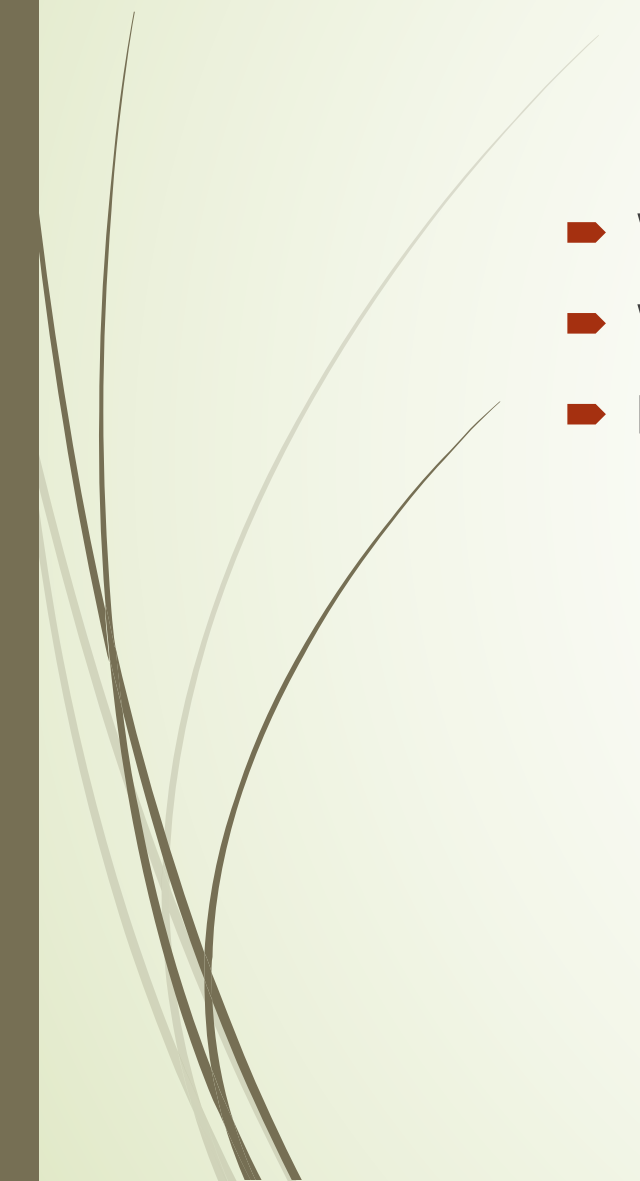


USING TEMPLATES TO TEACH RULE EXPLANATION AND APPLICATION





PROBLEM TO BE ADDRESSED: IMPLEMENTATION

- ▶ We can explain IRAC, CREAC, etc.
 - ▶ We can explain the purpose of Rule Explanation and Application
 - ▶ But how do you actually write the paragraphs?
 - ▶ Students want direction, answers
- 



COMMON PROBLEMS: RULE EXPLANATION

- I can think of thesis ideas, but how do I write a thesis sentence?
- What is a case illustration?
- What information goes into a case illustration?
- What case should I use for a case illustration?

DRAFTING A RULE EXPLANATION PARAGRAPH

- Best Type of Rule Explanation Paragraph Has Thesis Sentence and Case Example
- Case Example: factual example from the case law to prove and/or illustrate the conclusion
 - Demonstrates the type of facts/conduct that do or do not satisfy the element
 - Can also be used as a comparison when we apply the law to the facts in our case
- Case Example Includes:
 - Key/trigger facts
 - Court's holding on that particular element

DRAFTING A THESIS SENTENCE

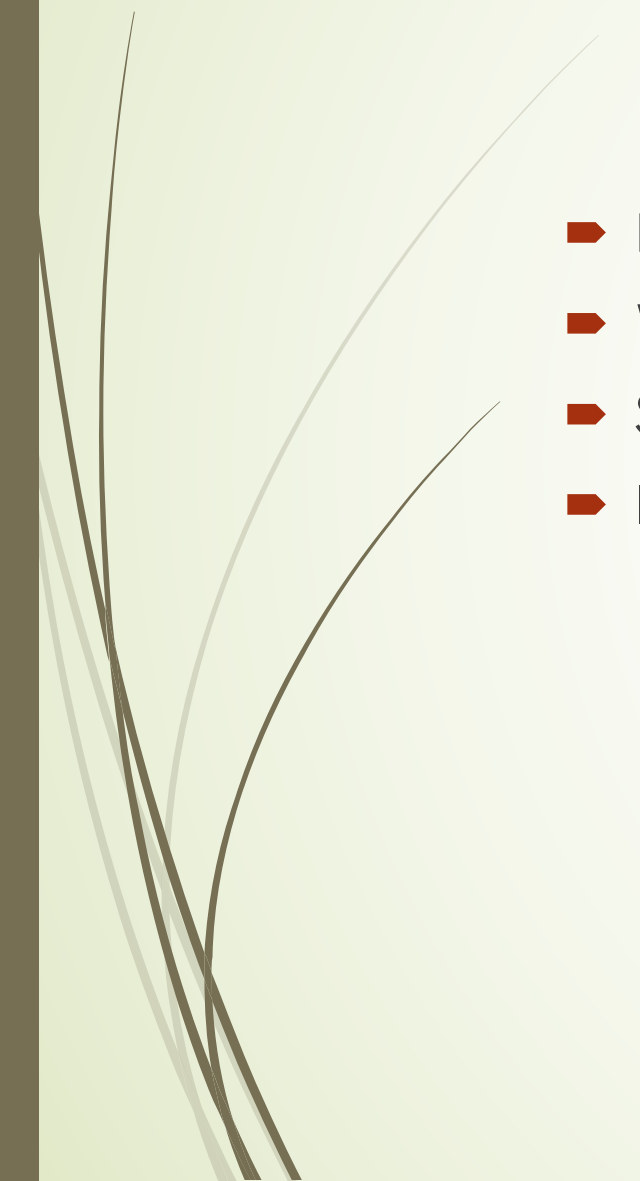
- ▶ States the Conclusion You Will “Prove” in that Paragraph
- ▶ Types of Conclusions
 - ▶ What satisfies the element
 - ▶ What does not satisfy the element
 - ▶ Define term of art in the element
- ▶ Drafting a Thesis Sentence
 - ▶ “This Element Is Satisfied When . . .”
 - ▶ Then substitute language of the element/factor
 - ▶ Make the element the verb (active verbs)
 - ▶ E.g. “A defendant threatens force when she . . .”
 - ▶ Provide a definition for terms of art in the element


RULE EXPLANATION “TEMPLATE”

- THESIS SENTENCE (with cite): conclusion about what satisfies the element of the rule
- FACTS of example: only legally significant or “trigger” facts
 - The facts that led the court to reach its holding
 - Start sentence with “In ____,”
 - Use generic/descriptive terms instead of party names
- HOLDING: state court’s holding in terms of the element you are explaining
 - Start new sentence for the court’s holding: “The court held that”
 - Relate back to the thesis and to the element and state holding in terms of the element
 - State the specific holding in that case; do not just restate the general legal proposition from the thesis sentence
 - E.g. “The court held that the defendant threatened force.”

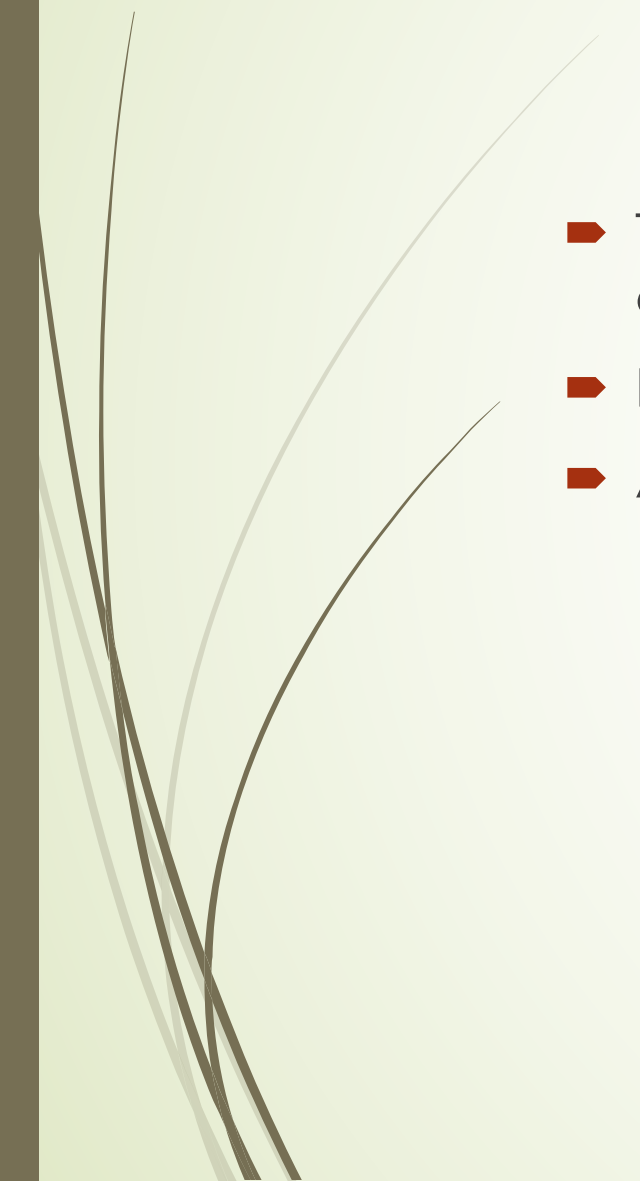


COMMON PROBLEMS: RULE APPLICATION

- How much information do I include?
 - What facts should I include?
 - Should I use an analogy?
 - If so, how do I draft an analogy?
- 



DRAFTING RULE APPLICATION PARAGRAPH

- Thesis sentence: state your conclusion on that thesis idea in our case.
 - Key facts: facts in our case that support your conclusion
 - Analysis: explain how/why those facts support your legal conclusion
 - Direct application of law to fact
 - Analogy
- 


Rule Application: Thesis Sentence

- Legal conclusion about how that element or factor of the rule applies to the facts in your case
- “This element is satisfied because . . .” or “This element is not satisfied because . . .”
- As in Rule Explanation, substitute the key terms of the rule for “this element”
 - “Here, Ms. Buchanan threatened force because she . . .”
- The reason you give in the thesis sentence should mirror the corresponding Rule Explanation thesis sentence.
 - Use the same key words or terms from the rule.
 - In RE, you say “this element is satisfied **when** . . .”
 - In RA, you say “this element is satisfied **because** . . .”
- Start first RA paragraph with a transition: “Here . . .”



Rule Application: Describe Key Facts

- After your thesis sentence, describe the key facts in our case – the facts relevant to this thesis idea for this element
- Include the most important fact(s) -- the “trigger facts” in your case.
- If you are going to make a comparison, you must include the fact that you will use in the comparison
- Include additional facts only if necessary to give context or help the reader understand the trigger facts.



Explain How Facts Support Your Legal Conclusion

- ▶ Apply the law (RE thesis idea/sentence) directly to the facts of your case, if possible.
 - ▶ Do not have to use a comparison or analogy in every Rule Application paragraph.
- ▶ If law does not apply directly to facts, or the application is not straightforward, then use an analogy
- ▶ Analogy comes right after description of the key facts in our case.

Rule Application: Analogies/Comparisons

- First, compare the key fact(s) in our case to the trigger fact in the case from Rule Explanation.
 - “Like the defendant in ____, here the defendant also carried a knife as a weapon.”
 - If the comparison is not self-evident, you may want to explain how the facts are similar.
 - “The parties’ joint brokerage account is like the joint bank account in Clark because both accounts indicate that the parties comingled their funds.”
- Second, state conclusion: the outcome/holding in our case should be similar to the outcome/holding in that other case. (similar fact should lead to similar outcome)
 - “As in Clark, here the parties mutually assumed marital rights, duties and obligations
 - “Therefore, the parties mutually assumed marital rights, duties and obligations

Rule Application: Recap

- TRANSITION in first RA paragraph (“Here,”)
- CONCLUSION about how thesis idea discussed in RE applies in your case
- DESCRIBE your facts that are legally relevant to your conclusion
- EXPLAIN how your facts support your conclusion (walk through your analysis/connect the dots)
 - ANALOGY (comparison)
 - COUNTER-ANALOGY (distinction)
- CONCLUSION in our case, stated using terms of the element in question