principle to be employed and the scenario to which it is applied. A principle (specifically a law) is applied to a scenario (facts) to come to some conclusion or recommendation. This same process, that is, applying some principle to some scenario, is needed in every business discipline. Students apply concepts rather than just learn a concept, a crucial characteristic for critical thinking skill development.<sup>11</sup>

The ability to solve complex problems correlates strongly with grade point average and university success.<sup>12</sup> The business curriculum is turning more and more to problem-based learning as one way to develop good managers and leaders.<sup>13</sup> The ability to solve problems is recognized as a skill needed by accounting graduates.<sup>14</sup> In a complex world, all business students must be able to adeptly solve problems.

Recent papers have looked at various aspects of legal problem-solving. Larry O. Natt Gantt II reviewed the pedagogy and instructional models of problem-solving to help improve legal analysis skills.<sup>15</sup> Tonya Kowalski proposes methods for teaching legal writing beyond specialized clinics. Her plan includes a collaboration model in which clinical and legal writing faculty at different institutions can work together to train in each other's methods.<sup>16</sup> Anthony Niedwiecki suggests that increased assessment is needed to improve student learning.<sup>17</sup>

This paper introduces a method which helps students see the connections between principles and the use of principles to solve problems. The method can be used whenever any type of principle, be it economic, management, accounting, marketing, or legal, is used to determine a course of action or to arrive at a conclusion. All of the exercises herein have been implemented for more than ten years in undergraduate business law

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<sup>9</sup> Nora M. Braun, *Critical Thinking in the Business Curriculum*, 79 J. EDUC. FOR BUS. 232-236, (Mar/Apr 2004); Janel Bloch & Sandra E. Spataro, *Cultivating Critical-Thinking Dispositions Throughout the Business Curriculum*, 77 BUS. & PROF. COMM. Q. 249 (2014) <https://doi.org/10.1177/2329490614538094>.

<sup>10</sup> D. F. Halpern, *Teaching Critical Thinking for Transfer Across Domains*, 53 AM. PSYCHOL. 449-455 (1998).

<sup>11</sup> M. I. Katsioloudes & V. Tischio, *Critical Thinking in Nonprofit Management Education*, HUM. SYS. MGMT. 47-57 (2001).

<sup>12</sup> J. Matthias Stadler, Nicolas Becker, Samuel Greiff & Frank M. Spinath, *The Complex Route to Success: Complex Problem Solving Skills in the Prediction of University Success*, 35 HIGHER EDUC. RES. & DEV. 365 (2015).

<sup>13</sup> Michael S. Carriger, *What is the Best Way to Develop New Managers? Problem-based Learning vs. Lecture-based Instruction*, 14 INT'L. J. MGMT. EDUC. 92-101, <https://doi.org/10.1016/j.ijme.2016.02.003> (July 2016).

<sup>14</sup> Nasrollah Ahadiat & Rose M. Martin, *Attributes, Preparations, and Skills Accounting Professionals Seek in College Graduates for Entry-Level Positions vs. Promotion*, 8 J. BUS. & ACCT. 179-189 (Fall 2015).

<sup>15</sup> Larry O. Natt Gantt, II, *The Pedagogy of Problem Solving: Applying Cognitive Science to Teaching Legal Problem Solving*, 45 CREIGHTON L. REV. 699 (2011).

<sup>16</sup> Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285 (2010).

<sup>17</sup> Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149 (2012).

courses. In addition, all have been modified based on student feedback and assessment for the same time period.

## II. Legal Analysis

Legal analysis requires the reasoning in support of the conclusion or answer to some legal problem. A complete legal analysis must include the applicable rule or law, as well as the application of the law to the facts. Traditional legal analysis can be challenging for undergraduate students and for first year law students to grasp. While students may be able to articulate the correct conclusion or answer the legal problem, they often struggle to provide reasoning in support of their conclusion. The legal analysis template involves teaching students the following steps:

1. Determining the legal elements and putting them in the left-hand column of the template.
2. Determining the facts, if any, related to the legal elements and putting them in the right-hand column of the template.
3. Coming to the conclusion by determining if the facts support the legal element(s). If so, put an equal sign (=) in the center column. If not, put a not equal sign ( $\neq$ ) in the center column.
4. Write one or two sentences, using the facts and law stated above, to support your conclusion to the issue.
5. The template also has a column for notes or comments, for use by either students or professors. See blank legal analysis template below.

### LEGAL ANALYSIS TEMPLATE

**Issue:**

**Rule:**

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or $\neq$	Facts. If no facts to support element put "no facts"	Notes or comments

**Conclusion:**

**Written legal analysis:**

### *A. Legal Elements*

The first concept to discuss with undergraduate students when teaching the skill of legal analysis is the concept of the legal element or element of the law. An element of the law or legal element is some part of a law that must be supported by facts in order to win an argument using that law. For example, a simplified rule of negligence that might be used to begin developing the skill of legal analysis might be: A party is negligent if they have acted unreasonably and caused injury. This simplified version of negligence has two elements: (1) a party acted unreasonably and (2) this unreasonable act caused injury. In order to win an argument using this law, both elements must be supported by facts. If only one element is supported by facts, then the argument is lost.

It is important to always inform students that they are working with simplified laws in order to begin mastering this skill. A sample instruction to provide students working on this step of the process can be found in Appendix B. Sample instructions for other steps are also in Appendix B.

#### B. Facts

The next concept to teach is “what is a fact?” The word “fact” has several meanings. According to the *Merriam-Webster* dictionary any of the following definitions are acceptable:

1. the quality of being actual: actuality <a question of fact hinges on evidence>;
2. something that has actual existence <space exploration is now a fact> an actual occurrence <prove the fact of damage>;
3. a piece of information presented as having objective reality <these are the hard facts of the case>.<sup>18</sup>

Students tend to use the first definition, whereas the legal system uses the last. This distinction must be explained and illustrated to students, so they understand how facts, laws, and conclusions differ when used in legal reality. According to *Merriam-Webster*, laws are facts and conclusions are facts because they are “actual” or exist.<sup>19</sup> In the legal realm, facts are unemotional, objective observations or descriptions of physical reality. In the legal arena, we are often interested in unemotional observations of how people have behaved. For example, a fact you might see in a law class is, “Lars and Hilda signed a contract” or “Lars said to Hilda ‘I offer to pay you \$500 for your used car.’”

#### OTHER EXAMPLES OF FACTS

1. John copied Ricardo’s paper during the test.
2. Mary struck Larry during the argument.
3. Kahn made the following statement, “I will buy your house for \$150,000.”
4. The employer fired the employee because the employee came in late five days in a row.
5. Company A’s employees took the display racks of Company B and destroyed them.

Students learn to recognize facts in a classroom setting because the facts are typically the first things students are given when asked to solve a problem. Facts are often labeled “facts” or “background.” With practice, students can learn to differentiate facts from other concepts such as values, conclusions, issues, and opinions. Exercises in the appendices provide opportunities for such practice.

### III. Using the Legal Analysis Template

The legal analysis template helps students apply the facts to the law. The initial step is to train students in the skill of breaking down the law into elements—a procedure that takes practice in order to master. A series of exercises woven into worksheets of the various legal concepts covered in the class will develop this skill while reinforcing the law under review. See Appendix A for sample completed legal analysis templates on a variety of common business law topics. These can be modified for student use by removing the information the student

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<sup>18</sup> MERRIAM-WEBSTER DICTIONARY, *Facts*, <https://www.merriam-webster.com/dictionary/fact>.

<sup>19</sup> *Id.*

should add to the template depending on which step is being completed. Appendix B contains sample instructions to students and professors for each step of the process.

#### A. Step One: Determining the Legal Elements

First, give the students practice at determining the legal elements only. The following is a sample exercise:

**Instructions to students:** Break down the three laws into their legal elements in the analysis tables below. Not all rules have the same number of legal elements and more than one way of breaking down the law into elements may exist. This is more an art than a science. **Ignore all other columns, use the left column only.** The first template is completed for you using a simplified rule of negligence—a party is negligent if they have acted unreasonably and caused injury. To make it easier you are provided with the number of lines needed for each element of the law you are dissecting; however, any particular law can be divided up in slightly different ways depending on how much detail the professor elects to include. This is one suggested deconstruction.

Legal Elements/Law	= or ≠	Facts. If no facts to support element put "no facts"	Notes or comments
Unreasonable action			Ignore cells for now
Caused injury			Ignore cells for now

Use the template below for this law: Individuals are liable for their own debts, including tort liability, even if another entity, such as an employer, is also liable. (**Key:** Liable for own debts).

Legal Elements/Law	= or ≠	Facts. If no facts to support element put "no facts"	Notes or comments
			Ignore cells for now

Use the following template for this law: Strict product liability – manufacturers and distributors are liable for injuries caused by their defective products. The first element is completed for you, the student, but these could have been split between separate lines. As stated above: the template may vary depending on the user and depth of legal analysis conducted. (**Key:** Elements are something like manufacturer or distributor, defective product, injury).

Legal Elements/Law	= or ≠	Facts. If no facts to support element put "no facts"	Notes or comments
Manufacturer or distributor			Ignore cells for now
			Ignore cells for now

*B. Step Two: Determining the Facts Related to the Legal Elements*

The next step is to familiarize students with how the facts fit into the template. To start, a template is given with the facts, but not the law, already inserted. Students then put the law into the left-hand column.

**Instructions to students:** Read the follow scenario, “Lew’s Computer” and fill in the legal elements of the rule needed to solve this issue: Is Mike an agent for Lew?

**Lew’s Computer Scenario**

Lew owns a store in New Orleans called “Lew’s Computer.” Lew pays Tricia \$1,000 each week to work in the store and sell products to customers. In addition, Lew hires Jordan to repair computers for customers. Jordan never actually sees or talks to the customers. He is given work by Tricia or Lew. Lew pays Jordan \$1,000 per week.

Lew also pays people, such as Mike, a referral fee if they bring customers into the store and the customer buys something from Lew or Tricia. For example, if Mike brings Kali into the store and Kali buys a laptop for \$1,000, Lew pays Mike \$50. The customers do not know about this arrangement. They are led to believe, by both Lew and Mike, that Lew and Mike are just friends. You can assume the law recognizes an oral contract between Lew and Mike in this situation and that the arrangement is not illegal.

Mike brought Durso into the store and Durso bought some computer equipment from Lew. Lew paid Mike the referral fee sometime later while Durso was not present.

Later Mike and Durso negotiated the sale of \$8,000 worth of merchandise from Lew’s store. Durso gave Mike \$8,000 in cash and Mike gave Durso a receipt with the name “Lew’s Computer” on the receipt. Mike disappeared with the money.

Later Durso showed up at Lew’s store and said Lew had to give him the \$8,000 worth of merchandise or return the \$8,000 Durso had given to Mike. Lew says he does not have to give Durso the \$8,000. Durso threatens to sue. Assume the jury will find Mike liable for the tort of fraud but Mike is long gone; the only two people arguing are Lew and Durso. [Example based on *Boulos v. Morrison*, 503 So.2d 1 (1987)].

**Instructions to students:** Choose which rule to apply to the above scenario to determine if Mike is Lew’s agent. Enter the elements in the left side of the template. You have been provided with the facts in the right-hand column. Also indicate, using the “≠” sign in the second column, if the facts do not support the legal element. (**Note to instructor:** The correct, simplified rule for this example is: An agent is someone who has been given power by a principal to act for that principal. It has only one element, which makes it easy and the element would be something similar to: “principal gives power to another to act for the principal.”)

Legal Elements/Law	= or ≠	Facts. If no facts to support element put “no facts”	Notes or comments
	≠	Lew pays Mike if Mike brings in someone who buys something.	Mike has no power to act for Lew.

*C. Step Three: Discerning if the Facts Support the Legal Elements and Determining the Conclusion*

Discerning whether the facts support the legal element is the next step of this process. Examples can be given and then the students instructed to decide if, in the student's opinion, the facts support the element or not. At this stage a completed legal analysis template is helpful.

**EXAMPLE OF A COMPLETED LEGAL ANALYSIS TEMPLATE WITH CONCLUSION AND WRITTEN LEGAL ANALYSIS**

**Facts:** Assume the following appeared in the local paper:

"REWARD OFFERED IN POP MACHINE CASE"

The Pepsi Bottling Group published a notice on their local Facebook page that it is offering a \$500 reward for information leading to the arrest and conviction of people who stole money from pop machines during the past month.

The Michigan State Police and Mt. Pleasant Police have been investigating several thefts from machines in the area. Anyone with information is asked to call.

Brisa gives information (after the Facebook notice was published) that leads to arrest and conviction of a third party. Is Brisa entitled to \$500 from Pepsi under contract law?

**Issue:** Has a contract been formed between Brisa and the Pepsi bottling Group?

**Rule:** A contract is formed when there is an offer, acceptance, consideration, and in some cases a writing/authentication is required. (Note to students: All laws would be discussed here in detail, but this section is shortened for this in-class exercise and not all the laws mentioned above are repeated here).

**Analysis:** Use the table below to develop the conclusion.

Legal Elements/Law	= or ≠	Facts. If no facts to support legal element, put "no facts"	Your notes/comments
Consideration	=	Brisa is to receive \$500 and Pepsi is to give up \$500. Brisa to give information, Pepsi to get information.	
Offer	=	On Facebook page offered \$500 reward for information	Reward example
Acceptance	=	Brisa gives information that leads to arrest and conviction.	Acceptance by act ok
Writing/Authentication/Record	=	Facebook page	No writing/ authentication/record is needed for this type of contract but it does exist.

**Conclusion:** Yes

**Written legal analysis:** Why in support of the conclusion? Start the answer with EITHER "Yes, a contract has been formed because...." Or "No contract has been formed because..." Then explain using the legal element(s) and facts. Many other ways exist to begin the legal analysis, but this is a good approach for beginners.

**Students: The following is a sample simple legal analysis based on the above.** The notations in the parenthesis are here only to show how the facts and law are used. You would not include the information in parenthesis in your analysis. For example: Yes, a contract has been formed between Brisa and the Pepsi Bottling Company because all of the legal elements exist and are supported by the facts - consideration, offer, and acceptance. In addition, no writing is needed for this type of contract. The consideration (**legal element**) is that Brisa gives information; Pepsi gets information (**fact**). Pepsi made an offer (**legal element**) of \$500 (**fact**) via the Facebook page (**fact**). Brisa accepted (**legal element**) the offer by performing the act requested and giving the information (**fact**). The law recognizes acceptance by act. No authentication/record (**legal element**) is required for this type of contract but the Facebook page (**fact**) does document the offer.

The next step is to give students blank templates to fill out. Here is one blank sample legal analysis template. Additional completed legal analysis templates, including this one, are in Appendix A.

#### **LEGAL ANALYSIS TEMPLATE**

Zonk rented a store in Hog's Head Village and operated a joke shop out of the space. The Weaz brothers wanted to purchase Zonk's joke shop business, take over Zonk's lease, and remodel the store after their very successful operation in London. Assume the owner of the shop has no objection to this transaction. During a meeting, the Weaz brothers present a written offer to pay Zonk \$200,000 for the business and in addition they want a provision in the contract that he will not open a competing shop within 50 miles of the Hog's Head Village for 5 years. Zonk says the minimum price of the shop is \$250,000. All sign an agreement with these terms, including the price of \$250,000.

**Issue:** Has a contract been formed between Zonk and the Weaz brothers?

**Rule:** A contract is formed when there is an offer, acceptance, consideration, and in some cases a writing/authentication is required. (Note to students: All laws would be discussed here in detail, but this section is shortened for this in-class exercise).

**Analysis of the first offer:** Use the table below to determine the conclusion.

Legal Elements/Law	= or ≠	Facts. If no facts to support element put "no facts"	Notes or comments

**Conclusion:**

**Written legal analysis:** Why in support of your conclusion? Start the answer with EITHER "Yes, a contract has been formed because...." Or "No contract has been formed because..." Then explain using the legal element(s) and facts.

*D. Step Four: Writing the Analysis*

The final step is to have students write a few sentences using the table section of the legal analysis template to support the conclusion to the issue. Students must use both the law and the facts to get credit. Using one or the other is common for students and they must be instructed to use both and practice using both. Suggesting students use the word "because" has also proved helpful. For this explanation I have returned to the Lew's Computer example above.

**Instructions to students:** Write a few sentences, using the above law and the facts, to support the conclusion that Mike is not Lew's agent. You must use the information in both the legal element column and the facts column to get credit; just using one or the other is incorrect.

The following is a sample of a simple legal analysis a student might write to support the conclusion to the issue. A proper answer must include both the law and the facts.

Mike is not Lew's agent because Lew has not given Mike power to act for Lew or enter into contracts for Lew. Lew only pays Mike if Mike brings people into the store. Lew has not told Mike that Mike can enter into contracts for Lew nor can Mike sell something to the customer.

The following analysis is incorrect because it has no facts: Mike is not Lew's agent because Lew has not given Mike power to act for Lew or enter into contracts for Lew.

The following analysis is incorrect because it has no law: Mike is not Lew's agent because Lew only pays Mike if Mike brings people into the store.

*E. The Notes and Comments Column*

This column can be used by both the instructor and student. It is particularly useful for the instructor when introducing this skill to give the student hints and comments. Later, the student may want to make comments about the problem. This column was added to the template after using the template in class and receiving feedback from the students.

## **IV. Summary**

Using the legal analysis template helps students understand how conclusions to legal problems are made using the law and the facts. The template is a useful first step for teaching the skill of legal analysis to undergraduates and first-year law students. The template requires students put the legal elements in the first column, the facts, if any, in the right column and then determine if the facts support the element by putting an equal (=) or not equal ( $\neq$ ) sign in the middle column. Students can then use the template to construct a simple legal analysis using the law in the left-hand column and the facts in the right-hand column.

## Appendix A: Sample Completed Legal Analysis Templates

This appendix contains several sample completed legal analysis templates. These can be modified to suit a particular approach or introduce a concept not covered here. Information can be removed from the template by the instructor depending on which step is being taught. At first students are given a completed template. Next, the students can be given a template with blank cells and the students instructed to fill in the cells or the particular cells under review.

### A1. Constitutional Law Legal Analysis Templates

#### Example A.1.1. Equal Protection

**Facts:** The law of the state of Kansas required segregation of the races in education, with children of European descent (white) attending one set of schools and children of African descent (black) attending a separate set of schools. Several parents of African descent attempted to enroll their children into the schools for students of European descent but were denied admission because of the law requiring segregation of the races in education.

**Issue:** Are children of African descent denied the right to Equal Protection under the U.S. Constitution because schools were segregated?<sup>20</sup>

**Rule:** Governments must treat all people equally unless there is a valid reason for not doing so. (Simplified law.)

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts. If no facts to support element put "no facts"	Notes or comments
Government	=	Board of Education of Topeka, a division of the state government of Kansas	
Type of treatment being given to people, equal or not equal	≠	Separate public schools for white children and black children	People can be treated differently by the government.
Reasons given must be valid	≠	The races should be separated	The actual case is more complex than this simple analysis.

**Conclusion:** Yes.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

(Example A.1.1 continues on Page 16)

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<sup>20</sup> This legal analysis template is based on the case of *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

Yes, separate public schools for white and black children is a denial of the right to be treated equally by the state government because the reason given, the races should be separated, is not valid.

Note to instructor: Pointing out to students how the analysis uses both the laws and facts is helpful at the beginning of this technique. An example to illustrate this concept to is:

Yes, (**conclusion**) separate public schools for white and black children (**fact**) is a denial of the right to be treated equally (**legal element**) by the state government (**legal element**) because (**use the word "because" in the written legal analysis**) the reason given (**legal element**), the races should be separated (**fact**), is not valid.

This written legal analysis is incorrect because it contains no facts. Yes, Linda Brown's right to equal protection was denied.

This written legal analysis is incorrect because it contains no law or legal elements, only the name of the law. Having separate schools for white children and black children is a denial of the right to equal protection.

### **Example A.1.2. Equal Protection**

**Facts:** The Federal Food Stamp Act provided for the distribution of food stamps to needy households. Section 3(e) was added to amend/change the definition of "households" as only those groups whose members were all related to each other and living in a single-family residence or apartment. This was done because U.S. Congress (or a majority at least) did not like the lifestyles of what they called hippies and people unrelated by marriage living together or, even worse, living in communes. Moreno, a U.S. citizen, applied for food stamps for herself and her children. She was denied food stamps because she was living in a group home with other unmarried women and their children.

**Issue:** Have Moreno's rights to equal protection been violated?

**Rule:** The government must treat all people the same unless there is a valid reason for not doing so. (Extremely simplified rule of equal protection.)

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts: Copy something from the "facts" above. COPY ONLY. This is because many students put conclusions here, not facts. If the conclusion is put here, the answer will be incorrect. If there are no facts related to the legal element put "no facts."	Notes or comments
Government	=	Law passed by U.S. Congress: the Federal Food Stamp Act	
Type of treatment being given to the people is same or not	=	Family members in homes or apartments get food stamps but people in group homes do not	
Valid reason	≠	Congress does not like hippies and people unrelated by marriage living together or living in communes	

**Conclusion:** No.

(Example A.1.2 continues on Page 17)

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word “because,” relevant facts, and relevant legal elements.

Yes, Moreno's rights to equal protection have been violated because people like her who live in group homes with unrelated people do not qualify for food stamps, but people who live with family members are eligible for food stamps. The reason given for this by Congress is they do not like hippies and people unrelated by marriage living together or living in communes. This is not a valid reason for denying food stamps.

Note to instructor: This example is based on an actual case, *Department of Agriculture v. Moreno*, 413 U.S. 528 (1973), and the US Supreme Court decided that the reasons given by Congress were not valid. The court believed the type of home people live in is not relevant to whether they get the benefit.

#### **Example A.1.3. Equal Protection**

**Facts:** Sparky's Country Stores' owner, Sparky, has decided to distribute food baskets and coupons redeemable at his store to people he thinks are “needy.” He set guidelines for eligibility to receive the baskets and coupons as follows: they will be given only to those households whose members are all related to each other by either blood or marriage and living in a single-family residence or apartment. This was done because he did not want college students living in dorms, fraternities, unmarried college students, and other unmarried couples receiving the benefits. He did this because he wanted to help only traditional families or families where one parent was gone. It is his belief that unmarried people of the opposite sex should not be living together. Beth, a college student in the area, asked to be given one of the food baskets and coupons. She was denied because she lives with her boyfriend in an apartment. She claims her right to equal protection has been violated.

**Issue:** Has Beth's right to equal protection been violated?

**Rule:** The government must treat all people the same unless there is a valid reason for not doing so. (Extremely simplified rule of equal protection.)

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts: Copy something from the “facts” above. COPY ONLY. This is because many students put conclusions here, not facts. If you put the conclusion here, your answer will be incorrect. If there are no facts related to the legal element put “no facts”.	Notes or comments
Government	≠	Sparky's Country Store	
Type of treatment being given to the people, equal or not	=	People in homes or apartments get baskets but students and unmarried cohabitating partners do not	
Valid reasons given	= or ≠	Wants to help traditional families or one parent family. Believes unmarried people should not live together.	

**Conclusion:** No.

(Example A.1.3 continues on Page 18)

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word “because,” relevant facts, and relevant legal elements.

No, her right to equal protection has not been denied because Sparky giving the food baskets only to traditional families and not college students or unmarried cohabitating partners is not a government action but is a decision of a business owner. The rule of equal protection only applies to government action not private actions.

**Example A.1.4. Equal Protection**

**Facts:** Dan attends a public university. He asks his professor if she can give him an extra credit assignment to increase his grade. The Professor White gives Dan an extra credit assignment to bring up his grade but does not give the same opportunity to other students.

**Issue:** Have the equal protection rights of the *other students* in Dan's class been violated?

**Rule:** The government must treat all people the same unless there is a valid reason for not doing so. (Extremely simplified rule of equal protection.)

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts: Copy something from the “facts” above. COPY ONLY. This is because many students put conclusions here, not facts. If you put the conclusion here, your answer will be incorrect. If there are no facts related to the legal element put “no facts”.	Notes or comments
Government	=	Employee of Central University, a public university	
Type of treatment being given to the people, equal or not	=	Some students get extra credit, and some do not	Different groups are being treated differently.
Valid reasons given	≠	No facts.	I can't think of a valid reason for this behavior.

**Conclusion:** Yes.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word “because,” relevant facts, and relevant legal elements.

The other students' rights have been violated because Professor White is a government employee and therefore the rule applies. The professor can treat different groups differently but there must be some reason. However, no reason is given therefore this element is not supported by any fact and therefore automatically fails.

**Example A.1.5. Due Process**

**Facts:** After several weeks' notice and many public hearings at the county level, the county of Isabella adopted an ordinance that requires dogs to be licensed and to be kept in an enclosed yard or other enclosed area. The ordinance allows the city Dog Catcher to pick up stray dogs and euthanize them before the end of the business day. Your dog gets out one day and you go to the pound the next day, but find that your dog has been euthanized. Has your constitutional right to due process been violated? CAUTION: THERE ARE TWO GOVERNMENT ACTIONS HERE, but you need only worry about the second one involving euthanizing the dog.

**Issue:** Have your due process rights been infringed because your dog was euthanized?

**Rule:** The government cannot take away your rights or property without fair processes or procedures. (Extremely simplified rule of due process.)

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts: Copy something from the "facts" above. COPY ONLY. This is because many students put conclusions here, not facts. If you put the conclusion here, your answer will be incorrect. If there are no facts related to the legal element put "no facts".	Notes or comments
Government	=	County of Isabella, government entity	
Rights or property are being taken	=	Dog is a piece of property	Only look at the euthanasia
Fair processes or procedures	≠	No notice is given. Only one day, not even an entire day. The owners only have a few hours to recover their property.	

**Conclusion:** Yes.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

Yes, my right to due process has been violated because a government entity, the county of Isabella, took away my property, my dog, without a fair process or procedure. I had only one day's notice and not enough time to retrieve my dog.

**Example A.1.6. Due Process**

**Facts:** You live in a private, planned community and have signed a document called "Covenants and Restrictions." This document is recorded with the deed. It limits the types of homes that can be built in the community and has other rules and regulations for the community. One of the covenants and restrictions is a requirement that dogs be licensed and be kept in a yard or other enclosure. The covenant and restriction allow the planned community's private police force to pick up stray dogs and euthanize them before the end of the business day. Your dog escapes the back yard and is euthanized by the end of the business day by the community's private security.

**Issue:** Have your due process rights been infringed?

**Rule:** The government cannot take away your rights or property without fair processes or procedures. (Extremely simplified rule of due process.)

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts: Copy something from the "facts" above. COPY ONLY. This is because many students put conclusions here, not facts. If you put the conclusion here, your answer will be incorrect. If there are no facts related to the legal element put "no facts".	Notes or Comments
Government	≠	Private planned community	
Rights or property are being taken	=	Dog is a piece of property	
Fair processes or procedures	≠	No notice is given. Only one day, not even an entire day. The owners only have a few hours to recover their property.	

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

No, my right to due process has not been violated because no government entity is involved. The situation involves only a private, planned community. True, a piece of my property, that is my dog, was euthanized. However, I have no rights under the law of due process against a private planned community even though the one day's notice does not seem enough time to retrieve my dog.

**Example A.1.7. Commerce Clause**

**Facts:** Arizona passed a law that restricted the length of trains passing through Arizona. The state said longer trains were dangerous because they held up traffic at intersections and emergency vehicles could not get through. The effect of this law was that all trains entering Arizona had to stop, divide up the train into two or more trains and pay for another engine and engineer who were conveniently waiting at the border to help. These engineers were employed by Arizona companies. The engines were owned by Arizona companies. This also delayed train travel of the goods passing through Arizona by up to two days. Issue: Is the law a valid exercise of Arizona's power under the Commerce Clause of the U.S. Constitution?

**Issue:** Has Arizona violated the Commerce Clause?

**Rule:** State governments cannot prefer in-state businesses over out-of-state business. State governments cannot place an unreasonable burden on interstate commerce. (Simplified law relating to the Commerce Clause of the U.S. Constitution.)

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts: Copy something from the "facts" above. COPY ONLY. This is because many students put conclusions here, not facts. If you put the conclusion here, your answer will be incorrect. If there are no facts related to the legal element put "no facts."	Notes or comments
State government	=	State of Arizona	
Cannot prefer own business OR	=	Trains required to take on an Arizona engineer and engine	
Place unreasonable burden on interstate commerce	=	Delay of up to two days for trains passing through Arizona.	

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

Yes, Arizona's law violates the Commerce Clause in two ways. First, it requires out-of-state trains to stop and take on an Arizona engineer and engine, thus preferring Arizona businesses. Also, a delay of up to two days is an unreasonable burden on interstate commerce.

**Example A.1.8. Commerce Clause**

[Note to Instructors: The case of *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) is reviewed in class and this example tests whether students realize the law applied to the federal government is different than the law applied to the state governments.]

**Facts:** After several years, the U.S. Congress notes that trucks equipped with contour mudguards cause fewer accidents and broken windshields of other vehicles traveling near them on the roads. The U.S. Congress passes a statute that states: all trucks in the United States that travel out of state, must have contour mud guards. This requirement increases the cost of deliveries by approximately \$.75 per load to install and maintain the contour mudguards.

**Issue:** Is the statute a valid exercise of U.S. Congressional power under the Commerce Clause?

**Rule:** The federal government may regulate interstate commerce.

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts: Copy something from the "facts" above. COPY ONLY. This is because many students put conclusions here, not facts. If you put the conclusion here, your answer will be incorrect. If there are no facts related to the legal element put "no facts".	Notes or Comments
Federal government	=	U.S. Congress	Caution, students: Notice the applicable law.
Regulation or law	=	Must have contour mudguards	
Interstate commerce	=	Trucks that travel across state lines	

**Conclusion:** Yes.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

Yes, this is a valid exercise of federal power because the trucks are in interstate commerce. The trucks travel out of state.

## A2. Business Entity Law Legal Analysis Templates

### Example A.2.1. Business Entity

**Facts:** Darby, Inc. bought 100 shares of stock in RI, Inc., a corporation that operated a Taco Bell franchise. RI, Inc. hired Harvey, who had been convicted of sexual assault but was out on work release from prison. After a few weeks Harvey left his Taco Bell shirt at work, walked a  $\frac{1}{2}$  mile to a store parking lot, shot his former girlfriend Robin, her fiancé David, and himself. Both David and Harvey died, but Robin survived, although she was permanently disabled. Robin sued Darby, Inc., RI, Inc., and Taco Bell, Inc. to recover damages for her injuries. [Example based on *Kerl v. Dennis Rasmussen, Inc.*, 267 Wis.App. 827 (2003)]. Several months later, after the discovery process ended, which is when these motions are normally filed, RI, Inc. filed a motion for dismissal with the court and won. Robin's case against RI, Inc. was dismissed because she had no legal basis by which she could recover from RI, Inc.

**Issue:** Is RI, Inc. liable to Robin because its employee, Harvey, injured her?

**Rule:** Employers are liable for the torts of their employees committed within the scope of employment.

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts: Copy something from the "facts" above. COPY ONLY. This is because many students put conclusions here, not facts. If you put the conclusion here, your answer will be incorrect. If there are no facts related to the legal element put "no facts."	Notes or comments
Business entities	=	RI, Inc., a corporation	
Employees acts	=	Employee Harvey shots and injures Robin	
Within scope of employment	≠	In parking lot $\frac{1}{2}$ mile way, not at work, not wearing work shirt	No other facts exist.

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

RI, Inc. cannot be liable for the acts of its employees that are not within the scope of employment. This act occurred away from the restaurant, Harvey was not at work and was not even wearing a work shirt. No connection exists between the employer, RI, Inc., and this event.

**Example A.2.2. Agency**

[Note to Instructors: I give this as a homework reading and I have questions on an online quiz before class to ensure more students read the scenario before coming to class.]

**Facts:** Kotsch, age 50, had extensive real estate holdings in his name. He entered into a written contract with his son, Manuel, giving Manuel the power to manage these extensive real estate holdings. More specifically, in the contract Manuel was empowered “to enter into leases, collect rents, make repairs, and do all that was necessary to manage the properties so they would produce income for Kotsch.” Kotsch was identified as the owner on all deeds. Manuel was paid a percentage of the gross rents. All income from the properties was paid into a bank account in the name of “Kotsch Rental Properties.” Both Kotsch and Manuel had control over this bank account and could write checks. All expenses were paid from this account, including a monthly check Manuel would write to himself for managing the properties. On a regular basis Kotsch and/or Manuel would write a check to Kotsch from the account and Kotsch would spend the money any way he wanted.

At first, Kotsch would buy, sell, trade, and even give away some properties. For example, one year he donated a property to a nonprofit corporation for a homeless shelter. Manuel on occasion would make recommendations to his father about buying or selling properties and sometimes his father would take his advice and sometimes not. Father and son got along very well for years and always discussed buying, selling, and managing the properties, but all the properties remained in only Kotsch’s name. They had no problems with this arrangement for years.

When Kotsch was 80, he met Margaret, a 25-year-old waitress. Kotsch began giving substantial sums of money to Margaret. Manuel saw a deed on one of the pieces of property giving the property to Margaret. Manuel then formed an LLC, Manuel and Kotsch LLC, and prepared and filed new deeds for all the real estate properties deeding all of the properties to “Manuel as agent for Kotsch and the Manuel and Kotsch LLC.” You can assume that it is legal for an agent to hold property belonging to the principal in this way.<sup>21</sup> **You cannot however assume it is legal for Manuel to do so.** What makes it legal for an agent to do this, or anything? Manuel did nothing different as far as the money was concerned and continued to manage all of the real estate properties the same. The bank account was the same and not changed. However, by changing the name on the deeds to “Manuel as agent for Kotsch,” Kotsch was no longer able to transfer any of the properties to Margaret or anyone else if he wanted. Kotsch was now required to get Manuel’s signature on a deed if he wanted to give the property to Margaret or otherwise dispose of the property. When Kotsch found out about this he fired Manuel as his agent and hired Claudia; however, Claudia had some problems because of the deeds that had been recorded by Manuel. (This problem is long enough; I do not want to get into more detail). Kotsch sued to have the deeds Manuel had recorded voided, that is, nullified. If the court did this, all the properties would once again be in Kotsch’s name and Kotsch could give them to whoever he wanted, including Margaret. Should the court nullify Manuel’s deeds and put the properties back into Kotsch’s name? [Based on *Kotsch v. Kotsch*, 608 So.2d 879 (Fla. App. 1992)].

**Issue:** Will the court order Manual to make new deeds returning the property to his father?

**Rule:** The principal is liable for the acts of its agents within the scope of power given to the agent.

(Example A.2.2 continues on Page 25)

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<sup>21</sup>When an agent holds property in the agent’s name for the principal, the word “trustee” is usually used instead of “agent” but I do not want to confuse you with a new term, so we will continue to use the term “agent”.

**Analysis:** Use the table below to help you come to the conclusion.

Legal Elements/Law	= or ≠	Facts. If no facts to support element, put "no facts"	Notes or comments
Principal/agent relationship	=	Kotsch gave Manuel power to manage property for Kotsch.	
Act within scope of power given to agent	≠	Power to manage but he made new deeds.	

**Conclusion:** Yes.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

Yes, the court should nullify the deeds and return the properties to Kotsch because Manuel acted outside the scope of the authority he was given by his father. The father gave him the authority to manage the property but not to prepare new deeds removing the property from the father's control. No facts indicate the father gave his son the power to do this.

#### Example A.2.3. Agency Good Faith

[Note to Instructors: I give this as a homework reading and I have questions on an online quiz before class to assure students read the scenario before coming to class.]

**Facts:** Tillie Flinn Corporation's stock was owned by several hundred stockholders. Marta was the Chief Financial officer of the corporation and had control over many of the corporate bank accounts. For example, she could authorize various funds to be paid to different divisions to meet their budgets. The corporation was earning only about 1% interest on the money kept in one account. Marta removed \$200,000 from the account, invested it in a short-term investment, and made \$20,000. She then returned the \$200,000 to the corporate bank account, together with \$1,000 of the \$20,000 she made. You can assume that the \$1,000 represents exactly the interest the corporation would have made on the \$200,000 had the money remained in the corporate bank account. In other words, the corporation did not lose any money because Marta did this. The corporate president found out what Marta had done, terminated Marta, and sued Marta for \$19,000 plus punitive damages. Marta says the corporation did not lose any money because of what she did, and she is not liable.

**Issue:** Is Marta liable to the corporation for damages?

**Rule:** The agent must always act in the principal's best interest. An agent can never make a secret profit on any transaction related to the principal. If the agent does, he or she must pay the principal all secret profits. In addition, agents can be required to pay punitive damages.

**Analysis:** Use the table below to help you come to the conclusion. (*Example A.2.3 continues on Page 26*)

Legal Elements/Law	= or ≠	Facts. If no facts to support element put "no facts"	Notes or comments
Principal-agent relationship	=	Marta is the CFO of the company.	
Agent made secret profit	=	She took company money and made \$19,000 profit without telling anyone.	
Punitive damages can be awarded	=	Marta breached her duty of loyalty to the company by taking a secret profit	

**Conclusion:** Yes.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word “because,” relevant facts, and relevant legal elements.

Yes, the corporation is entitled to \$19,000 plus punitive damages because Marta, the agent of the corporation, made a secret profit on the corporation’s funds. The law requires all secret profits to be paid to the corporation. In addition, she may be liable for punitive damages because the law states that an agent who breaches her duty may be liable for punitive damages.

### A3. Common Law Contract Legal Analysis Templates

#### Example A.3.1. Common Law Contract

**Facts:** You can assume the following appeared in the local paper:

“REWARD OFFERED IN POP MACHINE CASE”

The Pepsi Bottling Group published a notice on their local Facebook page offering a \$500 reward for information leading to the arrest and conviction of people stealing money from pop machines during the past month. The Michigan State Police and Mt. Pleasant Police have been investigating several thefts from machines in the area. Anyone with information is asked to call. Brisa gives information (after the Facebook notice is published) that leads to arrest and conviction of a third party. Is Brisa entitled to \$500 from Pepsi under contract law?

**Issue:** Has a contract been formed between Brisa and the Pepsi bottling Group?

**Rule:** A contract is formed when there is an offer, acceptance, consideration, and in some cases a writing/authentication/record signed by the party to be charged, is required. (Note to students: All laws would be discussed here in detail, but this section is shortened for this in-class exercise and not all the law of contract formation is mentioned here. You only need to use the four elements listed here in your analysis of the issue.)

**Analysis:** Use the table below to help you come to the conclusion.

**Note to instructors:** The author always teaches the concept of consideration first because it is the most difficult concept and the author has found students grasp it better when it is not confused with the offer and acceptance elements. However, the order of the elements can be redone to suit any method. (*Example A.3.1 continues on Page 27*)

Legal elements	= or ≠	Facts. If no facts to support the legal element write “no facts”.	Notes and comments
Consideration	=	Brisa is to receive \$500 and Pepsi is to give up \$500. Brisa to give information, Pepsi to get information.	
Offer	=	On Facebook page offered \$500 reward for information	Reward example
Acceptance	=	Brisa gives information that leads to arrest and conviction.	Acceptance by act ok
Writing/Authentication/Record	=	Facebook page	No record is needed for this type of contract, but it does exist.

**Conclusion:** Yes.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

Yes, a contract has been formed between Brisa and the Pepsi Bottling Company because all of the legal elements exist and are supported by the facts - consideration, offer, and acceptance. In addition, no writing is needed for this type of contract. The consideration (legal element) is that Brisa gives information, Pepsi gets information. Pepsi made an offer (legal element) of \$500 (fact) via the Facebook page (fact). Brisa accepted (element) the offer by performing the act requested and giving the information (fact). The law recognizes acceptance by act. No authentication/record (element) is required for this type of contract but the Facebook page (fact) does document the offer.

#### **Example A.3.2. Common Law Contract**

**Facts:** Bertha Jorkins approached Mockridge Cuthbert about buying his farm. They talked about the income produced by the farm, looked over the books and records, and walked around the farm. Bertha said, "I will pay you \$100,000 for the farm." Mockridge said, "Great. Let's shake on it." Both shook hands. No paperwork was ever completed. Shortly after this conversation Bertha discovered that the farm had been appraised at \$75,000 one month earlier. She told Mockridge she was no longer interested and refused to purchase the farm. She said no contract had been formed. Mockridge sued her for breach of contract.

**Issue:** Has a contract been formed between Bertha and Mockridge?

**Rule:** A contract is formed when there is an offer, acceptance, consideration, and in some cases a writing/authentication/record signed by the party to be charged, is required. (Note to students: All laws would be discussed here in detail, but this section is shortened for this in-class exercise and not all contract formation laws are mentioned here. You only need to use the four elements listed here in your analysis of the issue.)

**Analysis:** Use the table below to help you come to the conclusion.

Legal elements	= or ≠	Facts. If no facts to support the legal element write "no facts".	Notes and comments
Consideration	=	\$100K in exchange for farm	
Offer	=	Bertha Jorkins said, "I will pay you \$100,000 for the farm."	
Acceptance	=	Mockridge Cuthbert said, "Great. Let's shake on it."	
Writing/Authentication/ Record	≠	No facts	Real estate requires a writing/record.

**Conclusion:** No

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

No contract is formed because no facts exist to show there is a writing/authentication/record. Some type of writing/authentication/record is needed for the sale of real estate. In this situation we have the sale of a farm, which is a type of real estate.

### Example A.3.3. Common Law Contract

Zonk rented a store in Hog's Head Village and operated a joke shop out of the space. The Weaz brothers wanted to buy out Zonk's joke shop business, take over Zonk's lease, and remodel the store after their very successful operation in London. Assume the owner of the shop has no objection to this transaction. During a meeting, the Weaz brothers present a written offer to pay Zonk \$200,000 for the business and in addition they want a provision in the contract that he will not open a competing shop within 50 miles of the Hog's Head Village for 5 years. Zonk says the minimum price of the shop is \$250,000. All sign a contract with these terms, including the \$250,000 price.

**Issue** Has a contract been formed between Zonk and the Weaz brothers?

**Rule:** A contract is formed when there is an offer, acceptance, consideration, and in some cases a writing/authentication/record signed by the party to be charged, is required. (Note to students: All laws would be discussed here in detail, but this section is shortened for this in-class exercise and not all the law of contract formation is mentioned here. You only need to use the four elements listed here in your analysis of the issue.)

**Analysis of first offer:** Use the table below to help you come to the conclusion.

Legal elements	= or ≠	Facts. If no facts to support the legal element write "no facts."	Notes and comments
Consideration	=	\$200K in exchange for business	
Offer	≠	Written offer of above	Terminated by counteroffer
Acceptance	≠	No facts	Offer terminated by counteroffer
Writing/Authentication/Record	=	N/A	Not needed for this type of contract but this offer is terminated so nothing needed here

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

No acceptance (legal element). There is a counteroffer (law word would be elaborated upon in a paper but ok for here) instead. The first offer (legal element) was \$200,000 (facts) and it was countered by the \$250,000 (fact). No contract is formed on this first offer. (Conclusion).

**Analysis of second offer:** Use the table below to help you come to the conclusion. (Example A.3.3 continues on Page 29)

Legal elements	= or ≠	Facts. If no facts to support the legal element write "no facts".	Notes and comments
consideration	=	\$250K for business	
offer	=	Z says minimum price is \$250K	
acceptance	≠	Weazs sign contract	
writing/authentication/record	≠	Written contract	

**Conclusion:** Yes.

**Written legal analysis:** Using the legal analysis table above write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

All elements of contract formation exist, and the contract has been formed on the second offer. The first offer was terminated by the counteroffer of \$250,000. We have offer, acceptance, consideration, and an authentication. (Legal elements listed for reader) The offer (legal element) is \$250,000 (fact), the acceptance (legal element) is shown by the signed contract (fact), and the consideration (legal element) is \$250,000 in exchange for the business (facts). We have a writing (legal element), the written contract (fact), although no writing is required for this type of transaction (law that would be elaborated on in a paper but is fine for here).

#### **Example A.3.4. Common Law Contract**

**Facts:** Twenty years after you take this class you are successful and wealthy. The key to your wealth was your understanding of the concept of consideration taught in business law class. You look up your law professor and find out she is still living in Michigan. In May you send her an email saying, "I have already rented out my condo in Florida for next winter, but the following winter, I want you to have it free for the months of January, February, March, and April. I am sure you would like to get out of the Michigan weather." Your professor sends you a nice thank you note stating, "Great, I will be looking forward to this for the next 18 months, I am sure!!" However, several months later you send her a letter saying that circumstances have changed, and you are letting your boss's son use the condo instead. Your law professor sues you for \$20,000, the fair market value of the condo for those four months.

**Issue:** Has a contract been formed between you and your law professor?

**Rule:** A contract is formed when there is an offer, acceptance, consideration, and in some cases a writing/authentication/record signed by the party to be charged, is required. (Note to students: All laws would be discussed here in detail, but this section is shortened for this in-class exercise and not all laws of contract formation is mentioned here. Use only the four elements listed here in your analysis of the issue.)

**Analysis:** Use the table below to come to the conclusion.

Legal elements	= or ≠	Facts. If no facts to support the legal element write "no facts."	Notes and comments
Consideration	≠	No facts	You get nothing. Past consideration is no consideration.
Offer	=	Email saying "I want you to have..."	
Acceptance	=	Thank you note says "Great..."	
Writing/Authentication/ Record	=	Email	

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

No consideration (legal element) exists and therefore no contract has been formed (conclusion). The professor gets the use of the condo free and I get nothing out of the situation (facts).

**Example A.3.5. Common Law Contract**

**Facts:** Bluebonnet Lighting and Power Company sent a letter and a fancy, color brochure to real estate developers that stated "We will install, for developers of single family dwellings along Meridian Rd. between Hwy. 20 and Blue Grass, residential electrical service for a construction charge of only \$500 between 1/1/xx and 12/31/xx." Zoning along Meridian Road requires homes with a minimum of one acre. Also, the normal price for this service is \$1,500 per home or unit to be connected to electrical service. A mobile home park developer called up Bluebonnet and said, "We accept your offer and will send over the plans and address so you can install the electrical service." The agent of Bluebonnet said, "Thank you and we are looking forward to seeing your plans." When the plans arrived Bluebonnet discovered that the project was for a mobile home park with 10 units to be on one acre and the parcel was located near Hwy 20 but not on Meridian Rd. Bluebonnet refused to supply the residential electrical service claiming no contract had been formed. The mobile home park developer sued for breach of contract. (Based loosely on *Edmunds v. Houston Lighting & Power*, 472 S.W.2d 797 (Tex.App. 1971)).

**Issue:** Has a contract been formed between Bluebonnet and the mobile home park developer?

**Rule:** A contract is formed when there is an offer, acceptance, consideration, and in some cases a writing/authentication/record signed by the party to be charged, is required. (Note to students: All laws would be discussed here in detail, but this section is shortened for this in-class exercise and not laws of contract formation is mentioned here. You only need to use the four elements listed here in your analysis of the issue.)

**Analysis:** Use the table below to help you come to the conclusion.

Legal elements	= or ≠	Facts. If no facts to support the legal element write "no facts".	Notes and comments
Consideration	=	Money in exchange for electrical service	
Offer	=	Brochure/letter "single family homes..."	There are two offers in this scenario. Use this box for the first offer.
Acceptance	≠	Mobile home park	Mobile home park ≠ single family residence
Writing/Authentication/Record	=	Brochure/letter	

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

No acceptance (legal element) was made. The developer tried to accept the offer however, its purported "acceptance" did not mirror the offer. The purported acceptance was for a mobile home park not for a single-family residence. (Facts), (You can alternatively mention the location; both facts are important but for this exercise either or both will be accepted). The developer made a counteroffer (law) not an acceptance (conclusion about the lack of acceptance). Bluebonnet did not accept (legal element) the developer's counteroffer (law) but refused to complete the work (facts). No contract has been formed (conclusion).

(Example A.3.5 continues on Page 31)

THIS SITUATION ACTUALLY CONTAINS TWO OFFERS. CAN YOU FIND THE SECOND ONE?

Legal elements	= or ≠	Facts. If no facts to support the legal element write "no facts".	Notes and comments
Consideration	=	Money in exchange for electrical service	
Offer	=	Plans for mobile home park	There are two offers in this scenario. Use this box for the second offer. This is the counteroffer
Acceptance	≠	Blue refuses to do the work	
Writing/Authentication/Record	=	Written plans	

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

No acceptance (legal element) of the developer's offer (legal element) for Bluebonnet to install electrical service for its mobile home park (facts) was made by Bluebonnet. The company refused to do the work (facts). Therefore, no contract was made on the developer's offer. (Conclusion).

#### **Example A.3.6. Common Law Contract**

**Facts:** Super Cleaners contacts you and offers to clean the event center that you own for \$5,000/month for 1 year. You review the written contract they have sent to you, sign and return it to Super Cleaners, which also signs. **YOU CAN ASSUME A VALID CONTRACT WAS FORMED FROM THE ABOVE ACTIONS AND THIS PROBLEM HAS NOTHING TO DO WITH THIS CONTRACT.** Two months into the above contract Super Cleaners sends a "revised contract" for the same cleaning services at \$5,500 per month for the remaining 10 months of the contract. They claim that the minimum wage has increased, and health insurance has risen. This statement is correct; they have. You object and try to find another company to do the work for \$5,000 however, the only other contract you can get is for \$6,000/month. You sign the "revised contract" with Super Cleaners and send them an email saying it is under protest. They send you an email that says, "We do not accept your protest." Many emails go back and forth on the topic. The bottom line is you pay \$5,500/month for 9 months but at the end of the year you pay only \$500 for the last month, claiming that you are only obligated to pay under the first contract for \$5,000/month. Super Cleaners sues you for \$5,000.

**Issue:** Do you owe Super Cleaners \$5,000?

**Rule:** A contract is formed when there is an offer, acceptance, consideration, and in some cases a writing/authentication/record signed by the party to be charged, is required. (Note to students: All laws would be discussed here in detail, but this section is shortened for this in-class exercise and not all the law of contract formation is mentioned here. You only need to use the four elements listed here in your analysis of the issue.)

(Example A.3.6 continues on Page 32)

**Analysis:** Use the table below to help you come to the conclusion. USE THIS BOX FOR THE "REVISED CONTRACT" ABOVE not the original contract.

Legal elements	= or ≠	Facts. If no facts to support the legal element write "no facts".	Notes and comments
Consideration	≠	Super gets \$5.5K month/you get same as you had before	You get nothing new or additional.
Offer	=	Super Cleaners sends you a revised contract for \$5.5/month	
Acceptance	=	You review the revised contract and sign it	Sign under protest
Writing/Authentication/Record	=	Written contract	

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

There was no consideration given for the "revised contract," therefore no revised contract has been formed. Super is only getting the same service it was paying \$5,000 a month for but is now paying \$5,500/month. It did not get something additional in exchange for its acceptance of the revised offer.

#### Example A.3.7. Common Law Contract

**Facts:** Treece appeared before the State Gambling Commission at his hearing to obtain a license to sell punchboards. Punchboards are similar to scratch off lottery tickets and are sometimes sold at places like the Elks Clubs or other organizations to raise money. These hearings are recorded and Treece knew the hearing was to be recorded and was in fact recorded. An issue arose regarding whether punchboards were reliable or whether they could be easily used to defraud buyers. At this point in the hearing Treece said, "I'll pay \$100,000 to anyone who finds a fraudulent punchboard. If they find it, I will gladly pay it." A reporter happened to be at the hearing and reported the above on television with a video clip of the exchange. Barnes saw the news story on television. He had obtained two fraudulent punchboards years ago. He presented them to Treece and demanded \$100,000. Treece refused to pay the \$100,000 claiming no contract was formed. Barnes sued Treece for breach of contract. [Loosely based on *Barnes v. Treece*, 549 P.2d. 1142 (Wash.App. 1976)].

**Issue:** Has a contract been formed between Treece and Barnes for Treece to buy the fraudulent/crooked punchboards?

**Rule:** A contract is formed when there is an offer, acceptance, consideration, and in some cases a writing/authentication/record signed by the party to be charged, is required. (Note to students: All laws would be discussed here in detail, but this section is shortened for this in-class exercise and not laws of contract formation is mentioned here. You only need to use the four elements listed here in your analysis of the issue.)

(Example A.3.7 continues on Page 33)

**Analysis:** Use the table below to help you come to the conclusion. NOTICE THAT I HAVE GIVEN YOU THE FACT TO USE FOR THE OFFER ELEMENT. USE ONLY THIS FACT IN THAT LOCATION.

Legal elements	= or ≠	Facts. If no facts to support the legal element write "no facts".	Notes and comments
Consideration	=	\$100,000 in exchange for fraudulent boards.	
Offer	≠	Treece said, "I'll pay \$100,000 to anyone who finds a crooked board. If they find it, I will pay it."	Note to students: You must use this fact for the offer element analysis only.
Acceptance	= ≠ or =	"Nothing to accept" or "Presented the two punchboards."	More than one acceptable answer
Writing/Authentication/Record	= =	Video	

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

No contract has been formed because no offer has been made. The statement "I'll pay \$100,000" was made as a joke to try to get a license. He had no serious intention of buying crooked boards and anyone listening should have realized that. Since no offer was made, there was nothing to accept and no contract could be formed.

THIS SITUATION ACTUALLY CONTAINS TWO OFFERS. CAN YOU FIND THE SECOND ONE?

Legal elements	= or ≠	Facts. If no facts to support the legal element write "no facts".	Notes and comments
Consideration	=	\$100,000 in exchange for crooked board.	
Offer	=	Barnes presented the crooked boards to Trecee.	No special words are needed for an offer
Acceptance	≠	Treece refused to pay.	
Writing/Authentication/Record	=	Video	

**Conclusion:** No.

**Written legal analysis:** Using the legal analysis table above, write one or two sentences supporting your conclusion. Your answer must contain the word "because," relevant facts, and relevant legal elements.

No contract has been formed because no acceptance exists. Barnes did offer the two crooked boards to Trecee in exchange for \$100,000 but Trecee did not accept the offer. From the circumstances it appears Barnes is serious about the offer and would have accepted the money if Trecee had been willing to pay it.

## Appendix B: Sample Instructions to Students and Professors

**Step One:** Determining the legal elements and putting them in the left-hand column of the template.

*Step One Instructions:* For this exercise, complete Step One of the Legal Analysis Template – determine the legal elements and put them into the left-hand column of the template. Ignore the other columns in the legal analysis template table and put only the legal elements in the left-hand column. The number of lines is only a suggestion. This type of analysis is an art and some students may put more or fewer lines and that is acceptable as long as all the legal elements in the simplified rule you are given are included. You may write any notes or comments in the right-hand column.

**Step Two:** Determine the facts, if any, related to the legal elements and put them in the right-hand column of the template.

*Step Two Instructions:* For this exercise only complete Step Two of the Legal Analysis Template - determining which facts relate to the legal element. The facts may be insufficient to support the legal element, but you do not have to worry about that at this point. If no facts exist related to the element, just write "no facts" in the cell. If facts do not exist, it is an automatic failure to support the legal elements. You may wish to write a note or comment in the right-hand column.

**Step Three:** Determining whether the facts support the legal element or not and coming to the conclusion to the issue. If yes, the facts support the legal element, put an equal sign (=) in the center column. If not, put a not equal sign (#) in the center column.

*Step Three Instructions:* For this exercise you will only complete Step Three of the Legal Analysis Template - determining if the facts support the legal element or not. This will also allow you to come to a conclusion. If, in your opinion, the facts support the legal element put an equal (=) sign in the cell; if not put a not equal sign (#) in the cell. Then, fill in the conclusion with one or two words to answer the issue. You may wish to write a note or comment in the right-hand column, especially if there is a not equal sign and explain why.

**Step Four:** Writing the analysis

*Step Four Instructions:* For this exercise you will be completing the legal analysis template including the table, the conclusion, and writing the analysis. Fill in the table and come to a conclusion. When finished, write two or three sentences explaining your reasons for the conclusion using both the facts and the legal elements. Use both the facts and the legal elements or the analysis will not be complete. You may wish to include notes or comments in the right hand column.