



Implementing Best Practices & Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum

Workshop
8D

Teaching Students How to Visualize What It Means
to ‘Think Like a Lawyer’

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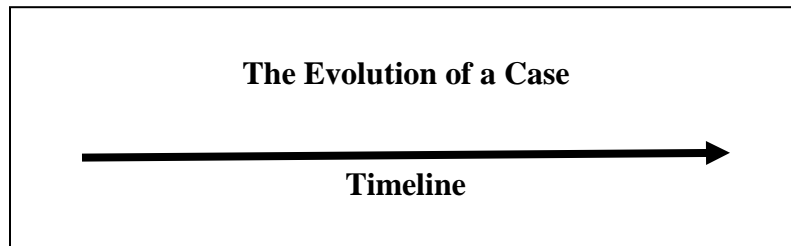
Professor Wendel is professor of law at Pepperdine University where he teaches Property, Wills and Trusts, and Law & Economics, and has been active in the area of academic support. He has received several teaching awards and has taught as a visiting professor at a number of law schools, including the University of California, Los Angeles; the University of Augsburg, Germany; Loyola University, Los Angeles; and Santa Clara University.

He has a number of publications in the Property, and Wills, Trusts & Estates areas.

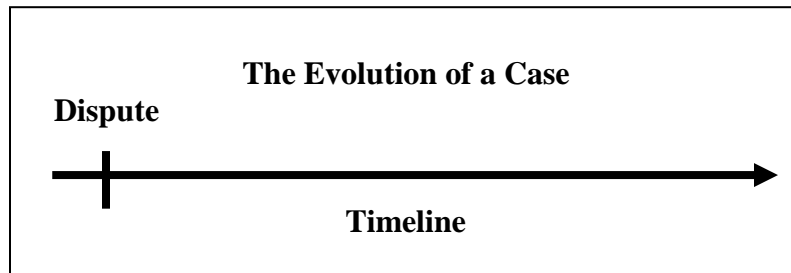
Teaching Students How to Visualize What it means to ‘Think Like a Lawyer’¹

By Peter T. Wendel
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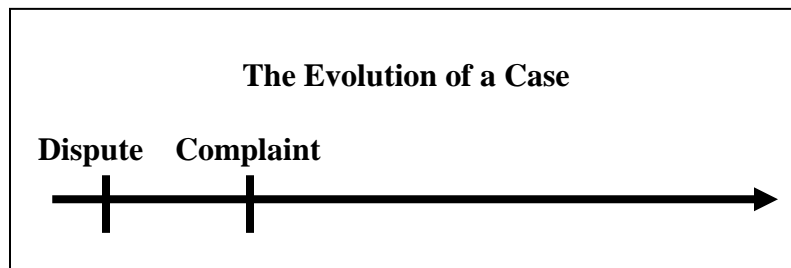
One way to teach students how to think like a lawyer is by diagramming the evolution of a case on a timeline:



The case starts out as a dispute between two parties:

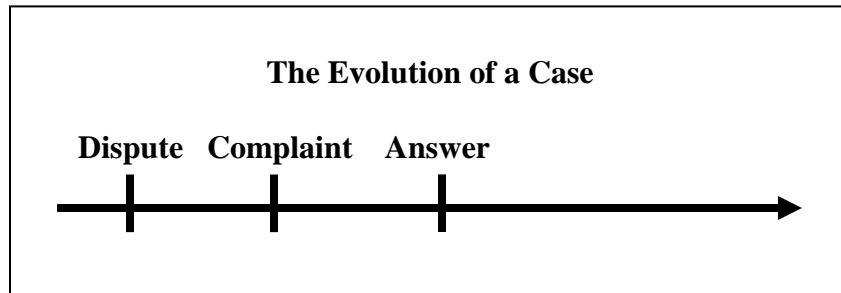


When the parties are not able to resolve the dispute on their own to their mutual satisfaction, one party files a complaint:

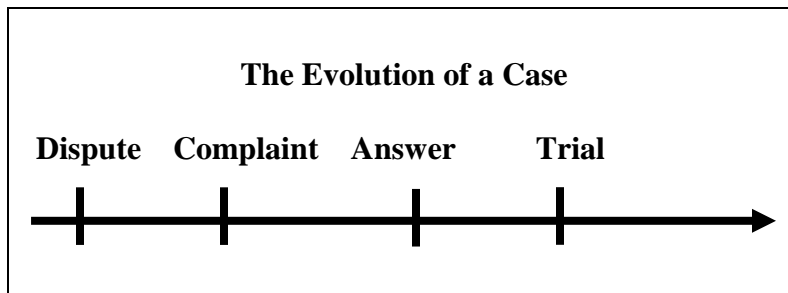


The defendant then files an answer:

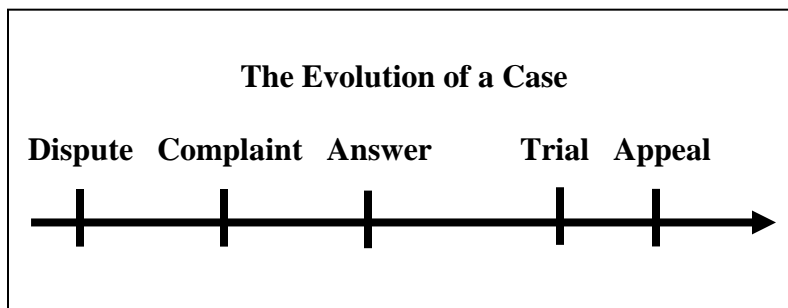
¹ © Copyrighted. This material is a very brief introduction to a theory of legal analysis developed in more detail and more fully in a forthcoming book with Aspen Publishing tentatively entitled Deconstructing Legal Analysis: A 1L Primer. The second half of the book shows how this abstract understanding of what it means to ‘think like a lawyer’ can be used to improve one’s briefing skills, one’s note taking skills, one’s outlining skills, one’s issue spotting skills, and one’s exam writing skills.



Assuming the dispute is not resolved by motion or settled, it goes to trial:



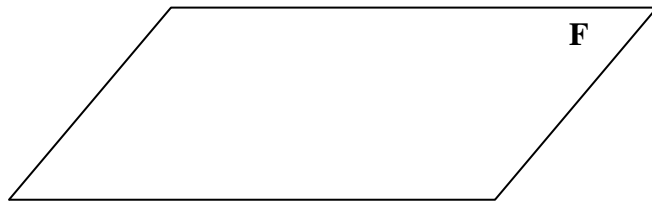
The party who loses at trial appeals:



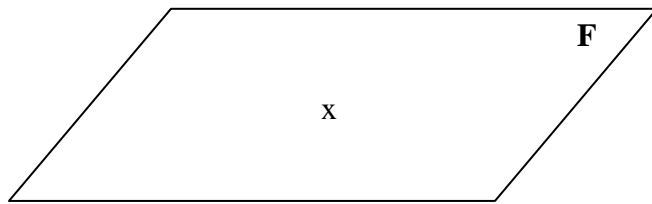
The appeal court issues an opinion.

Virtually all of the opinions students read in law school are appellate opinions, either from an intermediate court of appeals or an appellate court of last resort. Putting the evolution of an opinion on a temporal timeline helps the students understand how the case evolved.

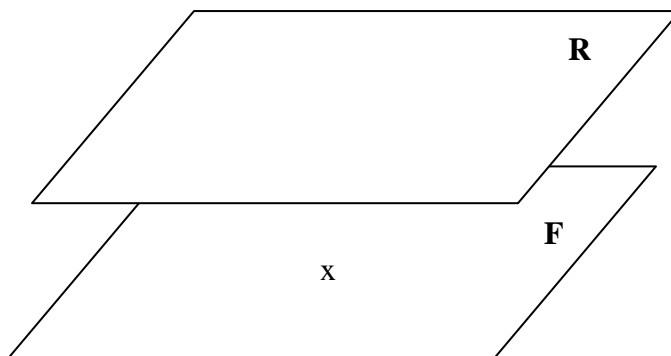
An alternative way to depict how a case evolves, however, is to put the evolution of a case on a series of abstract planes. The first plane is an abstract, two-dimensional plane called the factual plane. Everything that happens in the world occurs on the factual plane:



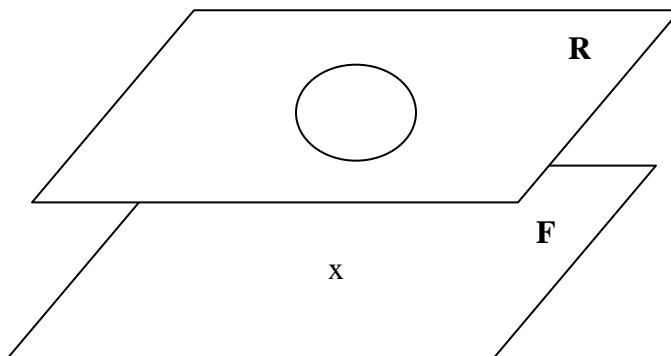
All dispute arise initially on the factual plane. Each dispute can be depicted by an 'x' on the factual plane:



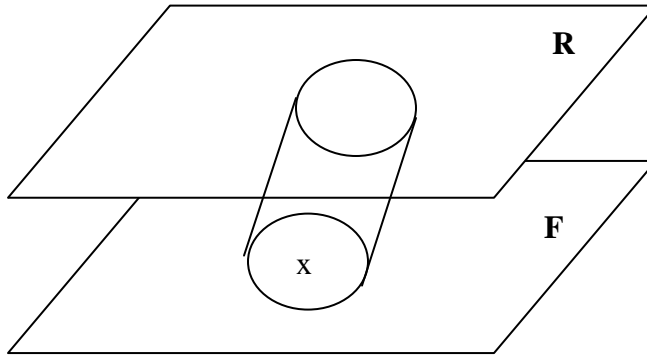
When one of the parties goes to his or her attorney, after the attorney learns the relevant facts in the case, he or she goes to the rule plane looking for a rule of law which when applied to the facts entitles his or her client to the relief he or she seeks. All of the rules exist on the rule plane. The rule plane floats above the factual plane:



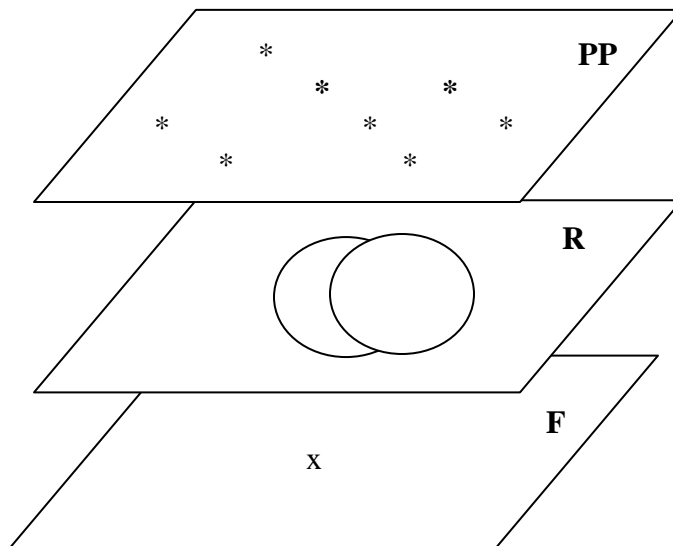
The particular rule the lawyer adopts for that particular case – the cause of action – can be depicted as a circle on the rule plane:



The plaintiff's attorney implicitly is asserting that the scope of the rule (the rule's shadow on the factual plane) covers the facts of the case in question, entitling his or her client to the relief he or she is seeking:



Where there is no rule on the rule plane, or the rule is ambiguous, or the facts of the case fall right on the edge of the shadow cast by the rule, the question becomes one of first impression. To the extent the issue is one of first impression, the court is, in essence, making law. Inasmuch as the court is making law, the court has to choose between competing articulations of what the law should be. Before the court makes law – before the court can decide which proposed rule statement is better – what should the court take into consideration? Public policy; the court must go to the third plane, the public policy plane, to identify what are the relevant public policy considerations, and how they relate to the issue in the case, before deciding what law to adopt.



After considering the competing public policy considerations, the court has to go back down to the rule plane and adopt the rule statement that it thinks does the best job of promoting the relevant public policy considerations. The court then applies the rule it adopted to the facts of the case to reach the holding in the case.

Proper legal analysis requires students to be able to think on three planes simultaneously – the factual plane, the rule plane, and the public policy plane – and in two directions simultaneously – forwards and backwards. The key is to be on the right plane at the right time looking in the right direction.