

# **SIMPLE STEPS: TEACHING LEGAL ARGUMENTATION USING THE LEGAL ARGUMENT TEMPLATE**

*by*  
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“Problem solving is a bit like beauty, morality, and good art. We are in favor of it, we know it when we see it, but we cannot define it.”<sup>1</sup>

## **INTRODUCTION**

Law professors continually struggle with teaching students how to write simple legal arguments and how to solve simple legal problems. This paper introduces a template, called the “legal argument template” (See Appendix A) to aid students in learning how to understand and to write simple legal arguments. The legal argument template provides a method for teaching simple legal problem solving to undergraduate learners with little or no previous or background knowledge of how to prepare legal arguments or indeed any type of argument.<sup>2</sup> This technique fits comfortably with, and is based upon, the IRAC (issue, rule, application, and conclusion) technique used by law professors to teach both legal briefing and legal argumentation. The legal argument template’s advantage over the IRAC approach is it gives more guidance in writing out the argument and forces students to more carefully develop the application section of the argument. This part is the most difficult section of an argument for beginners to write.<sup>3</sup>

The student fills in the legal argument template with information provided by the professor the student has discovered in readings or lectures. When completed, the template provides the student with an outline for a simple legal argument. The template then gives the student specific instructions on using that outline to form a simple, but organized, legal argument. The technique is based upon several learning theories and models discussed below. In this paper, the legal argument template is explained first, followed by the learning theories upon which it is based.

## **LEGAL ARGUMENT TEMPLATE**

A blank legal argument template can be found in Appendix A with completed templates in Appendices B and C. Before students can be expected to use the template, they must have some understanding of the following concepts.

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<sup>1</sup> E. Hunt, THINKING AND PROBLEM SOLVING 13-15 (R.J. Sternberg ed., 1998).

<sup>2</sup> While the examples in this article are based on law, any discipline which requires students to solve problems using principles, ethical standards, theorems, or rules can use this approach.

<sup>3</sup> See Ann Morales Olazabal, *Law as Haiku*, 22 J. LEGAL STUD. EDUC. 123 (2005).

**Argument:** The name given to a passage designed to convince the reader or listener of the validity of some conclusion. To qualify as an argument, the passage must contain *reasons* why the reader or listener should accept the conclusion. A mere conclusion, unsupported by reasons, is not an argument. For example, the statement, “We should not be at war,” is *not* an argument because it contains no reasons in support of the conclusion. The statement, “We should not be at war because the costs outweigh the benefits,” is a very simple argument because it does contain at least one reason in support of the conclusion.

**Legal argument:** An argument that cites at least one rule or law in support of the conclusion in the application section of the argument. All legal arguments contain the following components: fact(s), issue(s), rule(s), application of rules to facts, and conclusion. The following is an extremely simple legal argument: “Jo drove through the intersection when the light was red. Did Jo break the law? The law requires drivers to stop at red lights. Therefore, Jo broke the law because she drove through the red light and the law requires stopping at red lights.”

**Facts:** The background information. Facts consist of the who, what, when, where, why, and/or how. *Laws* are not facts, laws are in an entirely different category. *Example:* Joe is the owner of a business called Joe’s Coffee Shop. See Appendix D for a sample in-class exercise designed to teach students the difference between facts and laws.

**Issue:** The question being asked. An issue is always formulated as a question and must end with a question mark. *Examples:* Was John negligent? Has a contract been formed? Has Mary obtained title to the property by adverse possession?

**Rule or law:** A government enacted standard of behavior applying to all similar situations. An example of a rule or law is: A sole proprietor is personally liable for all of the debts of the business. Each rule or law must be cited to the source.

**Application:** The section convincing the reader or listener of the validity of the writer’s conclusion or answer. This section applies the law to the facts and determines if the facts support the use of the law. Some professors call this section the “analysis” section.

**Application box:** The section of the legal argument template requiring the student to apply the facts to the law. The following completed template based on the law of adverse possession illustrates the above concepts.

Facts: Unknown to Mary and Gary, Mary built her home on land owned by Gary. She lived in the home, by herself, for 11 years.

Rule or law: Adverse possession is the open, hostile, and exclusive possession of land belonging to another. After the statute of limitations period ownership of the land passes to the adverse possessor. (For this simplified rule of adverse possession, assume that the statute of limitations period in this states is ten years).

Application box:

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
Open	=	Mary lived in the home
Hostile	=	The land belonged to Gary
Exclusive	=	She lived by herself and Gary did not use the house
Statute of limitations period	=	11 years

Conclusion: An answer to an issue. The issue raised in the above example is: Who owns the land? The conclusion is: Mary.

Once the students have some familiarity with the above concepts they can be given the legal argument template to fill in. Writing an actual legal argument is more suitable as a homework assignment. The template requires the students to follow the following strict format:

Paragraph 1: facts

Paragraph 2: first issue and law relating to that issue, with citation

Paragraph 3: application and conclusion

Paragraph 4: repeat paragraphs 2 and 3 per issue

Appendix E contains a legal argument template practice worksheet with contract formation problems. This worksheet can be used as an in-class exercise and students can then be assigned the writing of one of the arguments as homework.

### THEORIES OF COGNITIVE DEVELOPMENT

Many believe problem solving and critical thinking are something people learn to do naturally without being taught. Cromer, a college physics teacher, states that scientific thinking, that is looking at things objectively and testing concepts and facts to understand those concepts and facts, is not normal or easy for humans. He defines science as “the heretical belief that the truth about the real nature of things is to be found by studying the things themselves.” Note however, humans tend to think

from their own subjective viewpoint and tend to believe that the truth about reality can be found by thinking about a topic rather than by testing.<sup>4</sup>

Cromer postulates that critical thinking is the result of a series of accidents in human history and it not a "natural" stage of human development.<sup>5</sup> Most societies have existed without scientific and critical thinking. The ability of society to think scientifically and critically could be lost.

Cromer traces critical thinking to the Ancient Greek practice of free debate. "The development of objective thinking by the Greeks appears to have required a number of specific cultural factors. . . . [The first was] the assembly, where men first learned to persuade one another by means of rational debate. Second was a maritime economy that prevented isolation and parochialism. Third was the existence of a widespread Greek-speaking world. . . . Fourth was the existence of an independent merchant class that could hire its own teachers. Fifth was the Iliad and Odyssey. . . . [The] sixth was a literary religion not dominated by priests. And seventh was the persistence of these factors for 1,000 years."<sup>6</sup>

According to Cromer, it is necessary to *teach* students how to think critically because it is not an inborn characteristic of the human race. Evidence has consistently shown that at least some aspects of critical thinking and problem solving can be taught.<sup>7</sup> Assuming critical thinking can be taught, many professors attempt to teach it. This paper introduces a specific technique, called the "legal argument template" designed to teach legal problem solving. The legal argument template is based upon theory and the author's experience teaching this skill.

## LEARNING THEORIES

The first comprehensive study of human development of thinking and problem solving abilities was performed by Jean Piaget over a span of several decades in the mid-1900s.<sup>8</sup> Piaget divided the cognitive development of humans into four stages roughly correlated with age; he placed little importance on specific ages, recognizing the fact children develop at different rates. These stages can be considered overlapping, each building on the abilities developed during the previous

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<sup>4</sup> ALAN CROMER, UNCOMMON SENSE: THE HERETICAL NATURE OF SCIENCE 18 (1995).

<sup>5</sup> *Id.* at 17.

<sup>6</sup> *Id.* at 18.

<sup>7</sup> THINKING AND PROBLEM SOLVING 226 (R.J. Sternberg ed., 1998).

<sup>8</sup> JEAN PIAGET, THE CHILD'S CONCEPTION OF THE WORLD (1929); JEAN PIAGET, THE MORAL JUDGMENT OF THE CHILD (1932); JEAN PIAGET, THE ORIGIN OF INTELLIGENCE IN CHILDREN (1953); JEAN PIAGET, THE CHILD'S CONSTRUCTION OF REALITY (1955); JEAN PIAGET, PLAY, DREAMS, AND IMITATION IN CHILDHOOD 223-224 (1962); JEAN PIAGET, BIOLOGY AND KNOWLEDGE (1971); JEAN PIAGET, THE LANGUAGE AND THOUGHT OF THE CHILD (1998); JEAN PIAGET & BARBEL INHELDER, THE PSYCHOLOGY OF THE CHILD (2000); JEAN PIAGET, THE PSYCHOLOGY OF INTELLIGENCE (2001).

stage.<sup>9</sup>

The sensorimotor stage (ages 0-2 years): During the sensorimotor stage, children begin to learn about the world around them using their senses and motor reflexes. Piaget observed three primary reflexes present at the beginning of this stage: sucking on objects put in the mouth, following movements with the eyes, and closing the hand around objects that come into contact with it. Gradually, such reflexes become intentional acts as children begin to recognize cause and effect. Towards the end of the sensorimotor stage, children start to show evidence of goal formation and the planning of steps to meet their goal. Creativity becomes evident as trial and error and enhanced insight lead to new strategies of problem solving. In this stage and the next, children are very egocentric and see things only as they relate to them.<sup>10</sup>

The preoperational stage (ages 2-7 years): In the preoperational stage, children develop the ability to use symbols, such as language and gestures. Imagination allows them to use one object to represent another and play pretend games. Problem solving abilities are definitely more advanced. If the child does not currently have the knowledge of how to solve a particular problem, the child will struggle to create a new method or modify an existing one. In this and many other ways the preoperational child's thinking is still very different from an adult's. Thought processes are still unsystematic and illogical, lacking such awareness of causality, time, and perspective. Piaget's famous experiment with several glasses partially filled with liquid provides a good example of the preoperational child's cognitive abilities. In this experiment, two identical tall glasses are filled with the same amount of liquid. The liquid in one of the tall glasses is then poured into a wider, short glass while the child is watching. The child is then asked which glass contains more liquid, and usually chooses the wide glass. This will occur even if the same liquid is poured back and forth between the tall and short glass.<sup>11</sup>

The concrete operational stage (ages 7-11 years): Children in the concrete operational stage are able to solve, logically and systematically, concrete problems; however, abstract thinking is very limited. Their thought process is more logical, flexible, and organized allowing for the manipulation of numbers and an understanding of time, length, mass, area, weight, and volume. Children can now consider more than one perspective simultaneously, such as the tall and short glass problem. They now recognize that both glasses contain the same amount of liquid. They can take more aspects of a situation into account when solving a problem.<sup>12</sup>

During the first two stages, children's thoughts are hindered by their egocentric focus. In the concrete operational stage, however, they are now able to consider another person's point of view.

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<sup>9</sup> PIAGET, *THE CHILD'S CONCEPTION OF THE WORLD*, *supra* note 8, at 37-60.

<sup>10</sup> PIAGET, *THE PSYCHOLOGY OF INTELLIGENCE*, *supra* note 8, at 166.

<sup>11</sup> PIAGET, *THE CHILD'S CONCEPTION OF THE WORLD*, *supra* note 8, at 37-60.

<sup>12</sup> PIAGET, *PLAY, DREAMS, AND IMITATION IN CHILDHOOD*, *supra* note 8, at 223-224.

The formal thought or formal deduction stage (ages 11 years – adult): The formal operational stage begins around age twelve and continues into adulthood. At this stage, the ability to think abstractly and theoretically is developed.<sup>13</sup> People can now order and organize thoughts in their minds without external drawings or other representations. Hypothetical thinking and the ability to plan a systematic approach enrich the problem-solving process.<sup>14</sup> Early adolescents begin to speculate about what might happen in the future and consider deep world issues.<sup>15</sup>

The results of Piaget's research have been debated over the years and a wide variety of literature exists on the topic of cognitive development. Some argue Piaget's stages are far too descriptive and many children often display cognitive characteristics found in stages they have not yet reached. Several studies, for example, have found even in the earliest months of infancy an existence of intentional behavior and limited heuristic search directed at accomplishing certain goals.<sup>16</sup> Piaget denied the existence of goals and even intentional acts at this stage of development. Regardless of the accuracy of Piaget's findings, the importance of his research cannot be denied.<sup>17</sup> Most research in cognitive development since has been influenced in some way by his work.<sup>18</sup>

The implications of Piaget's theory in the classroom are unclear. While Piaget did not design strategies for teaching critical thinking, several programs have been designed for use at the college level based on his stages of cognitive development.<sup>19</sup> Mary Driscoll lists three basic instructional principals with which Piagetian theorists generally agree.<sup>20</sup> Driscoll's principles are:

Principle 1: The learning environment should support the activity of the student. Principle 2: The student's interactions with their peers are an important source of cognitive development. Principle 3: Adopt instructional strategies that make children aware of conflicts and inconsistencies in their thinking.

The legal argument template creates a learning environment that supports the student by giving him a tool to use in learning to solve legal problems, supports the learning environment by giving the student a tool to help in solving legal

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<sup>13</sup> PIAGET, THE LANGUAGE AND THOUGHT OF THE CHILD, *supra* note 8, at 116, 126.

<sup>14</sup> MARCY P. DRISCOLL, PSYCHOLOGY OF LEARNING FOR INSTRUCTION 192, 194 (2000).

<sup>15</sup> *Id.*

<sup>16</sup> DAVID F. BJORKLUND, CHILDREN'S STRATEGIES; CONTEMPORARY VIEWS OF COGNITIVE DEVELOPMENT 23-66 (1990).

<sup>17</sup> *Id.*

<sup>18</sup> DRISCOLL, *supra* note 14, at 76, 192, 194.

<sup>19</sup> Raymond S. Nickerson, THINKING AND PROBLEM SOLVING, HANDBOOK OF PERCEPTION AND COGNITION 12 (R.J. Sternberg ed., 1998).

<sup>20</sup> DRISCOLL, *supra* note 14, at 209-12.

problems. The legal argument template does not require the interaction of peers however; it is particularly effective when given as a group project. The legal argument template can do this by forcing students to support answers through a step-by-step process. It is common for students to write a conclusion down before filling in the legal application box and then change it once they have been forced to fill in the legal application box.

An alternative to Piaget is information processing theory. This theory explains human problem solving using a computer as a metaphor for the way the human brain processes information. The model explains how the human mind receives, stores, retrieves, and uses information. For a piece of information to become knowledge, it is received in sensory memory, processed in short-term memory, and, finally, stored in long-term memory.<sup>21</sup>

The information-processing model emphasizes the importance of background and procedural knowledge and relevant information in problem solving.<sup>22</sup> This model helps professors understand why students have so much trouble with legal argumentation when first introduced to it. Students struggle because legal argumentation is new and they have little upon which to build.

The processing in short-term memory involves taking something observed through the senses and consciously thinking about it in order to remember it. This process allows for the storage of the piece of information to be retrieved later. George Miller's studies of short-term memory have found that the mind is capable of holding seven plus or minus two of information at a time without committing them to long-term memory.<sup>23</sup> A bit of information could be anything from an individual digit in a string of numbers to a word or even a complete sentence.

The information processing model emphasizes the importance of background and procedural knowledge and the isolation of relevant information in problem solving.<sup>24</sup> It also takes into account short term memory and how that affects learning. This model sees learners as building upon background information. Piaget generally ignored the issue of background knowledge (also known as declarative) knowledge. Relevant knowledge in the area of a particular problem clearly enhances problem-solving strategies. For example, if a student is asked to calculate the area of a circle given its radius the student would be unlikely to get a very accurate solution without having learned the formula  $\pi r^2$  (pi-radius-squared).

According to information processing theory, two types of background knowledge exist: procedural and conditional. Procedural is how-to knowledge and conditional involves knowing when and why to apply information that one has

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<sup>21</sup> DRISCOLL, *supra* note 14, at 76, 206-12.

<sup>22</sup> Anders Ericsson, & Reid Hastic, THINKING AND PROBLEM SOLVING, HANDBOOK OF PERCEPTION AND COGNITION 45-52 (R.J. Sternberg ed., 1998).

<sup>23</sup> George A. Miller, *The Magical Number Seven, Plus or Minus Two: Some Limits on our Capacity for Processing Information*, 63 PSYCHOL. REV. 81-97 (1956).

<sup>24</sup> Ericsson & Hastic, *supra* note 22, at 45-52.

learned.<sup>25</sup> Instructors using this theory help students focus on important details while ignoring unnecessary information, helping them to make connections between new information and knowledge they already have and focusing on the meanings of concepts rather than the memorization of concepts and terms. Information processing theory, as most theories on cognitive development, agrees that the teaching of critical thinking is dependent upon the cognitive level of the student, which is the student's existing ability to process information, and is dependent on the student's cognitive development stage.<sup>26</sup>

One of the major problems with teaching undergraduate students critical thinking is that students are just beginning to have the ability to think critically. Information processing theory helps professors understand why students have so much trouble with legal argumentation when first introduced to it. Students struggle because legal argumentation is new and they have little upon which to build. The legal argument template overcomes this problem by providing the student with background knowledge and a highly structured method to follow.

Drawing on both the information processing theory and the extensive research of Piaget, Seigler formulated a more precise hypothesis concerning the age-related development of children. Ellis and Siegler explained that improvements in the ability to think critically arise from the development of three qualities of the child: strategy, representation, and self-regulation.<sup>27</sup>

Strategies are plans or methods designed to achieve a desired goal. Contrary to Piaget, this theory holds that such strategies are present in even the youngest infants. The earliest forms of strategies begin to arise in children as they observe the way others attempt to solve problems. Experience in solving a variety of problems, interacting with many different people, and trying to live up to greater demands improves critical thinking throughout the schooling process as students master strategies to solve problems. This theory provides much support for the effectiveness of the legal argument template because it gives the student a structured method to use to achieve the goal of solving a legal problem.<sup>28</sup>

Representation is the ability to translate goals into language or other symbolic representations. For example, younger children will talk themselves through a problem because this translation of the goal into language helps them to keep the goal and their strategy for achieving the goal, in their minds. This self-regulatory use of "private speech" is used throughout a person's life to regulate cognitive activity, but after the age of four or five it is rarely audible.<sup>29</sup>

Inadequate representation has been seen as a major limitation of problem-

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<sup>25</sup> ROBBIE CASE, INTELLECTUAL DEVELOPMENT BIRTH TO ADULTHOOD 410-31 (1985).

<sup>26</sup> *Id.*

<sup>27</sup> Shari Ellis & Robin, S. Siegler, THINKING AND PROBLEM SOLVING, HANDBOOK OF PERCEPTION AND COGNITION 368 (R.J. Sternberg ed., 1998).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

solving capabilities of children and young adults. The ability to internally represent goals is present early in life; however, as language and other symbolic representations develop, critical thinking skills are greatly enhanced. An increasing ability to encode complex information and the development of more advanced methods of representation also drive one's improvements in critical thinking throughout school. The legal argument template gives the student a tool to encode the complex (to the student) information given in a typical legal hypothetical.<sup>30</sup>

Self-regulation and planning are also a vital to the learning process. Younger children have little capacity for planning and therefore problem solving will often be attempted jointly with an adult. In this manner, the adult takes over the role of planning by guiding the child in the right direction. Through this interaction, planning skills are quickly learned so that the child can incorporate them on his/her own.<sup>31</sup>

Another way of looking at the learning process is through the concept of mental models. Mental models are a person's understanding of some specific domain of knowledge, such as a way to understand chemistry or playing football. People develop models of understanding that help them avoid inefficient solution paths and thus simplify the problem solving process. Research has shown that by understanding a discipline's mental models, a teacher can often understand how to teach critical thinking within that domain of knowledge.<sup>32</sup> Students struggle with legal argumentation in part because they do not understand the law's models or methods for solving problems. The legal argument template breaks down the legal profession's method for solving problems into a simple model that can be used by students.

### COLLEGE STUDENT LEARNING THEORIES

Perry is a leading researcher in the area of the cognitive abilities of college students. Perry described nine different cognitive ability levels based on students' views of knowledge. These "positions," as Perry called them, help to define the capacity for formal operations reasoning as defined by Piaget. Perry's nine positions can be grouped into four major periods.<sup>33</sup>

When first entering college, students generally see it as a place to learn the right answers. The professor is the authority and the job of the professor is to provide the students with the correct answers. Knowledge presented by the professor-authority is assumed to be known by all experts in the discipline and disagreement

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<sup>30</sup> *Id.*

<sup>31</sup> Ellis & Siegler, *supra* note 27, at 333-63.

<sup>32</sup> J.H. Larkin, *The Role of Problem Representation in Physics*, MENTAL MODELS, 75-97 (Dedre Gentner & Albert L. Stevens eds., 1983).

<sup>33</sup> JOANNE G. KURFISS, CRITICAL THINKING: THEORY, RESEARCH, PRACTICE, AND POSSIBILITIES 9-10 (1988).

about such knowledge is not acceptable.<sup>34</sup>

Students tend to think dualistically, that is from only two perspectives: right and wrong. The term “dualism” comes from the tendency to view information as either correct or not.<sup>35</sup> The dualist-thinking student can often become confused when asked to reason independently because the student believes only one right answer exists.

At some point in the early semesters at college, students begin to discover that knowledge is not always strictly right or wrong. They encounter numerous conflicting views on many topics, especially in areas such as psychology, law, and other social sciences. These conflicting views among experts are often seen as legitimate in such fuzzy areas of study where students believe society still has a lot to learn. These gray areas of knowledge force students to begin to listen to their own inner voices instead of relying on the authority alone.<sup>36</sup> This can be uncomfortable for many students.

Eventually students begin to view the gray areas of knowledge as a legitimate part of almost every area of study. By observing the ways their professors deal with such knowledge, they are able to develop new problem solving strategies. Students also begin to realize that opinions differ in quality. A good opinion must consider all sides of an argument and be supported with reasons. The student, however, still struggles with committing to opinions and ideologies out of fear of being wrong. Students begin to recognize that the professor’s job is to guide the students’ learning, not to simply provide all the answers. The authority figure (professor) is now viewed as a more experienced information seeker and not necessarily one who possesses all of the right answers. Several studies since Perry’s work have found that less than half of college seniors have fully obtained the perspectives described in this level.<sup>37</sup>

At the next stage, students are committed to this abstract approach to thinking in all areas of study. With an awareness that multiple perspectives exist in all fields, comes the realization that knowledge is constantly changing. Students are now able to take a position on their views, even though there is no guarantee their views are correct. The student finally understands the ultimate goal of most professors, to develop an understanding of the important questions and concepts in a field. Instead of criticizing ideas, students are now able to more fully explore them from different angles before making a conclusion. These students are finally adept in the thought processes described in Piaget’s formal operational stage.<sup>38</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 52-53, 573.

<sup>36</sup> *Id.* at 11.

<sup>37</sup> *Id.*

<sup>38</sup> E. Hunt, *supra* note 27, at 13-15.

## THEORY AND PRACTICE OF TEACHING ARGUMENTATION

The prior sections have summarized many of the theories related to learning and cognitive development. How do these theories relate to the teaching of argumentation and what are the theories of teaching argumentation?

Ellis and Siegler define problem solving as “procedures that overcome obstacles and meet goals.”<sup>39</sup> Oates summarizes some of the anecdotal and research evidence on the ability of writing to facilitate learning. However, most of the research and background deals with how writing can help absorb content. For example, does writing an essay about a book help a student to better understand the concepts presented in the book? Does writing facilitate learning?<sup>40</sup>

Newell and Simon theorize that problem solving is “walking a path through the problem space.”<sup>41</sup> At various points in the space, a person makes decisions regarding how to proceed and continues until the problem is solved. In theory, to solve a problem, one must compare the current state with the desired state. The person then finds ways of eliminating the differences between these two states so as to arrive at the desired state. Giving students linguistic guideposts such as “fact” and “issue” help them negotiate the problem space.<sup>42</sup>

This comparison of “what is” with “what is desired” is not, apparently, how humans tend to solve problems however. Humans tend to make decisions based on intuition rather than looking at the evidence first and then making the decision. Two theories that explain this are information-gain theory and the “Rips PSYCOP theory.” Information-gain theory states that people make a decision, and then spend time attempting to find evidence in support of their decision, rather than, as logic might dictate, searching through the evidence first and then coming to a decision.<sup>43</sup> The “Rips PSYCOP theory” states that people make decisions based on intuition rather than logic and reason.<sup>44</sup> The tendency to make a decision first and then try to support it (information gain theory) or intuitively (Rips PSYCOP theory) are particularly problematic for the undergraduate law professor because the answers so reached are usually incorrect. The undergraduate law professor must develop techniques to deal with these theories.

Several methods of teaching critical thinking have arisen to help the

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<sup>39</sup> Ellis & Siegler, *supra* note 27, at 333.

<sup>40</sup> Linda L. Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer*, 6 LEGAL WRITING 57 (2000).

<sup>41</sup> ALLEN NEWELL & HERBERT A. SIMON, HUMAN PROBLEM SOLVING 1-4 (1972).

<sup>42</sup> *Id.*

<sup>43</sup> Mike Oaksford & Nick Charter, *A Rational Analysis of the Selection Task As Optimal Data Selection*, 101 PSYCHOL. REV. 608-31(1994); JOHN R ANDERSON, THE ADAPTIVE CHARACTER OF THOUGHT (1990).

<sup>44</sup> LANCE J. RIPS, THE PSYCHOLOGY OF PROOF: DEDUCTIVE REASONING IN HUMAN THINKING (1994).

undergraduate law professor. For example, pairing students with experts (other students, not teachers) at solving the particular problem dramatically increases the ability of students to solve problems, particularly using new information.<sup>45</sup> A novice student and an expert student can move the novice student forward to the level of the more advanced partner.

Students appear to approach problem solving differently than experts. Research shows that experts tend to solve problems by first classifying the problems and then retrieving from memory rules for solving a specific type of problem. "The general theory is that when people are dealing with familiar material they rely to a greater extent on previously memorized solution schemata."<sup>46</sup>

### TEACHING CRITICAL THINKING IN THE LAW CLASS

The law class provides an excellent environment in which to teach and foster the skills of problem-solving and critical thinking. How should one teach this problem solving? "None of the approaches to the teaching of thinking and problem solving that has yet been developed is firmly based on a well-articulated theory of cognition that is universally recognized as valid by scientists who work in this area."<sup>47</sup>

Browne and Keeley's book, *Asking the Right Questions about the Legal Environment of Business*<sup>48</sup> is a useful supplement in introductory business law and legal environment courses. It starts with the idea that one's attitude toward what one is told is very important. It encourages readers to use the "panning for gold" method of learning and not just the "sponge" approach, although both are useful. The panning for gold approach encourages people to look at and evaluate what they are taught or what they read; some, but not all, of the information presented is gold. The sponge approach to learning is to absorb uncritically information given.<sup>49</sup> Browne and Keeley then introduce the students to ways of recognizing issues, conclusions and reasons or premises.<sup>50</sup> The authors review the ambiguity of language and also how ethical values are a component of reasons for beliefs or acts; they also discuss the problem of missing information, and how a lack of information affects an argument.<sup>51</sup>

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<sup>45</sup> Jonathan R.H. Tudge, *Processes and Consequences of Peer Collaboration: A Vygotskian Analysis*, 63 CHILD DEV. 1364-79 (1992).

<sup>46</sup> J.D. McDermott, & Herbert A. Simon, *Expert and Novice Performance in Solving Physics Problems*, 208 SCIENCE 1335-42 (1980).

<sup>47</sup> Nickerson, *supra* note 27, at 409.

<sup>48</sup> NEIL BROWNE & STUART KEELEY, *ASKING THE RIGHT QUESTIONS: A GUIDE TO CRITICAL THINKING* (2004).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

Wright<sup>52</sup> sets out the following procedure for approaching an argument:

Summarize or paraphrase an argument – this helps to understand it.

Outline the structure of the argument – this is a complex process whereby the main points are broken down into subpoints and classified in relation to the main point as: causes, motive, purpose, effect, support, implication, qualification.

Outline the reasons or support for a particular conclusion

Another process for teaching problem solving has been developed by Allen and Allen and is called the “SOLVE” method of problem solving. The SOLVE method consists of:

S – Initial statement of the problem

O – Observing and organizing the problem through the identification of initial conditions, goals, resources and constraints”

L – Learn by Questioning All Parts of the Problem

V – Visualize Possible Solutions, Select One, and Refine It,

E - Employ the Solution and Monitor Results.<sup>53</sup>

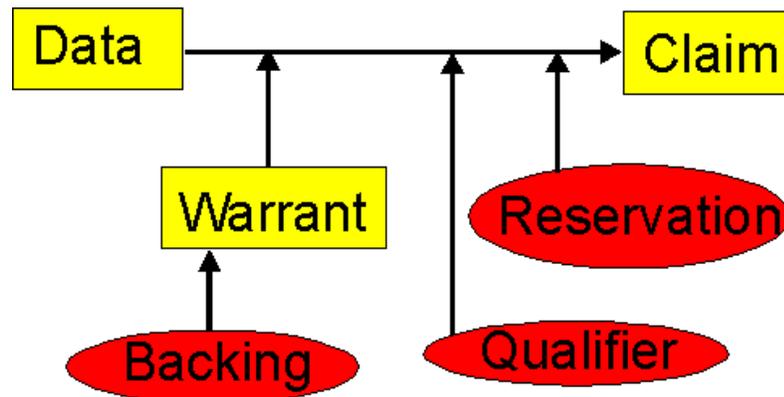
Another model, diagrammed below,<sup>54</sup> developed by Stephen E. Toulmin in the 1950s represents the nature of argumentation as it occurs in everyday life. Toulmin was an English philosopher and his method has been taught to in a variety of situations to improve argumentation ability.

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<sup>52</sup> LARRY WRIGHT, CRITICAL THINKING: AN INTRODUCTION TO ANALYTICAL READING AND REASONING 119-21 (2001).

<sup>53</sup> *Id.*

<sup>54</sup> Diagram from *The Toulmin Project Home Page*, University of Nebraska, Lincoln, at <http://www.unl.edu/speech/comm109/Toulmin/> (last visited April 25, 2006).



The parts of the model are:

Data: evidence, facts

Warrant: reasoning process. Connects data to claim.

Backing: support material that supports the warrant

Qualifier: explicit verbalization of the strength or limits of the argument

Reservation: an exception presented by the arguer

Claim: the position on the issue<sup>55</sup>

In law school, it is typical to use the case method to teach problem solving. The case method teaches problem solving by reading and analyzing cases written by judges. In the law school classroom, the cases are broken down into issues, rules, application, and conclusions (“IRAC”). The method needs work<sup>56</sup> and may have been dislodged from its pedestal.<sup>57</sup> Other techniques such as clinics, simulations,<sup>58</sup>

<sup>55</sup> *Id.*

<sup>56</sup> Janeen Kerper, *Legal Education: Creative Problem Solving vs. The Case Method: A Marvelous Adventure in which Winnie-the-Pooh meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351 (1998).

<sup>57</sup> Nancy Millich, *Building Blocks of Analysis: Using Simple “Sesame Street Skills” and Sophisticated Educational Learning Theories in Teaching a Seminar In Legal Analysis And Writing*, 34 SANTA CLARA L. REV. 1127 (1994).

<sup>58</sup> Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1 (1996).

group discussion<sup>59</sup> and a visual approach<sup>60</sup> have been suggested.

These are all excellent. The difference between these approaches and the legal argument template introduced here is this approach is specifically designed to be a very simple process that can be easily incorporated into the already crowded undergraduate law class curriculum. In addition, it offers specific help with the most difficult part of case analysis, the application section. This method can be used in any law class and any class that uses principals to solve problems. The application box gives the student a basic tool to improve their problem-solving abilities. Incorporating it into case analysis gives the student a more complete outline from which to write an organized and logical argument. It is useful in a writing across the curriculum approach to teaching.<sup>61</sup>

### SUMMARY

This paper presents the legal argument technique, which helps the student write a simple, organized, legal argument. This technique requires students to fill in the parts of an argument in a template. The template guides the student through the necessary part of an argument and provides the student with a map of how to prepare and organize the argument.

This technique is based upon theories of cognitive development of undergraduate students and also upon the traditional law school IRAC method. This technique is more regimented than the IRAC method and guides students through the steps necessary to write a simple, coherent, legal argument. Learning models also suggest that, for the undergraduate college age group, a more regimented process may be helpful in teaching them this skill because they have little experience in preparing arguments.

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<sup>59</sup> Susan L. DeJarnatt, *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, 40 DUQ. L. REV. 489 (2002).

<sup>60</sup> Linda Morton, *Legal Education: Teaching Creative Problem Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375 (1998).

<sup>61</sup> Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561 (1997).

## APPENDIX A: BLANK LEGAL ARGUMENT TEMPLATE WITH INSTRUCTIONS

*Instructions: Fill in the following information on the legal argument template.*

1. **Facts:** briefly summarize the facts from the problem given to you.
2. Fill in the **issue** or question that you are being asked to decide. The issue must always be in the form of a question and followed by a “?”.
3. Choose which **rule(s)** or law(s) you think are applicable and put them in the space indicated. The name of the rule or law is not acceptable, you must put the actual rule or law here. Be sure to *cite* the rule/law to the PowerPoint slide, text, or other source where you have found it. Remember in this class the word ‘rule’ and ‘law’ are interchangeable.
4. Put the **legal elements of the rule** on the left side of the application box. You do not have to rewrite the entire rule, just the important words. A legal element is a part of a rule that must be established by facts in order to win using that rule.
5. Summarize the **fact(s) which supports the existence of the legal element(s)** on the right side of the box. If no facts exist to support the legal element put “no facts” in that cell.
6. Make a **determination** whether or not the facts are sufficient to support the legal element or not by putting either an = **or** ≠ sign in the center column.
7. Come to a **conclusion** to the legal issue raised *only* after filling in the application box. The conclusion should be one or two words only and answer the issue.
8. If you have more than one issue, repeat steps 2-7 for each issue.
9. After the template is filled in, you have an outline for a very simple legal argument. When writing out a simple legal argument, organize it as follows:
  - a. Paragraph 1: Facts. Yes, you must restate the facts briefly even though they have been given to you. You are writing an argument not answering a question.
  - b. Paragraph 2: Issue 1 and applicable law. You should give the reader more than just the law in the application box; summarize the applicable law here. Give the reader background to understand the law. You must cite the law to the source such as the text or PowerPoint.
  - c. Paragraph 3: Application and conclusion. Write complete sentences in support of your opinion. Yes, you must restate the elements of the rule and tell me what fact(s) support that element or if no facts support it. Your conclusion goes in this paragraph and is a complete sentence.
  - d. Paragraph 4: If you have more than one issue, the next issue is here. Repeat the above process for all issues.

## LEGAL ARGUMENT TEMPLATE

**FACTS:**

**ISSUE 1:**

**RULE:**

**APPLICATION:** Application box

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts

**CONCLUSION:**

**ISSUE 2:** If any.

**RULE:**

**APPLICATION:** Application box

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts

**CONCLUSION:**

**NOTE:** Repeat issue, rule, application (with application box), and conclusion, until all issues are resolved.

**TO PREPARE COMPLETED LEGAL ARGUMENT FROM THIS TEMPLATE:** Put the following information in the paragraph indicated:

Paragraph 1: Facts

Paragraph 2: Issue 1 and applicable law. You should give the reader more than just the law in the application box; summarize the applicable law here. CITE THE LAW TO THE SOURCE(S) SUCH AS THE PAGE NUMBER IN A TEXT.

Paragraph 3: Application and conclusion. Make complete sentences from the rows in the application box.

Paragraph 5: Issue 2 and applicable law. Again, give the reader more than just the law in the application box; summarize the applicable law here.

Paragraph 6: Application and conclusion. Make complete sentences from the rows in the application box.

Repeat until all issues are analyzed.

**APPENDIX B: COMPLETED LEGAL ARGUMENT TEMPLATE AND  
LEGAL ARGUMENT WITH ONE ISSUE**

**FACTS:** Due to a rainstorm, at a grocery store, every time a customer going in or out opened the door water was blown in. Additionally, customers themselves were tracking water into the store. An employee frequently mopped the water from the doorway of the store, as instructed by a manager. No sign was ever posted warning to customers of the water on the floor. No mat was placed on the floor to absorb water. A woman was injured when she slipped and fell in the doorway of the store due to the water. Her medical bills and lost wages relating to the accident were \$4,000.

**ISSUE:** Is store negligent?

**RULE:** A party is negligent if they have acted unreasonably and caused injury.

**APPLICATION:**

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
Unreasonable act	=	No sign, no mat, only mopping
Caused injury	=	\$4,000 in medical bills and lost wages

Completed simple legal argument based on above template:

Due to a rainstorm, at a grocery store, every time a customer going in or out opened the door water was blown in. Additionally, customers themselves were tracking water into the store. An employee frequently mopped the water from the doorway of the store, as instructed by a manager. No sign was ever posted warning to customers of the water on the floor. No mat was placed on the floor to absorb water. A woman was injured when she slipped and fell in the doorway of the store due to the water. Her medical bills and lost wages relating to the accident were \$4,000.

Was the store negligent? A party is negligent if they have acted unreasonably and caused injury. Negligence is the most common tort and requires people to act reasonably towards others. (citation here).

In this case, the grocery store was negligent. The grocery acted unreasonably by failing to put up a sign and particularly in failing to put out a mat. In addition, the customer was injured in that she had \$4,000 in medical bills and lost wages.

### APPENDIX C: COMPLETED LEGAL ARGUMENT TEMPLATE AND LEGAL ARGUMENT WITH MORE THAN ONE ISSUE

**FACTS:** The following story appeared in the Morning Sun, the local newspaper on 3/21/01, and was based upon an interview between a Morning Sun reporter and a representative of the local Pepsi Bottling Plant:

“REWARD OFFERED IN POP MACHINE CASE”

The Pepsi Bottling Group is offering a \$500 reward for information that leads to the arrest and conviction of people who have been 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. (Based on actual story in the Mt. Pleasant Morning Sun, 3/21/01).

Brisa gives information on 3/25/01 that leads to arrest and conviction. Is Brisa entitled to \$500 from Pepsi?

**ISSUE:** Was a contract formed between Pepsi and Brisa?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.<sup>62</sup>

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<sup>62</sup> Each instructor using this template should modify this section to more closely resemble the law emphasized in their particular class.

**APPLICATION:**

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	=	The Pepsi Bottling Group is offering a \$500 reward for information
acceptance	=	You give information that leads to arrest and conviction.
consideration	=	You are to receive \$500 and Pepsi is to give up \$500
written evidence	=	Not required. Contract for information, no writing required.

**CONCLUSION:** Yes

Completed simple legal argument based on above template:

A story appeared in the Morning Sun, the local newspaper, and was based upon an interview between a Morning Sun reporter and a representative of the local Pepsi Bottling Plant:

“REWARD OFFERED IN POP MACHINE CASE”

“The Pepsi Bottling Group is offering a \$500 reward for information that leads to the arrest and conviction of people who have been 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 that leads to the arrest and conviction of the persons who have been vandalizing the machines. Is Brisa entitled to \$500?

The issue raised here is: was a contract formed between Pepsi and Brisa? A contract is formed if there has been an offer, acceptance, and consideration. Some types of contracts require written evidence, signed by the person to be charged, to be enforceable. Contracts requiring a signed writing are: contracts related to real estate, leases for more than a year, contracts that cannot be performed within a year, and contracts for goods over \$500. (citation here).

Has an offer been made? An offer is an expression of a willingness to enter into a contract. (citation here)

Pepsi has made an offer by giving an interview to the local paper and making the

offer of a reward for certain information. Pepsi wants people to give information and intends to give a reward for the information.

Has the offer been accepted? An acceptance must mirror the offer in order to be valid. Unilateral contracts are accepted by completing performance. (citation here).

Brisa accepted the offer by complying with the terms of the offer; that is giving Pepsi the information requested. True, Brisa never said anything to Pepsi prior to giving Pepsi the information, but the law does not require that. The acts of Brisa can be an acceptance since they mirror the offer and have been performed.

Does consideration exist? Consideration is what each party gives up and gets in exchange for the offer and acceptance. In order for consideration to exist both sides must get something and both sides must give up something in order for consideration to exist. (citation here).

The consideration here is the \$500 to be given to Brisa and given up by Pepsi. In addition, information is what Brisa is giving up and Pepsi is getting. Since both sides are getting something and giving up something, consideration exists.

Is a writing required? Some types of contracts must be evidenced by a writing signed by the person to be charged, in order to be recognized by the law. Those contracts are: for the sale of goods over \$500, real estate contracts, leases over one year, and contracts to be performed over a year from now. (Citation here).

This is a contract for information. It is not the type of contract that requires written evidence signed by the entity to be charged. Therefore, the lack of written evidence signed by the party to be charged is not relevant.

In summary then, a valid contract has been formed between the parties. Pepsi is required to pay Brisa \$500 for the information.

## APPENDIX D: IN-CLASS EXERCISES DESIGNED TO TEACH THE DIFFERENCE BETWEEN FACTS AND LAWS

*Instructions:* Determine whether each of the following is a fact(s) or a law/rule(s) and so indicate by circling either “fact” or “rule” next to the item. Each item is only one or the other and no item can be both.

*Definitions* needed to complete this assignment:

- A law is a government-enacted and enforced standard of behavior. Another way of saying this is a law or rule is a guideline for how people should act.
- A fact is a piece of specific information about who, what, when, where, how, and why. Another way of saying this is the facts are background information about the actions of specific people and entities involved in the problem.

**Fact / Rule 1.** Chloe published an editorial stating Lana was pregnant by Lionel Luther. This was a lie. FACT.

**Fact / Rule 2.** When someone dies, their debts must be paid and any remaining property is transferred to the heirs. LAW.

**Fact / Rule 3.** Lawrence loaned money to Moore, who died without repaying the loan. FACT.

**Fact / Rule 4.** Harry Potter has the following assets: a bank vault filled with gold galleons, a magic wand, some personal effects, and a new Quidditch broom. FACT.

**Fact / Rule 5.** A contract is ambiguous if the language is capable of more than one reasonable meaning. LAW.

**Fact / Rule 6.** Battery is the intentional, offensive touching, of another human, without his or her consent. LAW.

**Fact / Rule 7.** The cost of the plastic necessary to make this product doubled this week. FACT.

**Fact / Rule 8.** The tort of public exposure of private facts is the telling of the truth about another but that truth is something that should be kept private. LAW.

**Fact / Rule 9.** A party must honor its contract or respond in damages. LAW.

**Fact / Rule 10.** The owner of a sole proprietorship has unlimited personal liability for all of the debts of the business. LAW.

**Fact / Rule 11.** Ernest promised to pay his parents \$1,800 a year for as long as either of them was alive. FACT.

**Fact / Rule 12.** Celebrity Source is a Los Angeles company specializing in getting stars for nonprofit events. FACT.

**Fact / Rule 13.** Lawrence's home was burglarized. He sued the alarm company for negligence. FACT.

**Fact / Rule 14.** A minor can only enter into a contract for necessities. LAW.

**Fact / Rule 15.** Corporate specifications required the coffee to be sold at 187 degrees although most restaurants serve coffee at 155 degrees. FACT.

**Fact / Rule 16.** He did not intend to hurt his friend. FACT.

**Fact / Rule 17.** Sales of real estate must be evidenced by a writing signed by the person to be charged. LAW.

**Fact / Rule 18.** Trucks traveling through Illinois must have the rear wheels of the trucks equipped with contour mudguards. LAW.

**Fact / Rule 19.** Pet Pie Co. sold pies in Utah at price lower than it sold the same pies in California in order to eliminate Utah Pie Co. from the Utah market. FACT.

**Fact / Rule 20.** An exculpatory clause is a clause that attempts to nullify important or fundamental legal rights and will not be enforced. LAW.

## APPENDIX E: LEGAL ARGUMENT TEMPLATE PRACTICE WORKSHEET WITH CONTRACT FORMATION PROBLEMS KEY

**You will be preparing legal argument templates – you do not have time to write a complete argument in class. You will only be filling in the templates to get practice. You will be assigned one of these problems to prepare a legal argument in support of your answer.**

*Instructions:* Fill in the following information on the blank legal argument templates.

1. **Facts:** briefly summarize the facts from the problem given to you.
2. Fill in the **issue** or question that you are being asked to decide. The issue must always be in the form of a question and followed by a “?”.
3. *For this in-class exercise you have been given the rule and that rule applies to each of the problems.*
4. Put the **legal elements of the rule** on the left side of the application box. You do not have to rewrite the entire rule, just the important words. A legal element is a part of a rule that must be established by facts in order to win using that rule.
5. Summarize the **fact(s) which supports the existence of the legal element(s)** on the right side of the box. If no facts exist to support the legal element put “no facts” in that cell.
6. Make a **determination** whether or not the facts are sufficient to support the legal element or not by putting either an = **or** ≠ sign in the center column.
7. Come to a **conclusion** to the legal issue raised *only* after filling in the application box. The conclusion should be one or two words only and answer the issue.
8. If you have more than one issue, repeat steps 2-7 for each issue.

### EXAMPLE OF COMPLETED LEGAL ARGUMENT TEMPLATE

**FACTS:** The following story appeared in the Morning Sun, the local newspaper on 3/21/01, and was based upon an interview between a Morning Sun reporter and a representative of the local Pepsi Bottling Plant:

“REWARD OFFERED IN POP MACHINE CASE”

The Pepsi Bottling Group is offering a \$500 reward for information that leads to the arrest and conviction of people who have been 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. (Based on actual story in the Mt. Pleasant Morning Sun, 3/21/01).

Brisa gives information on 3/25/01 that leads to arrest and conviction. Is Brisa entitled to \$500 from Pepsi?

**ISSUE:** Was a contract formed between Pepsi and Brisa?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:** Using application box

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	=	The Pepsi Bottling Group is offering a \$500 reward for information
acceptance	=	Brisa gives information that leads to arrest and conviction.
consideration	=	Brisa is to receive \$500 for information and Pepsi is to give up \$500 for information
written evidence	=	Not needed. Contract for information.

**CONCLUSION:** Yes

LEGAL ARGUMENT TEMPLATE #1 KEY

Bluebonnet Lighting and Power Company sent a brochure to real estate developers that said, “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 1/1/09 and 06/30/09.” Zoning in that area allowed only one home per acre.

A mobile home park developer called up Bluebonnet and accepted the offer for ten units, giving Bluebonnet no details about his project but saying the plans would be sent over the next day. The representative 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 one acre and the parcel was located near Hwy 20 but not on Meridian Rd. Bluebonnet refused to supply the residential electrical service for \$500. (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 signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:**

Legal elements	= or ≠	Facts
offer	=	brochure
acceptance	≠	Telephone call by developer
consideration	=	One party gets \$500, the other gets electrical service installation
written evidence	=	None needed, but there is a brochure

**CONCLUSION:** No

LEGAL ARGUMENT TEMPLATE #2 KEY

Bertha Jorkins is talking to Mockridge Cuthbert one day and offers to buy his farm for \$100,000. Cuthbert accepts. No paperwork is ever completed. Shortly after this conversation, Bertha finds out that the farm was recently appraised at \$75,000 and tells Mockridge she is not interested. He threatens to sue her for breach of contract.

**ISSUE:** Has a contract been formed between Jorkins and Cuthbert?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something to which they are not already legally entitled to, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:**

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	=	Bertha Jorkins is talking to Mockridge Cuthbert one day and offers to buy his farm for \$100,000.
acceptance	=	He accepts.
consideration	=	\$100,000 for farm.
written evidence	≠	No paperwork is ever completed.

**CONCLUSION:** No

LEGAL ARGUMENT TEMPLATE #3 KEY

Tabatha's daughter Helen, was looking for a job as a bookkeeper or accountant with a growing firm. Tabatha was also a bookkeeper with her own small business which netted her about \$50,000/year in income. She was thinking of retiring but Helen was not interested in taking over her mother's business. Helen interviewed with Tried and True, Inc., a large metropolitan accounting firm and was offered a job. Helen accepted the offer and agreed to start work on 1/5. Helen did not tell her family, intending to surprise them at Christmas dinner with her new job.

On December 17, Tabatha called the CEO of Tried and True, Inc. and offered to transfer all of her bookkeeping and accounting business to Tried and True, Inc. if it would hire Helen. Tried and True, Inc. accepted Tabatha's offer and the parties exchanged signed faxes memorializing the agreement.

On 12/27 Tabatha called Tried and True, Inc. and told them she was not going to transfer her business to Tried and True, Inc. Tried and True, Inc. has brought a lawsuit against her for breach of contract. Tabatha claims no contract exists between them.

**ISSUE:** Has a contract been formed?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:**

<b>Legal elements</b>	<b>= or ≠ (‘equals’ or ‘does not equal’)</b>	<b>Facts</b>
offer	=	Tabatha called the CEO of Tried and True, Inc. and offered to transfer all of her bookkeeping and accounting business to Tried and True, Inc. if it would hire Helen.
acceptance	=	Tried and True, Inc. accepted Tabatha’s offer.
consideration	≠	None.
written evidence	=	None required but the parties exchanged signed faxes memorializing the agreement.

**CONCLUSION:** No

LEGAL ARGUMENT TEMPLATE #4 KEY

The Weazley brothers want to buy out Zonko's joke shop in Hogsmeade Village and turn it into a second shop modeled after their very successful shop on Diagon Alley in London. They arrange a meeting with Zonko and offer to pay him \$200,000 for the shop and in addition, they want a provision in the contract that he will not open a competing shop within 50 miles of the village for 5 years. Zonko says the minimum price of the shop is \$250,000. The brothers agree to this price. All sign a contract with these two terms and others not relevant to this problem.

**ISSUE:** Has a contract been formed?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION: FIRST OFFER**

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	=	The Weazley brothers offer to pay him \$200,000 for the shop and in addition they want a provision in the contract that he will not open a competing shop within 50 miles.
acceptance	≠	None.
consideration	=	Brothers pay \$200,000 and get shop and non-compete agreement; Zonko gets money, sells shop, and agrees not to compete.
written evidence	≠	None.

**CONCLUSION:** No.

**APPLICATION: SECOND OFFER**

<b>Legal elements</b>	<b>= or ≠ (‘equals’ or ‘does not equal’)</b>	<b>Facts</b>
offer	=	Zonko says price is \$250,000.
acceptance	=	Brothers agree
consideration	=	Brothers pay \$250,000 and get shop and non-compete agreement; Zonko gets money.
written evidence	=	All sign an agreement.

**CONCLUSION:** Yes.

LEGAL ARGUMENT TEMPLATE #5 KEY

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 or other organizations to raise money.

At the hearing he said, "I'll pay \$100,000 to anyone who shows me a crooked board. If they find it, I will pay it." A reporter happened to be at the hearing and reported the above on television. Barnes saw the news story on television. He had obtained 2 fraudulent punchboards years ago. He presented them to Treece and demanded \$100,000. Treece refused to pay the \$100,000. [from *Barnes v. Treece*, 549 P.2d. 1142 (Wash.App. 1976)].

**ISSUE:** Has a contract been formed?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:** Using application box

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	≠	I'll pay \$100,000 to anyone who shows me a crooked board.
acceptance	=	Barnes presented the fraudulent boards to Treece.
consideration	=	Treece gets 2 fraudulent boards; Barnes gets \$100,000
written evidence	=	None required. No written evidence signed by Treece exists. News story does not count either as it is not signed by Treece.

**CONCLUSION:** HINT: No

LEGAL ARGUMENT TEMPLATE #6 KEY

Osborne, the president of Locke Steel Inc., was negotiating his retirement with the Board of Directors of the corporation. He offered to retire but to hold himself available for consultation to the Board and would not work for any direct or indirect competitors of the company and the company would be required to pay him \$15,000/year for the remainder of his life. The Board voted to accept this offer and a written contract to that effect was entered into by the corporation and Osborne. After paying for two years, the company stopped payment when Osborne refused to consent to a modification of the agreement.

**ISSUE:** Must Locke Steel pay Osborne \$15,000/year for life even though Osborne refuses to modify the agreement?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something to which they are not already legally entitled, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:**

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	=	He offered to retire, be available for consultation, would be paid \$15,000 for the remainder of his life. and a written contract to that effect was entered into by the corporation and Osborne.
acceptance	=	The Board voted to accept this offer.
consideration	=	Company gets consultation and no competition; Locke gets \$15,000/year for life.
written evidence	=	Written contract.

**CONCLUSION:** Yes

LEGAL ARGUMENT TEMPLATE #7 KEY

Rosemerta, the owner of Rosmerta's Tavern, sent out a letter to the top three painting contractors in the city informing them she was planning on repainting the interior and exterior of the tavern and if the contractors were interested in the job, to please send a bid to her by a certain date. Note that under the law a bid is considered an offer. All bids came back before that date and the bids were as follows:

- Bonaccord: \$120,000
- Edgecombe: \$130,000
- Grey: \$140,000

Rosemerta was discussing the offers with her staff and whether or not they would proceed with the painting. Meanwhile, Bonaccord called and also faxed Rosemerta a letter which said, "We are sorry but we have just gotten a very large painting job and must rescind our bid as we do not have the staff to do both jobs should you award us the contract. Yours truly, Bonaccord." Rosemerta faxed back an acceptance of Bonaccord's bid and told Bonaccord that if he do not do the job for \$120,000 Bonaccord will be liable to Rosemerta \$10,000, the difference between Edgecombe's bid and Bonaccord's bid.

**ISSUE:** Has a contract been formed?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:**

Legal elements	= or ≠	Facts
offer	=	Bonaccord's bid for \$120,000.
acceptance	≠	Rosemerta faxes acceptance after Bonaccord withdraws his bid.
consideration	=	Bonaccord gets money; Rosemerta gets painting work.
written evidence	=	None required but there is a written bid.

**CONCLUSION:** No

**LEGAL ARGUMENT TEMPLATE #8 KEY**

A Super Clean representative meets with you and offers to clean the corporate offices for \$10,000 a month for 12 months. The corporation accepts and a valid written contract is entered into for those terms and others not relevant to this problem. After the corporation has paid Super Clean for the first two months of work, Super Clean demands \$11,000 a month because of increased costs and refuses to send over a crew to clean. The corporation cannot find anyone else to do the job for less than \$13,000 a month at such short notice and so send over a fax to Super Clean that says, “OK to \$11,000/month but we don’t like it.” Corporation pays Super Clean \$11,000 a month for the next 9 months but only \$1,000 for the last month of service and hires Honest Cleaning to do the work thereafter. Corporation claims it only has to pay Super Clean \$120,000 for the year and since it overpaid by \$1,000/ a month in months 3-11, it only owes Super Clean \$1,000.

**ISSUE:** Is the corporation required to pay Super Clean \$11,000 or \$1,000 for month 12?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:** USE THIS BOX FOR THE \$10,000 SITUATION.

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	=	A Super Clean representative meets with you and offers to clean the corporate offices for \$10,000 a month for 12 months.
acceptance	=	The corporation accepts.
consideration	=	Corporation gets cleaning services; Super Clean gets money.
written evidence	=	None required but there is a written contract.

**CONCLUSION:** Yes

**APPLICATION:** USE THIS BOX FOR THE \$11,000 SITUATION.

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	=	Super Clean demands \$11,000 a month because of increased costs and refuses to send over a crew to clean.
acceptance	=	“OK to \$11,000/month but we don’t like it.”
consideration	≠	Super Clean gets an additional \$1,000/month; Corporations gets nothing it is not already legally entitled to get.
written evidence	=	None required but there is a fax.

**CONCLUSION:** \$1,000.

LEGAL ARGUMENT TEMPLATE #9 KEY

Babilli Trapizio, owner and editor of the *Daily Trumpet* is fed up with all of the interference he is getting from the government in the operation of the newspaper. While sitting in the editorial board meeting arguing with government representatives about certain stories to be printed in the paper, he shouts, "I have had it with the newspaper business, if the government thinks it can run this paper better than I, I will sell it to the government for \$1,000, lock, stock, barrel, and broken coffee machine!" Terrence Higgs, one of the government employees at the meeting takes out his wallet and gives Trapizio \$1,000 and says, "Done.". Babilli refuses to turn over the paper to the government.

**ISSUE:** Has a contract been formed?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:**

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	≠	Statement “I will sell it to the government for \$1,000, lock, stock, barrel, and broken coffee machine!” is made in anger only.
acceptance	=	takes out his wallet and says, “Done.”
consideration	=	\$1,000 for newspaper business
written evidence	=	<i>No written evidence required in this transaction</i>

**CONCLUSION:** No

LEGAL ARGUMENT TEMPLATE #10 KEY

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 your undergraduate law class. This was the key because you did not pay \$11/wedget when you only had to pay \$10/wedget and therefore had enough money to buy a condo in Florida. You look up your old professor and find out she is still living. You send her a letter saying, "Because you helped me so much, I am offering you my condo in Florida rent free for the months of January, February, March, and April. I am sure you would like to spend some time at the beach this year." Dr. White sends you a nice thank you note saying, "Great, I will be there on 1/5!!" Later you send her a letter saying that circumstances have changed and you are letting your boss's son use the condo instead. Your old professor sues you for \$20,000 the fair market value of the condo for those four months.

**ISSUE:** Has a contract been formed?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:**

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	=	I am offering you my condo
acceptance	=	nice thank you note
consideration	≠	No consideration is exchanged for the above. Only past consideration exists.
written evidence	=	Letter and note

**CONCLUSION:** No

LEGAL ARGUMENT TEMPLATE #11 KEY

Marty and Clarissa Slatert, a married couple, wanted children but were unable to reproduce. Clarissa's ovaries were capable of producing eggs and Mark's sperm were capable of fertilizing the eggs. The Slaterts discussed the possibility of Anna carrying a fertilized egg, bringing the fetus to term, and then giving the baby to the Slaterts. They asked Anna if she would be a surrogate mother. They offered to pay her \$10,000 and all of the medical care. Anna accepted. The parties had an attorney draw up the agreement and everyone signed. However, after the fertilized egg was placed in Anna's womb, the relationship between the parties deteriorated. After the child was born Anna refused to give the child to the Slaterts, even though testing proved the child was genetically the Slaterts.

**ISSUE:** Has a contract been formed?

**RULE:** A contract is formed when there is an offer, acceptance, consideration, and in some cases, a writing signed by the person to be charged, is required. An offer is the expression of a willingness to enter into a contract. A party may revoke an offer at any time prior to acceptance. A counteroffer terminates an offer. The acceptance must mirror the offer. Consideration is what each party gets and what each party gives up; both parties must get something and both must give up something, in order for consideration to exist. A writing, signed by the person to be charged, is required for the following types of contracts: sale of interest in real estate, sale of goods over \$500, lease longer than a year.

**APPLICATION:**

Legal elements	= or ≠ (‘equals’ or ‘does not equal’)	Facts
offer	=	They offered to pay her \$10,000 and all of the medical care.
acceptance	=	Anna accepted.
consideration	=	Anna gets money Slaterts get baby.
written evidence	=	Written agreement

**CONCLUSION:** Yes