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EXPLAIN IT TO ME:

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Tips for Effective Rule Explanation in Legal Analysis

The process of rule explanation is an important part of legal analysis, because it informs the legal reader, be it another attorney or a judge, how the legal rule has been applied in past cases. In other words, the rule explanation is where we use case law “to define, explain, and exemplify” the legal rule that determines the outcome of the client’s problem or dispute.¹ Legal writing texts refer to this discussion of past cases as case illustrations,² case descriptions,³ or case examples,⁴ and they often devote substantial space to the topic. This column highlights four tips for improving the content and clarity of your case illustrations, which can be used when writing rule explanation paragraphs in predictive or persuasive legal writing.

1. ORGANIZE AROUND MAIN IDEAS (NOT CASES). The organization of the rule explanation can be as important as the content. The reader will get bored if the rule explanation reads like a list of case summaries.⁵ The reader may also get frustrated because he is left to figure out which part(s) of the rule a particular case is being used to clarify or explain. Remember that the goal for legal analysis is rule-based reasoning, not case-based reasoning. Thus, it is the writer’s job to decide which case(s) to use to explain each relevant part of the rule, and then to organize the analysis of the selected cases around those main ideas.

2. FOCUS ON CONTENT. Some writers are inclined to fill a rule explanation with several cases combined in a string citation, and with little or no discussion of the substance of each opinion.⁶ Others like to drop in a favorite block quote from a case that merely restates or reiterates the rule, or even worse, that takes the quoted information out of context.⁷ Instead, you should focus on providing sufficient, accurate information so the discussion is

“understandable and credible” to the reader regardless of whether she opts to read the case herself.⁸ As one former deputy solicitor general has explained, if the case is worth citing, then it is “worth discussing sufficiently to show why it is particularly on point or sheds analogous light on the question at hand.”⁹ This is especially true when the case or the underlying legal issue (or sub-issue) to be explained is critical to the writer’s analysis.¹⁰ In general, a case illustration should include the following: (a) the relevant legal issue (or sub-issue); (b) the disposition of that issue (and, if relevant, of the entire case); (c) the facts on which the court relied in reaching that decision; and (d) the court’s related reasoning (i.e., “why the court decided the issue in the way that it did”).¹¹ When it comes to persuasive writing, also frame the legal issue from the client’s view, and take the opportunity to highlight the facts that will support your argument.¹² Following this guidance will ensure your case illustrations are complete yet focused (and thus succinct).

3. USE PAST TENSE. Some writers get confused about what tense to use in case illustrations. While statements about the current legal rule or principle should be stated in present tense, case illustrations should be stated in some form of the past tense.¹³ In particular, use past tense when describing events that happened in the case (and before the start of the case), and when stating the court’s findings and holdings as to the specific parties and facts in the case.¹⁴ While this tip may not impact the content of your case illustrations, using proper verb tense avoids reader confusion and distraction.¹⁵

4. USE GENERIC, DESCRIPTIVE PARTY REFERENCES. Remember that the reader is often unfamiliar with the details of a case, including the particular parties involved, prior to reading your case illustration. Thus, a reader can more easily comprehend the case illustration if you use a generic party reference that also describes the party’s role in the case or



underlying dispute. For example, the case *White v. Baxter Healthcare Corporation*, 533 F.3d 381 (6th Cir. 2008) involves the disposition of a summary judgment motion in an employment discrimination case. It is more effective to refer to the parties as plaintiff or plaintiff employee and defendant or defendant employer (instead of Todd White, Mr. White or Baxter Healthcare Corporation). This technique is even more important when the case involves two parties with the same last name, or when multiple individuals are involved in the dispute that gives rise to the case. For example, in the marriage dissolution case of *Ford v. Ford*, 578 S.W.3d 356 (Ky. App. 2019), it is easier to follow a case illustration with references to husband and wife (rather than Ford or Mrs. Ford). Not all generic party references are created equal, however, because the reference must give context for how the party fits into the dispute. For example, appellant or appellee is not descriptive enough, because the appellant could be the husband or wife, the former employee or employer, or the

plaintiff or defendant, depending on who brought the appeal. Moreover, this same technique applies when comparing the facts of the past case with the relevant facts from the client's case when using analogical reasoning in the rule application. Only proper names are used when referring to the parties involved in the client's dispute, and the reader need not recall who Mr. White or Mr. Ford was in the past case in order to follow along with the case comparison.

CONCLUSION

The rule explanation is an important part of the writer's legal analysis. Case illustrations inform the reader how the rule has been applied by courts in the past, and thus give the reader confidence in how you apply the rule in the client's case. The tips provided here ensure your case illustrations are organized, complete, and clear.

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ENDNOTES

1. Tracy Turner, *Legal Writing from the Ground Up: Process, Principles, and Possibilities*, at 67 (Wolters Kluwer 2015); see also Christine Coughlin, et al., *A Lawyer Writes: A Practical Guide to Legal Analysis*, at 113 (Carolina Acad. Press, 3d ed. 2018) ("While rules explain how courts determine whether a particular standard is met, 'case illustrations' show how those standards were met in actual cases").
2. Coughlin, *supra* n. 1 at 113.
3. Mary Beth Beazley & Monte Smith, *Legal Writing for Legal Readers: Predictive Writing for First-Year Students*, at 132 (Wolters Kluwer, 2d ed. 2019).
4. Turner, *supra* n. 1 at 68.
5. *Id.*
6. Beazley & Smith, *supra* n. 3 at 132.
7. See *id.* at 146.
8. *Id.* at 132.
9. *Id.* at n. 1 (quoting James Van R. Spring, *Symposium on Supreme Court Advocacy: Some Suggestions on Preparing Briefs on the Merits in the Supreme Court of the United States*, 33 Cath. U. L. Rev. 593, 601 (1984)).
10. Turner, *supra* n. 1 at 85.
11. Beazley & Smith, *supra* n. 2 at 133-38; see also Coughlin, *supra* n. 1 at 114-19.
12. Coughlin, *supra* n. 1 at 174, 177; see also Linda H. Edwards, *Legal Writing: Process, Analysis, and Organization* at 306 (Wolters Kluwer 2010) (noting that the prior case should be discussed "in the terms most favorable to your client's position").
13. Beazley & Smith, *supra* n. 3 at 143; Coughlin, *supra* n. 1 at 132.
14. Beazley & Smith, *supra* n. 3 at 143.
15. *Id.* at 144.

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