**Chapter 6:** **Introduction to Legal Analysis**

**Review Questions**

**6.1.** Define legal analysis.

**6.2.** What is the basic structure of legal analysis?

**6.3.** What does IRAC stand for and what is its function?

**6.4.** What is a memorandum of law?

**6.5.** Define element of a rule.

**6.6.** Give three reasons that rules are sometimes difficult to break into elements.

**6.7.** What is a cause of action?

**6.8.** List seven benefits of breaking rules into their elements.

**6.9.** Once you have identified the element in contention, you have the basis of a legal \_\_\_\_\_\_\_\_\_\_.

**6.10.** When is an element in contention?

**6.11.** What are the two components of a comprehensive statement of an issue?

**6.12.** What is a dispute called when it is over the truth or falsity of an alleged fact?

**6.13.** Ambiguous language within an element in contention can often be defined \_\_\_\_\_\_\_\_\_\_ or \_\_\_\_\_\_\_\_\_\_.

**6.14.** What is the distinction between an element and a factor?

**6.15.** Define:

1. brief of a court opinion

(b) trial brief

(c) appellate brief

**6.16.** Define:

(a) appellant

(b) appellee

(c) respondent

**6.17.** The calendar number of a case is its \_\_\_\_\_\_\_\_\_\_ number.

**6.18.** When the equivalent of an appellate brief is filed in a trial court, what is it often called?

**6.19.** Name two major systems for checking the subsequent history of an opinion.

**6.20.** What is a citator?

**6.21.** What is the name of the one paragraph summary of an opinion often placed at the beginning of the opinion?

**6.22.** Define headnote.

**6.23.** Name two places where headnotes are printed.

**6.24.** What does a key number consist of and what is its function?

**6.25.** What are per curiam and memorandum opinions?

**6.26.** What is a key fact?

**6.27.** What does a court do when it construes a statute?

**6.28.** Stare decisis means that a court should be reluctant to reject \_\_\_\_\_\_\_\_\_\_.

**6.29.** What happens when an appellate court remands a case?

**6.30.** What is res judicata?

**6.31.** Define dictum.

**6.32.** Distinguish among:

(a) majority opinion

(b) concurring opinion

(c) dissenting opinion

**6.33.** What should you include in the following parts of the brief of an opinion:

1. citation
2. parties
3. objectives of the parties

(d) theories of the litigation

(e) history of the litigation

(f) facts

(g) issue(s)

(h) holding(s)

1. reasoning

(j) disposition

**6.34.** A thumbnail brief is a brief of a(n)\_\_\_\_\_\_\_\_\_\_.

**6.35.** When is an opinion analogous?

**6.36.** Describe two distinctions between common law and enacted law.

**6.37.** Give four examples of enacted law.

**6.38.** Judge-made law in the absence of controlling statutory law or other higher law is called \_\_\_\_\_\_\_\_\_\_ law.

**6.39.** When you apply an opinion, what two things do you compare?

**6.40.** An opinion is \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ when its facts are exactly the same or almost exactly the same as the facts of your case.

**6.41.** For the holding in an opinion to apply, the \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ in the opinion must be substantially the same as the facts of your case.

**6.42.** When comparing the facts of the opinion with the facts of your case, what three comparisons do you make?

**6.43.** In which component of IRAC do you discuss the potential applicability of court opinions?

**6.44.** When comparing facts, what do you try to show when you want the holding to apply?

**6.45.** When comparing facts, what do you try to show when you do *not* want the holding to apply?

**6.46.** What is a roadmap paragraph?

**ANSWERS**

**Chapter 6: Introduction to Legal Analysis**

**6.1.** Legal analysis is the application of one or more rules to the facts of a client’s case in order to answer a legal question that will help (1) keep a legal dispute from arising, (2) resolve a legal dispute that has arisen, or (3) prevent a legal dispute from becoming worse.

**6.2.** The basic structure of legal analysis is as follows: Rule + Facts + Issue + Connection

 (application of rule to the facts) = Conclusion.

**6.3.** IRAC stands for: **I**: Issue; **R**: Rule; **A**: Application of Rule to the Facts; **C**: Conclusion.

IRAC is an acronym that describes the legal analysis process. IRAC provides a structure

 for legal analysis.

**6.4.** A memorandum of law is a written explanation of how the law might apply to the fact

situation of a client.

**6.5.** An element is a component or portion of a rule that is a precondition of the applicability

of the entire rule.

**6.6.** Rules are sometimes difficult to break into elements because the rule:

1. contains lists
2. contains alternatives
3. contains exceptions or provisos

**6.7.** A cause of action is a legally acceptable reason for suing. Facts that give a party the right to judicial relief.

**6.8.** Element identification helps:

1. identify issues
2. draft a complaint
3. draft an answer
4. organize a client interview
5. organize an investigation
6. conduct a deposition
7. organize a memorandum of law
8. organize an examination answer
9. charge a jury

**6.9.** Once you have identified the element in contention, you have the basis of a legal issue.

**6.10.** An element is in contention when you can predict that the other side in the controversy

will probably not agree on the definition of the element, on whether the facts fit within

 the element (i.e., within the definition), or both.

**6.11.** The two components of a comprehensive statement of a legal issue are:

1. a brief quote from the element in contention
2. several of the important facts relevant to that contention

**6.12.** When a dispute is over the truth or falsity of an alleged fact, it is called a question of fact or a factual issue.

**6.13.** Ambiguous language within an element in contention can often be defined broadly or

narrowly.

**6.14.** An *element* is a precondition of the applicability of a rule. The rule cannot apply unless

each element of that rule applies. Sometimes, however, there is no traditional definition

 of an element. Instead, the rule will list *factors* that are to be considered in determining

 the applicability of the element. A factor is simply one of the circumstances or

 considerations that will be weighed in making a decision, no one of which is conclusive.

**6.15.** Definitions:

 (a) Brief of a court opinion: A summary of the main or essential parts of a court opinion.

(b) Trial brief: (1) An attorney’s personal notes on how to conduct a trial (also called *trial manual* or *trial book*). (2) An attorney’s presentation to a trial court of the legal issues and positions of his or her client (also called *trial* *memorandum*).

(c) Appellate brief: A document submitted (filed) by a party to an appellate court (and served on an opposing party) in which arguments are presented on why the appellate court should affirm (approve), reverse, or otherwise modify what a lower court has done.

**6.16.** Definitions:

 (a) The appellant is the party bringing the appeal because of dissatisfaction with the

 ruling or decision of the lower court.

1. The appelleeis the party against whom the appeal is brought.
2. Respondent is another name for appellee.

**6.17.** The calendar number of a case is its docket number.

**6.18.** When the equivalent of an appellate brief is filed in a trial court, it is often called a memorandum of points and authorities.

**6.19.** Two major systems for checking the subsequent history of an opinion are *Shepard’s* *Citations* and KeyCite.

**6.20.** A citator is a book, CD–ROM, or online service containing lists of citations that can (a) help you assess the current validity of an opinion, statute, or other item and (b) give you leads to additional relevant materials.

**6.21.** The one paragraph summary of an opinion often placed at the beginning of the opinion is called the syllabus or case synopsis.

**6.22.** A headnote is a short paragraph summary of a portion of a court opinion (usually

 covering a single issue or subissue) printed before the opinion begins.

**6.23.** Headnotes are printed:

1. at the beginning of the opinion
2. in the digests of West Group

**6.24.** A key number consists of a general topic (e.g., Searches and Seizures) and a number for

one of its subtopics (e.g., 3.8 [1]). Key numbers are used by West Group to organize

 millions of cases by topic in its digests.

**6.25.** Definitions:

 (a) Per curiam opinion (an opinion “by the court” as a whole): A court opinion, usually a short one, that does not name the judge who wrote it.

 (b) memorandum opinion (mem.): The decision of a court with few or no supporting reasons, often because it follows established principles. It is also called a *memorandum* *decision*.

**6.26.** A key fact is a critical fact; a fact that is essential or very important to the decision (holding) reached by the court.

**6.27.** When a court construes a statute, the court interprets it.

**6.28.** Stare decisis means that a court should be reluctant to reject precedent.

**6.29.** When an appellate court remands a case, it sends it back to a lower court with

 instructions on how to proceed.

**6.30.** Res judicata (“a thing adjudicated”) means that a final judgment on the merits will

 preclude the same parties from later relitigating the same claim and any other claim based

 on the same facts or transaction that could have been raised in the first suit but was not.

 It is also called *claim preclusion*.

**6.31.** Dictum is (a) A statement or observation made by a judge in an opinion that is not

essential to resolve the issues before the court; a comment that goes beyond the facts

 before the court. It is also called *obiter dictum*. (b) An authoritative, formal statement

 or announcement.

**6.32.** Definitions:

 (a) Majority opinion: The opinion whose result and reasoning are supported by at least half plus one of the judges on the court.

(b) Concurring opinion: An opinion written by less than a majority of the judges on the court that agrees with the result reached by the majority but not with all of its reasoning.

(c) Dissenting opinion: An opinion that disagrees with the result and the reasoning used by the majority or plurality opinion.

**6.33.** Parts of the brief of an opinion:

 (a) The *citation* tells you where the opinion can be found in a law library or online.

(b) The *parties* are the lead parties in the litigation, their relationship to each other,

 their litigation status when the case began, and their litigation status here in the case

 you are now reading and briefing.

(c) The *objectives of the parties* are the ultimate objectives the parties were seeking

 when the litigation began.

(d) The *theories* of the litigation are the legal theories of both parties, usually the

 cause(s) of action and defense(s).

(e) The *history of the litigation* is a brief summary of each prior proceeding in the

 litigation.

(f) The *facts* are those essential or very important facts that were key to the court’s holding, or the key facts.

(g) The *issue* is the question of law containing a brief quote from the rule in controversy and the important facts that raise this controversy.

(h) The *holding* is the court’s answer to the issue.

(i) The *reasoning* consists of the reasons why the court reached its holding.

(j) The *disposition* is the consequence of the court’s resolution of the issue. What the court ordered.

**6.34.** A thumbnail brief is a brief of a brief.

**6.35.** An opinion is analogous if it is sufficiently similar to justify a similar outcome or result in another case. (Additional definitions of analogous: [a] An opinion that is sufficiently similar to lend support. [b] On point, it is germane, It involves the same or similar issues, and it involves facts and rules that are similar to those now under consideration.)

**6.36.** Definitions:

 (a) Common law is judge-made law created within litigation; enacted law is any law

not created within litigation.

(b) Common law applies mainly to past facts; enacted law is mainly prospective, applicable to future facts.

**6.37.** Four examples of enacted law:

1. constitutions
2. statutes
3. administrative regulations
4. ordinances

**6.38.** Judge-made law in the absence of controlling statutory law or other higher law is called

common law.

**6.39.** Comparisons when applying an opinion:

(a) Rule comparison. First, you compare the rule (enacted law, common law, or both)

that was interpreted and applied in the opinion with the rule that you have

 uncovered elsewhere in your research (or the rule that you have been given) as

 potentially applicable to your problem facts.

 (b) Fact comparison. Second, you compare the key facts of the opinion (i.e., those that were essential or very important to its holding) with your problem facts.

**6.40.** An opinion is on all fours when its facts are exactly the same or almost exactly the same

as the facts of your case.

**6.41.** For the holding in an opinion to apply, the key facts in the opinion must be substantially

the same as the facts of your case.

**6.42.** When comparing the facts of the opinion with the facts of your case, you compare:

1. factual similarities
2. factual differences
3. factual gaps

**6.43.** In the “A” (application) of IRAC you discuss the potential applicability of court opinions.

**6.44.** If you want a holding to apply to the problem facts, you try to show that there is a substantial similarity between all the key facts in the opinion for that holding and the problem facts.

**6.45.** If you do *not* want a holding to apply to the problem facts, you try to show that there is a substantial difference between at least one of the key facts for that holding and the problem facts.

**6.46.** A roadmap paragraph is an overview or thesis paragraph at the beginning of a memorandum of law that tells the reader what issues will be covered and briefly states the conclusions that will be reached.