Marian has worked as Robert Walker’s paralegal for the past four years. She conducts initial client interviews, manages the case files, and performs basic research. Robert, a solo practitioner, always determines the merits of a case and performs the substantive research. Marian started law school last fall and now works only part time at the law firm.

Robert called Marian into his office one morning. “Marian,” he said, “I’m going to hire another paralegal to do your assignments.” Robert continued, “Now that you are in law school, I want you to take over some of the more substantive legal work. I want you to start performing the legal analysis of some of the new cases and determine what, if any, possible causes of action exist. Your new responsibilities will be to study the cases and provide me with memoranda of law identifying the legal issues and analyzing how the law applies to the issues. This will free me to concentrate more on trial work. Start with Mr. Lietel’s case.”

Marian remembered the initial interview with Mr. Lietel. Jerry Lietel has a hot temper. He got into an argument with his neighbor, Tom Spear. Mr. Leitel’s temper got the best of him. He punched Tom, and a fight ensued. Steve Spear, the father of Tom and a retired deputy sheriff, came out of the house and announced that he was placing Mr. Lietel under citizen’s arrest. After a short struggle, Steve Spear subdued and handcuffed Mr. Lietel. After Mr. Lietel was handcuffed and had ceased resisting, Steve Spear kicked him about six times, cracking one of his ribs. Mr. Leitel incurred medical bills and lost two days of work. Since the incident, Mr. Lietel has a lot of trouble sleeping, and he is taking sleeping pills on his doctor’s advice. He is fearful of Steve Spear whenever he sees him.

Jerry admits that he punched Tom without provocation and that the citizen’s arrest was probably justified, but he wants to sue for his medical bills and the loss of work.

Marian realizes that this is her first analysis assignment, and whether she continues to be assigned this type of substantive legal work will depend on the quality of her product. She asks herself, “What’s the best way to approach a legal problem? What is a systematic way to analyze a client’s problem that will produce the best result in the least amount of time?” The Application section of this chapter presents an analysis of Mr. Lietel’s case and the answers to Marian’s questions.
I. INTRODUCTION
As discussed in the preface, the focus of this text is on the process of analyzing legal questions raised by the facts of a client’s case, legal research, and the process of communicating research and analysis in written form. This chapter presents an overview of the process of legal analysis and some concepts and considerations involved in that process.

Most cases begin like the Lietel case. A client relates a set of factual events that the client perceives entitle him or her to legal relief. The client seeks a solution to what he or she believes is a legal problem. The problem may be as simple as the need for a power of attorney or as complex as a question involving multiple parties and several legal issues. The problem may be one for which there is no legal remedy, or it may not be a legal problem at all.

For Example
An individual is fired in retaliation for disclosing a defect in the employer’s product. The state where this occurs does not have a statute prohibiting retaliatory discharge, nor have the state courts adopted a cause of action in tort for retaliatory discharge. Therefore, it may be that no legal remedy for this type of discharge is available under state law. It is possible that the client’s only recourse is political; that is, the client may be required to attempt to get legislation passed prohibiting retaliatory discharge or to exert social pressure through the media.

The object of legal analysis and legal research is to analyze the factual event presented by the client and determine:
1. The legal issue (question) or issues raised by the factual event
2. The law that governs the legal issue
3. How the law that governs the legal issue applies to the factual event, including what, if any, legal remedy is available

Once this is accomplished, the client can be advised of the various rights, duties, and options available.

II. LEGAL ANALYSIS DEFINED
Before addressing the steps involved in the legal analysis process, it is necessary to understand what is meant by legal analysis. The term has different meanings, depending on the context of its usage (the type of legal analysis being performed).

For Example
The term legal analysis can refer to, among others, statutory analysis (discussed in Chapter 3), case law analysis (Chapter 12), and counteranalysis (Chapter 13).

In this chapter, legal analysis is used in a broad sense to refer to the process of identifying the issue or issues presented by a client’s facts and determining what law applies and how it applies. Simply put, legal analysis is the process of applying the law to the facts of the client’s case. It is an exploration of how and why a specific law does or does not apply. Legal research is part of the legal analysis process. It is that part of the process that involves finding the law that applies to the legal question raised by the facts of a client’s case.

III. LEGAL RESEARCH AND THE ANALYSIS PROCESS
A legal analysis process is a systematic approach to legal research and analysis. It is an organized approach that helps you develop research skills. It makes legal research easier, saves time, and helps develop research skills.
The commonly used approach to legal analysis involves a four-step process:

**STEP 1: Issue.** The identification of the issue (legal question) or issues raised by the facts of the client’s case

**STEP 2: Rule.** The identification of the law that governs the issue

**STEP 3: Analysis/application.** A determination of how the rule of law applies to the issue

**STEP 4: Conclusion.** A summary of the results of the legal analysis

An acronym commonly used in reference to the analytical process is IRAC. It is composed of the first letter of the descriptive term for each step of the legal analysis process. The use of the acronym is an easy way to remember the four-step legal analysis process—issue, rule, analysis/application, and conclusion.

The research component of this process involves steps 1 and 2. Steps 3 and 4 of the process involve the analysis of the research once the research is complete. The subsequent sections of this chapter address steps 1 and 2 in detail. Steps 3 and 4 are summarized in this chapter and then discussed in detail in Chapter 15 in the legal writing section of the text.

Before the legal analysis of a case can properly begin, however, the following preliminary preparation must take place:

1. All the facts and information relevant to the case should be gathered.
2. Preliminary legal research should be conducted to gain a basic familiarity with the area of law involved in the case.

### A. Facts and Key Terms

#### 1. Facts

It is important to keep in mind the crucial role the facts play in the analytical process. The four steps of the analysis process involve the facts of the client’s case, and the facts play a major role in each step:

1. **Issue.** The key facts are included in the issue. The issue is the precise question raised by the specific facts of the client’s case. A properly stated issue requires inclusion of the key facts. This is discussed in detail in Chapters 10 and 11.

   _For Example_ Under the provisions of the state battery law is a battery committed by an individual, _present at the scene of a battery_, who _encourages others to commit the battery but does not actively participate in the actual battering of the victim_? The key facts of this issue are italicized.

2. **Rule.** The determination of which law governs the issue is based on the applicability of the law to the facts of the client’s case.

   _For Example_ If the issue involves oppressive acts by a majority shareholder against the interests of minority shareholders in a closely held corporation, then the facts govern the determination of which corporation statutes apply. Only those statutes that address acts by majority shareholders can apply. In most states, this is limited to a few statutes.

3. **Analysis/Application.** The analysis/application step is the process of applying the rule of law to the facts. It obviously cannot take place without the facts. Without the facts, the law stands in a vacuum.
CHAPTER 2  INTRODUCTION TO LEGAL RESEARCH AND ANALYSIS

Assume a very simple problem where the client was ticketed for driving 65 mph in a 55 mph zone. The client believes that the speed limit was actually 65 mph and that the officer made a mistake. A determination of whether the client violated the law requires the application of the rule of law to the facts of the client’s case. Was the speed limit where the ticket was given 65 mph or 55 mph? The facts are essential to the process. Without the facts, a determination of how the law applies cannot be made.

4. Conclusion. The conclusion is a summation of how the law applies to the facts, a recap of the first three steps. It obviously requires the facts.

In every case, the analytical process involves a determination of how the law applies to the facts. In court opinions, courts determine how the law applies to the facts presented to the court. Very often students pay too little attention to the facts, focusing on what the law is and what it requires. They ignore the important role the facts play.

In a sense, cases are fact driven—the facts determine the outcome of the case. Often, if a single fact is changed, the outcome is different. The application of the law results in a different conclusion.

With this in mind, the analysis process should begin with a consideration of the facts of the client’s case. Identify and review the facts at the outset. This preliminary step should include the following:

1. Be sure you have all the facts. Ask yourself if you have all the interviews, files, statements, and other information that have been gathered concerning the case. Are the files complete? Are facts or information missing? As discussed in the murder case example, a single fact can determine the outcome of a case. If key facts are missing, your analysis may result in an erroneous legal conclusion.

2. Study the available facts to see if additional information should be gathered before legal analysis can properly begin.

3. Organize the facts. Group all related facts. Place the facts in a logical order, such as in the sequence in which they occurred (chronological order) or according to topic (topical).

4. Weigh the facts. The value of some factual information, such as hearsay, may be questionable.

5. Identify the key facts. Determine which facts appear to be critical to the outcome of the case. Chapter 9 discusses the importance of key facts and the process for identifying key facts.

2. Key Terms

Most legal research sources such as statutory codes, legal encyclopedias, legal treatises, and digests contain one or more indexes. These indexes are a list of terms that help to
locate information. To effectively use an index, you must identify the relevant terms in the client’s case. These key terms help guide the researcher in the area being researched. If you are researching electronically such as through the internet, searches are conducted using key terms.

Key terms are identified by reviewing the case file and listing all the terms relevant to the legal questions raised by the facts of the case. When preparing this list, keep in mind the following:

- Parties involved (e.g., private citizen, corporation, public official)
- Place (e.g., public or private property)
- Actions or omissions that form the basis of the case (e.g., negligence, intentional acts)
- Defenses available (e.g., self-defense)
- Relief sought (e.g., money, injunction)

Key terms may be broad terms you use as a guide to perform preliminary research to gain a familiarity with the area of law governing the client’s case, or narrow terms if you are already familiar with the area of law and want to focus your research on a specific aspect.

For Example

Assume the client’s case involves a question about child custody and the researcher is unfamiliar with this area of law. The researcher decides to read about the topic in a legal encyclopedia. The first step is to list all the terms that the subject “child custody” may be indexed under, such as divorce, marriage, custody, parent and child, child custody, children, and domestic relations. By listing the terms, you focus the search in the index and avoid having to scan the entire index. The topic will be under at least one of the search terms.

Because the key term may not be indexed in the way you think it should be, it is important to think of all the terms or categories that may apply. One role of legal education is to teach key terms and the categories where they fit.

For Example

A legal education teaches that, in general, unintentional harmful acts are categorized under tort law as negligence, the act of striking someone is categorized under both civil and criminal law as battery, and child support is under the umbrella of domestic relations.

Key terms may include key facts from the client’s case. This often occurs when one is familiar with the general area of law and is seeking the specific law that governs the client’s fact situation.

For Example

The assignment is to locate the federal law the client may be charged with breaking. The client placed a bomb made of nitroglycerin under a bridge. Assume these are the key facts. The researcher, based on her legal education and previous experience, knows that the general research topic is “federal criminal law” and the subtopic is “explosives.” By identifying the key search terms nitroglycerin and bridges, the researcher is guided to the specific law within the general area of “federal criminal law” and “explosives.”
It is recommended that a list of key terms be developed while you are reviewing the case and identifying the key facts. If you are unfamiliar with the area of law, use a list of terms related to the general topic of the case to perform general research and become familiar with the area of law. See the child custody example above. Once you are familiar with the area of law, identify the key facts and the legal issue before conducting research.

**B. Preliminary Research**

Before conducting any research, check the office research files for previous memos or research that may have addressed the issue(s) you are researching. This may obviate the need for further research.

It may, however, be necessary to conduct some basic research in the area(s) of law that govern the issue or issues in the case. You may be unfamiliar with the area of law in general or with the specific aspect of the area that applies in the client’s case. You may obtain a general overview of the law by reference to a legal encyclopedia or a single-volume treatise. If the specific question or area is known at the outset, an ALR reference or a multivolume treatise may be appropriate.

**C. IRAC Analysis**

Once the facts have been gathered and reviewed, follow the four steps of the IRAC legal analysis process (see Exhibit 2-1). The following are important considerations to keep in mind when performing these steps.

**Exhibit 2-1 Steps in the IRAC Legal Analysis Process.**

<table>
<thead>
<tr>
<th>STEP 1: Issue</th>
<th>Identify the issue (legal question) or issues raised by the facts of the client’s case.</th>
</tr>
</thead>
<tbody>
<tr>
<td>STEP 2: Rule</td>
<td>Identify the law that governs the issue.</td>
</tr>
<tr>
<td>STEP 3: Analysis/ Application</td>
<td>Determine how the rule of law applies to the issue.</td>
</tr>
<tr>
<td>STEP 4: Conclusion</td>
<td>Summarize the results of the legal analysis</td>
</tr>
</tbody>
</table>

**1. Issue**

*Identify the issue (legal question) or issues raised by the facts of the client’s case.* The **issue** is the precise legal question raised by the facts of the dispute. The first and probably most important step in the analytical process is to identify the issue. You must identify the problem before you can solve it. The issue is the starting point. If it is misidentified, each subsequent step in the process is a step in the wrong direction. Time is wasted, and malpractice may result.

**For Example** A client complains that the individual who sold and installed the tile in his bathroom installed it in a defective manner. After a few months, the tile began to fall off the wall. The person who installed the tile gave no oral or written warranty covering the quality of the installation or the quality of the tile.
PART I

INTRODUCTION TO RESEARCH, ANALYTICAL PRINCIPLES, AND THE LEGAL PROCESS

The client does not pay to have the wrong question answered. The subjects of issue identification and presentation are of such importance that Chapters 10 and 11 are devoted to them. Some important considerations involving issues are discussed briefly here.

a. Multiple Issues
The client’s fact situation may raise multiple legal issues and involve many avenues of relief. The implied warranty example involves one issue, but there may be several issues in a case.

For Example
Mr. Elvan rear-ended the client’s car at a stoplight. After the impact, Mr. Elvan exited his car, approached the client’s car, and started yelling at the client, threatening to hit the client. He grabbed the client’s arm but never struck him. As a result of the incident, the client’s car is damaged. The client suffered whiplash from the collision and a bruise on his arm from being grabbed, and since the wreck, he has been upset and has had trouble sleeping.

The client may have several causes of action against Mr. Elvan: a claim of negligence arising from the rear-end collision, civil assault for his conduct of approaching the client in a threatening manner, battery for grabbing the client, and intentional infliction of emotional distress for his conduct after the collision. Each of these potential causes of action may raise legal issues or questions that must be addressed. This example is referred to in this chapter as the rear-end collision example.

You should be aware of and keep in mind that one set of facts may raise multiple issues and include multiple causes of action.

b. Separate the Issues
Analyze and research each issue separately and thoroughly. If you are trying to research and analyze several issues at once, it is easy to get confused and frustrated. If you find information relevant to another issue, make a reference note and place it in a separate research file.

c. Focus on the Issues of the Case
Keep your focus on the issues raised by the facts of the client’s case or on those issues that you have been assigned to research.
2. Rule

Identify the law that governs the issue (legal research). The second step in the IRAC analytical process is to identify the rule of law that applies to the issue; that is, to solve the client’s problem you must find the law that applies to the problem. This is the legal research component of legal analysis. The three-part process presented in Exhibit 2-2 is recommended for conducting legal research.

The first part is locating the general law, such as a statute, that governs the question. The second part is locating the law, such as a court opinion, that interprets how the general law applies to the specific fact situation of the issue. The third part is to update the research sources.

Exhibit 2-2 Three Parts of Step 2: Rule.

| PART 1 | Locate the general law that governs the issue—usually statutory or case law. |
| PART 2 | Locate the law that interprets how the general law applies to the specific fact situation of the issue—usually case law. Reference to secondary authority is necessary if there is no primary authority that applies or if additional authority is needed to help interpret the primary authority. |
| PART 3 | Update research to ensure that the source you are reading has not been amended, repealed, revoked, overruled, modified, or otherwise changed. |

For Example

In the rear-end collision example, assume that there was a passenger in the vehicle with the client and that the passenger is represented by another law firm. Although there may be many interesting issues involving potential legal claims available to the passenger, the passenger is not the client. The focus should be on the issues in the client’s case. The issues involving the passenger are outside the scope of the problem and should not be allowed to become a distraction.

For Example

Suppose in the rear-end collision example, you are assigned to research the assault issue. Do not research the other issues or clutter your analysis with issues you were not assigned to address. Stick to the assignment. If you come across useful information that is relevant to another issue, note it and give it to the person assigned to address that issue.

Avoid getting sidetracked and wasting time on interesting aspects or issues of a case you were not assigned to address.
statute provides that custody will not be changed unless there has been a substantial change in circumstances that affects the welfare of the child. The statute does not define or give examples of a “substantial change in circumstances.” The second step requires locating a court opinion (case law) that answers the question of whether a custodial parent’s conviction of possession of drugs is a “substantial change in circumstances” within the meaning of the statute. The third part is to update the research sources to ensure that the source is current law.

Chapter 3 through Chapter 7 presents detailed instructions on how to research specific types of primary and secondary authorities, such as statutory law, case law, and treatises. A summary of the three-part research process follows.

a. Part 1: Locate the General Law that Governs the Issue
This requires the identification of terms that you will use to search for the law that governs the issue. Ask yourself, “What type of law applies to the question raised by the facts of the case?” This may be enacted law or case law.

(1) Enacted Law The legal issue may be governed by enacted law, such as a constitutional provision, statute, ordinance, or regulation. Ask yourself, “What terms will I use to search a statutory index or computer database to locate the law that applies to this issue?” List all the possible terms that might encompass the relevant law. Search the enacted law index or database using the search terms you have identified.

Review the annotations to the statute for cases that interpret the statute in fact situations similar to your case. Also, check the annotations for secondary sources such as encyclopedias, ALR annotations, and law review articles that discuss the statute. To avoid having to look up the law more than once, save the relevant research concerning the rule of law as you go along. This should include the proper statutory citation, a copy of the relevant portions of law, case citations (if any), and references to secondary sources.

For Example In the child custody example, think of all the terms for the laws governing child custody. Laws involving child custody could be indexed under “family law,” “domestic relations,” “divorce,” “marriage,” “child custody,” “custody,” or “parent and child.” The laws governing changes in custody should be indexed under one of these terms.

(2) Case Law Rules or principles established by the courts may govern the issue. In such cases, there may be no statutory law that applies. As with searching for enacted law, ask yourself, “What terms will I use to search a case law digest or computer database to locate the law that applies to this issue?” List all the possible terms under which the court opinions governing the issue may be categorized.

For Example An individual, while not paying attention, runs a stop sign and hits the client’s vehicle. The client is suing for the damage caused to her vehicle. Lawsuits between individuals arising out of accidents are governed by tort law. Most tort claims are based on case law, that is, the law defined by the courts in court opinions. Think of all the terms under which the court opinions governing automobile collisions may be categorized. The opinions may be listed under “negligence,” “automobile collisions,” and other topics.
Search the case law digests or computer databases using the search terms you have identified. Chapter 4 addresses the research of issues governed by case law. Chapter 7 presents techniques for conducting research using computers.

**b. Part 2: Locate the Law That Interprets How the General Law Applies to the Specific Fact Situation of the Issue**

The rule of law that governs the issue may be written in such broad terms that it is necessary to look to another source, such as case law or secondary authority, to determine how the law applies to the specific fact situation of the issue. Ask yourself, “What terms will I use to search a case law digest or computer database to locate the court opinion that interprets how the general law applies to the specific fact situation raised by the issue?”

**For Example**

In the child custody example presented at the beginning of this subsection, it is necessary to find case law that addresses the question of whether a drug conviction is a “substantial change in circumstances” within the meaning of the statute. Think of all the terms or phrases that may help locate cases that interpret the statute in this fact situation. These terms may be *child custody, custodial parent and drug convictions, change of custody and drug convictions, or change of custody and parental misconduct.*

Chapter 12 addresses how to determine when a court opinion applies to a specific fact situation.

When looking for primary authority, be sure to conduct counteranalysis. That is, always look for authority that may present a counterargument in response to your analysis of an issue. If you find a case on point in support of your position, look for other cases that have a different holding.

**Role of Secondary Authority** Although it is essential to locate the primary authority that governs an issue, be sure to note the importance of secondary authority as well. Secondary authority may be relied on by the court if there is no primary authority or if it is unclear how the primary authority applies. Sources such as ALR annotations, legal encyclopedias, and treatises often discuss and list the statutes and cases related to a topic. Reference to such sources ensures that you have found all the law related to the issue being researched. Also, secondary authority sources such as ALR annotations are helpful in locating counterarguments when performing counteranalysis.

**c. Part 3: Update Research**

Update all research to ensure that sources are current. Statutes must be checked to determine if they have been repealed or amended, cases checked to ensure they have not been reversed or modified by later cases, and secondary sources checked for additions and amendments.

When conducting research, follow a research sequence. First, locate the primary authority that governs the issue. As mentioned in Chapter 1, the courts refer to and rely on primary authority first when resolving legal problems.

When researching primary authority, look first for the enacted law, constitutional provision, statute, and so forth that governs the issue. There are two reasons for this. One, the constitutional or statutory provision may answer the question, so that reference to case law is not required.
For Example The issue is, “How often must stockholder meetings for a corporation be held?” The statute provides that meetings must be held at least once annually. The statute answers the question; there is no need for case law interpreting the statute.

Two, the annotations (summary of court opinions and other references that interpret the law) that follow the constitutional or statutory provision may include an opinion or a secondary authority source that interprets the law in a fact situation similar to the facts of the issue. Therefore, you will not need to spend time researching other sources for relevant case law.

For Example The issue is, “Does a majority shareholder of a corporation engage in oppressive conduct when he or she refuses to issue dividends?” The corporation statute prohibits oppressive conduct but does not define what constitutes oppressive conduct. In the annotations that follow the statute is reference to a court opinion where the court held that the refusal to issue dividends was oppressive conduct. The researcher does not have to research other sources for a case that interprets the statute.

The second part in the research sequence is if there is no primary authority that applies or if additional authority is needed to help interpret the primary authority, then look to secondary authority (see Exhibit 2-3).

Exhibit 2-3 Sequence for Conducting Research.

First—Locate the primary authority that governs the issue

Step 1: Locate the constitutional or statutory law. The constitutional or statutory provision may answer the question raised by the issue, making reference to case law unnecessary. Also, the annotations (summary of court opinions and other references that interpret the law) that follow the constitutional or statutory provision may include an opinion or secondary the issue source that applies that law to a fact situation similar to the facts of the issue.

Step 2: Locate the case law. This is necessary when there is no constitutional or statutory law or when the law needs interpretation. In this situation the case law rules or principles established by the courts govern the issue.

Second—Locality secondary authority

Reference to secondary authority is necessary if there is no primary authority that applies or if additional authority is needed to help interpret the primary authority.

See Chapter 15 for additional summary of the research process.

3. Analysis/Application

Step 3: Determine how the rule of law applies to the issue. Once the rule of law is located, you must analyze the law to determine how it applies to the facts of the client’s case. In other words, apply the law to the legal issue. This is a three-part process (see Exhibit 2-4).
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Exhibit 2-4 Three Parts to Step 3—Analysis/Application.

<table>
<thead>
<tr>
<th>PART 1</th>
<th>Identify the component parts (elements) of the rule of law.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART 2</td>
<td>Apply the facts of the client’s case to the component parts.</td>
</tr>
<tr>
<td>PART 3</td>
<td>Consider the possible counterarguments to the analysis of the issue (i.e., conduct a counteranalysis of the analysis).</td>
</tr>
</tbody>
</table>

An in-depth discussion of this step in regard to statutory law and case law is presented in Chapter 3 and Chapter 12, respectively. The role of the key facts is addressed in Chapter 9. Counteranalysis is discussed in Chapter 13. Therefore, only a brief summary of this step is included here.

a. Part 1: Identify the Component Parts (Elements) of the Rule of Law
To determine how a rule of law applies to a fact situation, certain conditions established by the rule must be met. These conditions or component parts are called the elements. You must identify the requirements of the rule of law before the rule can be applied to the issue raised by the facts of the client’s case.

For Example
Section 93-85A of the state statute governing the execution of a will provides: “The execution of a will must be by the signature of the testator and of at least two witnesses as follows:
1. The testator, in the presence of two or more witnesses:
   a. signifies to the witnesses that the instrument is the testator’s will, and
   b. signs the will or has someone else sign the testator’s name at the testator’s specific direction.
2. The attesting witnesses must sign in the presence of the testator and each other.”
To determine how the statute applies to a client’s facts, first identify the elements of the statute. The elements of the statute follow:
1. The testator must indicate to two or more witnesses that the instrument is the testator’s will.
2. The testator must sign the will or have someone sign it at the testator’s specific direction.
3. The witnesses must sign.
4. Steps 1 through 3 must be done in the presence of the witnesses and the testator.

This example is referred to in this chapter as the wills example.

b. Part 2: Apply the Facts of the Client’s Case to the Component Parts
Once you have identified the elements of the rule of law, match or apply the facts of the client’s case to the elements and determine how the rule applies.

For Example
If the client’s case involves a question of whether a will was validly executed in accordance with the statute presented in the wills example, match the facts of the client’s case with the elements of the statute to determine if the execution was valid. Assume the will was signed by someone other than the testator, and not at his specific direction. The testator never specifically directed the person to sign the...
Once facts of the client’s case have been matched to the elements of the rule of law, you may determine how the rule applies in the client’s case.

**For Example** In the preceding example, the conclusion may be that the element allowing a signature by “someone else” at the testator’s specific direction was not met. Although the testator was present, he did not specifically direct the other person to sign the will. It could also be concluded that additional research is necessary to determine how the courts have interpreted “specific direction” as used in the statute.

In some cases, the way the rule applies is clear from the face of the rule, and there is no question how the rule applies. All that is required is the application of the elements of the rule of law to the facts to determine how the law applies in the case.

**For Example** An 18-year-old client wants to know if she is eligible to run for the position of probate judge. Section 34-214 of the election code provides that the minimum age for candidates for the position of probate judge is 21 years. It is clear from Section 34-214 that the client is not eligible to run.

In many cases, it is not clear from the rule of law how an element applies in a specific fact situation. In such instances, it may be necessary to refer to court opinion where the court, in a similar fact situation, interpreted how the law applies.

**For Example** The rule of law defines slander as the “publication of a false statement of fact concerning the plaintiff that causes damages.” In the client’s case, the client’s neighbor orally communicated to another neighbor a false statement of fact concerning the client. While visiting her neighbor’s house, she falsely stated that the client was a thief. The statement damaged the client.

The answer to the question of whether an oral communication to one person constitutes “publication” within the meaning of the statute is not clear from a mere reading of the statute. You must refer to case law to determine how the courts have interpreted the term publication. You must then apply the courts’ interpretation of the term to the client’s case. If the courts have defined publication as “communication to any third person,” then the communication to the neighbor is slander.

This example is referred to in this chapter as the slander example.

c. Part 3: Consider the Possible Counterarguments to the Analysis of the Issue (Conduct a Counteranalysis of the Analysis)

Once you complete the analysis and application of the rule of law, consider any potential counterarguments to the analysis or application. This involves the anticipation and consideration of any argument an opponent is likely to raise in response to the analysis.
For Example  Refer to the wills example where the testator did not specifically direct a third party to sign the will but was aware of the signing and did not object. It can be concluded that the element of the statute allowing a third party to sign the will at the testator’s specific direction was not met. Although the testator was present, he did not specifically direct the other person to sign the will.

The counterargument is that this element of the statute is met because the equivalent of “specific direction” took place. The testator was aware that the third person was signing on his behalf and did not object. The failure to object is evidence that the signing took place at his specific direction.

Undertake research to determine if this counterargument has support in the case law. You should consider and address the counterargument in this step of the analysis process.

4. Conclusion

Step 4: Summarize the results of the legal analysis. The final step in the analytical process is the conclusion, the result of the analysis. As discussed in step 3, part of the analysis/application process is a determination of how the rule of law applies to the client’s facts. This determination is, in effect, a conclusion. Therefore, the conclusion step in the analytical process is a summing up and commentary that may include:

a. A recap of the determination reached in the analysis/application step

b. A consideration or weighing, based on the analysis, of what action a court may take or how a court may rule upon the issue

IV. GENERAL CONSIDERATIONS

The process of analyzing a legal problem can at times be difficult, especially for a beginner. In addition to the steps addressed in the previous section, the following general considerations and guidelines will prove helpful when researching and analyzing a legal issue.

A. Focus

Focus is critical when performing the steps of the analytical process. Focus has several meanings, depending on what part of the process is being performed. At the broadest level, it means to keep focused on the specific task assigned, to analyze only the issue or issues assigned.

For Example  Referring to the rear-end collision example, if the assignment is to analyze the question of whether a cause of action is present for civil assault, keep focused on that issue. Answer only that question. If you come across information relevant to another issue, note it, but do not pursue it. When you have a break or at the end of the day, give your notes to the person assigned to analyze that issue. Valuable time may be lost in researching and analyzing the other issue or in interrupting your work to discuss the information with the other person.

When identifying the issue, focus on the facts of the client’s case. Ask yourself, “What must be decided about which of the facts of the client’s case?”

When identifying the rule of law, focus on the facts of the case and the elements of the rule of law. This will help you quickly eliminate rules of law that may not apply.
The fact situation involves a credit purchase by the client. There may be several rules of law that govern the transaction, such as the state’s usury laws, the state sale of goods statutes, and the federal truth-in-lending laws.

The interest charged in the transaction in question was 1 percent and the usury statute provides that interest rates in excess of 20 percent are void. Keeping this fact in mind when locating the possible laws that apply to the transaction, the usury statute can be immediately eliminated from consideration. The interest charged does not violate the usury statute, and the statute clearly does not apply. It does not have to be considered when analyzing the problem in step 3.

When analyzing and applying the rule of law in step 3, focus on the client’s facts and the issue or question being analyzed. It is easy to get sidetracked, especially when reading case law. There may be interesting issues addressed in a court opinion that are close but not directly related to the issues in the client’s case. Stay focused. Ask yourself, “Is the issue being addressed in this opinion really related to the issue in my case? Is it on point?” The guidelines and principles addressed in Chapter 12 are helpful in this regard.

If you do not stay focused, after you have completed your research, you may have several cases in front of you that are only marginally related to the specific issue you are analyzing. A lot of time can be wasted reading cases that are not really on point.

Focus on the work. Avoidance and procrastination are deadly. When you are stuck or having a difficult time analyzing or researching an issue, it is sometimes easy to procrastinate, to avoid working on the problem. You may find excuses for not working on the problem, such as working on an easier project. The way to overcome this is to start. Do not put it off. If you are at the research stage, start researching. If you are at the writing stage, start writing. Do not be discouraged if the results seem poor at first. Focus on the problem and begin. Often the barrier is beginning.

B. Ethics—Intellectual Honesty

Rule 1.1 of the American Bar Association’s Model Rules of Professional Conduct requires that a client be represented competently. This means that it is your ethical duty to possess and exercise that degree of knowledge and skill ordinarily possessed by others in the profession. One aspect of competency requires that a legal problem be researched with intellectual honesty. Intellectual honesty means to research and analyze a problem objectively. Do not let emotions, preconceived notions, personal views, or stubbornness interfere with an objective analysis of the client’s case. Do not assume you know the law. Check your resources. Just because you “feel” a certain outcome should occur, do not let that feeling prevent you from objectively researching and analyzing the issue.

For Example

The person who interviews clients in a law office has a personal history of domestic violence. When he was a child, there was domestic violence in the home. He has a strong aversion to domestic violence and harbors a prejudice against perpetrators of domestic violence. He interviews a client who complains that, the night before the interview, her husband hit her in the face with his fist. She states that he has beaten her frequently and savagely throughout their 10-year marriage. The client appears to have been severely beaten. She has two black eyes, and her face is swollen around the eyes.
The interviewer is outraged and upset by what happened to the client. As a result of his outrage, he fails to conduct a thorough and objective interview. He does not ask questions to elicit the details of the events of the previous night. He assumes the battery was unprovoked and does not ask questions concerning the reasons the client's husband hit her. His emotions and personal feelings cause him to focus on punishing the husband.

The interviewer knows that in addition to the remedies available under the criminal law, there is also a civil cause of action for domestic battery available under the state's recently passed domestic violence statute. He recommends that the supervising attorney file a civil complaint for domestic battery under the domestic violence statute. Relying on the paralegal's record for thoroughness, the supervising attorney directs that a complaint be drafted and filed. A few weeks later, the husband's counsel, a friend of the supervising attorney, calls concerning the case. “Why did you file this complaint?” she asks. “My client was acting in self-defense. He hit his wife after she stabbed him.” As it turns out, the client decided to kill her husband rather than face a future of beatings. She took a kitchen knife and stabbed him in the chest. In self-defense, he hit her once, and the blow caught her between the eyes, causing the two black eyes and facial swelling.

Had the interviewer not lost his objectivity, he would have conducted a thorough interview. Probing questions concerning the events of the night in question would have revealed the true facts, and the lawsuit may not have been filed.

This is an extreme example, but it occurs in varying degrees. Personal prejudices, personal beliefs, or sympathy for the client can combine to affect objectivity, which may lead to a failure to conduct an objective, critical analysis of the case, to not vigorously pursue potential opposing arguments, or to discount opposing authority.

Remember, the client may not be telling the whole truth. This may not be intentional. It may be the result of forgetfulness or a personal tendency to discount or downplay the importance of adverse facts. In this example, the client may have been so focused upon the years of abuse, and the desire to escape from further abuse, that she truly considered the stabbing insignificant when weighed against her past experiences.

Pursue the analysis of all legal issues with intellectual honesty. Identify all the facts affecting the case. Pursue all legal authority concerning the issues, including any authority that may negatively affect the client’s position. Ignoring adverse authority will not make it go away. It must be addressed. The importance of counterargument and counteranalysis is detailed in Chapter 13.

C. When to Stop Researching

One of the more difficult problems is to determine when to stop researching. This involves two situations. The first is when to quit researching a specific source if you find nothing. The second and more common situation is when to stop researching after finding several legal sources that address the research topic. In other words, when is your research complete? Both of these situations are discussed in this section.

1. When to Stop Researching If You Find Nothing

One of the more difficult problems is when to stop looking if your research fails to produce any results.

For Example: The assignment is to locate law identifying elements of the tort of emotional distress. The first step is to locate the statute governing emotional distress. In many jurisdictions, torts such as this are not governed by statutory law, but by case law. How do you know when to quit looking in the state statutes for the statutory law?
There are several different approaches to take in this situation.

**a. Look to Another Source of Law**

In the previous example, there may simply be no statutory law that governs the question. Then, once you have conducted research using all the possible terms the statute may be categorized under, it is time to look to another source such as case law. It may be that the subject is covered by federal rather than state law. If after exhausting all possible avenues of research under a specific source, look to another source.

**b. Reconsider the Issue and Search Terms**

It may be possible that the issue or search terms are stated so broadly or narrowly that your search is empty.

*For Example* The issue is stated as, “Is a will valid when the testator wrote ‘invalid’ on the title page of the will?” The researcher finds nothing when looking in the statutory index under wills, testator, and validity. A simple rephrasing of the issue to, “Is a will validly revoked when the testator wrote ‘invalid’ on the title page of the will?” might improve the research results. Expanding the search terms to include revoked or revocation may lead to the answer.

In this regard, it may be necessary to consult the person who gave you the assignment for guidance or to make sure the assignment is clear. In addition, reference to a secondary source such as a treatise may help you reframe the issue or identify additional search terms.

**c. Reconsider the Legal Theory**

It may be that you have incorrectly analyzed the question and are searching in the wrong area of law. Review the question to see if another area of law may be involved. It may be necessary to consult a secondary source such as a legal encyclopedia for an overview of the law that compiles all the ways a topic may be addressed.

*For Example* The client runs a small business and a competitor induced a customer of the client to breach a contract with the client. Because the matter involves breach of contract, the researcher looks to state contract law for remedies that may be available against the competitor and finds nothing. The matter, however, is governed by the state’s tort law—the tort of interference with contractual relations. Reference to contract law in a legal encyclopedia will reveal that third-party interference with a contract is often governed by tort law.

**d. Matters of First Impression**

It may be that the issue you are researching has not been addressed in your state. That is, it is a matter of first impression with no law on the subject in your jurisdiction. If this is the case, refer to a secondary source such as a legal encyclopedia, treatise, or ALR annotation to identify how other jurisdictions have answered the question. The results of your research should not simply inform the supervising attorney that the state has not decided the matter. It should include the various ways other states have addressed the question.
2. When to Stop Researching After Finding Several Legal Sources

A more difficult problem is to know when to stop researching after finding several sources. There may be an endless variety of sources that address a specific question you are researching. There may be a statute, case law, encyclopedia references, ALR annotations, law review articles, and so on. There is no simple answer to the question of when to stop. Learning when to stop becomes intuitive with experience. The following considerations may help you determine when to stop.

a. Stop When You Have Found the Answer

The first research step is to find the primary authority that answers the question. If the authority clearly answers the question, then stop researching, as the answer is simple.

For Example

If the question is, “What is the statute of limitations for filing a claim for breach of a written contract?” then the statute will clearly provide the answer. Reference to case law or secondary authority is not necessary. The only task remaining is to update and Shepardize the statute to determine if it has been amended or repealed.

There may be case law directly on point that answers the question being researched. If this is the situation, then you must Shepardize the case to determine if it is good law and identify any cases that may criticize or affect its application. In addition, check the appropriate digest for other cases that may analyze the issue differently. Also, check a secondary source such as an ALR annotation on the topic for authority that may provide a different analysis. Include any cases that are on point in the research.

b. When You Find Several Authorities on the Research Topic

Keep the following factors in mind if you locate several authorities that address the research issue.

(1) Primary Authority (Constitutions, Statutes, Cases) Always try to find a mandatory primary authority source(s) for each issue. If you have several cases that address the topic, use the mandatory authority cases. If you have case law that is mandatory authority, you do not need persuasive authority such as cases from other jurisdictions.

If you have several mandatory authority cases, select the case that is most on point, that most clearly analyzes the law, and is most recent. Courts, or the person reading your research, do not have time to read through numerous cases addressing the same legal arguments. Select only the lead case or cases.

(2) Secondary Authority You do not need to include secondary sources in your research if the primary authority clearly provides the answer to the issue. However, you may wish to include secondary authority sources to support your research if they specifically address the research topic. A reference to an ALR annotation or law review article on the issue allows the reader to review a comprehensive analysis of the topic if additional reference is desired.

If there is no primary authority on a topic, then reference to secondary authority is necessary. The more specific the secondary authority source, the better.

For Example

If you have a legal encyclopedia citation that generally addresses the question being researched and an ALR annotation that specifically addresses the question, then the ALR annotation is preferable.
Courts often refer to Restatements of the Law, ALR annotations, law review articles, and treatises when relying on secondary authority.

**c. Other Factors Governing When to Stop**

Time and economic factors may govern how thorough your research should be and when to stop. The assignment may be governed by a short time constraint or you may be informed to not spend too much time on the project because the potential claim is small. The assignment may be to draft a three-page legal memorandum. Each of these situations limits the amount of research to be performed.

When this occurs, first locate the primary authority that answers or addresses the question, that is, the enacted law (statute, etc.) that applies and the case law that is on point. Follow the research sequence presented earlier in this chapter until you run out of time.

Discuss the amount of research time you should spend on the project when it is assigned. If you find that you are running out of time or the project is more complex than you anticipated, consult your supervisor.

**V. KEY POINTS CHECKLIST: Legal Research and Analysis**

- Always pay attention to the facts. Keep them in mind when performing each step of the analytical process. The analysis process involves determining how the law applies to the facts. Make sure you have all the facts at the outset.
- Before beginning the IRAC process, perform preliminary research to obtain a familiarity with the area of law involved in the case.
- Remember IRAC. An easy way to remember the legal analysis process and what to look for when reading a court opinion is to use the acronym IRAC: issue, rule, analysis/application, and conclusion.
- When conducting research, locate the primary authority that governs the issue first. If there is no primary authority that applies or additional authority is needed to help interpret the primary authority, then look to secondary authority.
- When conducting legal analysis, address one issue at a time. If there are several issues involved in the assignment, consider each issue separately. Complete the analysis of one issue before proceeding to the next issue. In doing so, you will be more efficient and avoid confusion.
- Remember counteranalysis. Always look for authority or arguments counter to your position.
- Keep focused. Focus on the specific issue you are assigned to analyze and the facts of the client’s case, and keep asking yourself, “What must be decided about the facts of this case?”
- Maintain intellectual honesty. Do not lose your objectivity. Do not let personal beliefs or feelings interfere with a thorough legal analysis.

**VI. APPLICATION**

The steps of the analytical process are illustrated here through their application to the hypothetical presented at the beginning of the chapter.

Marian’s new assignment requires her to analyze the Lietel case, identify the issues, and determine if Mr. Lietel has any cause of action against Steve Spear. Marian realizes that she must first familiarize herself with all the information concerning the facts of the case. She reviews the case file and all interviews that have
been conducted. Next, she reviews the notes from the legal research and analysis course she took when she was studying for her paralegal degree. She notes a four-step approach for analyzing a case:

**STEP 1: Issue.** Identify the issue (legal question) or issues raised by the facts of the client’s case.

**STEP 2: Rule.** Identify the law that governs the issue.

**STEP 3: Analysis/Application.** Determine how the rule of law applies to the issue.

**STEP 4: Conclusion.** Summarize the results of the legal analysis.

### A. Battery Issue

**Step 1. Identify the Issue(s)**

Assume for the purposes of this problem that there is no question concerning the lawfulness of the citizen’s arrest by Steve Spear. He had authority to make a citizen’s arrest.

Marian, based upon her education and experience as a paralegal, quickly identifies two possible civil causes of action that Mr. Lietel may have against Mr. Spear:

1. Battery
2. Intentional infliction of emotional distress

From her training, Marian knows that the best approach to legal analysis is to address and completely analyze one issue before proceeding to the next one. She decides to begin with the battery issue.

Marian knows that the issue is the legal question raised by the facts of the client’s case; therefore, the statement of the issue must include reference to the law and the facts. She identifies the issue as follows: Under the state’s tort law, does a civil battery occur when an individual encounters resistance while making a lawful arrest, uses force to overcome the resistance, and kicks the person being arrested several times after the resistance ceases?

**Step 2. Identify the Rule of Law**

The second step is to identify the rule of law governing battery. Marian first looks for any state statute that defines civil battery. Based upon her familiarity with tort law, she is fairly certain that civil battery is defined in the case law, and there is no applicable statutory law. She researches the statutes, however, to be sure that the state legislature has not enacted any legislation concerning civil battery. Her research reveals that there is no statute. She finds that the case law definition of battery adopted by the state’s highest court is: “A civil battery is the unprivileged, intentional, and harmful or offensive contact with the person of another.”

**Step 3. Analysis/Application**

The third step is a determination of how the rule of law applies to the facts of the client’s case. This is a three-part process:

- Part 1: Identify the component parts (elements) of the rule of law.
- Part 2: Apply the facts of the client’s case to the component parts.
- Part 3: Consider the possible counterarguments to the analysis of an issue (i.e., conduct a counteranalysis of the analysis).
a. Part 1: Identify the Components (Elements) of the Rule of Law

After reviewing the definition of battery, Marian identifies the following elements that are required to be present for a battery to occur:

1. Unprivileged
2. Intentional
3. Harmful or offensive
4. Contact

b. Part 2: Apply the Facts of the Client’s Case to the Component Parts

If the elements of the case law are met or established by the facts of the case, then a cause of action exists. Elements 2, 3, and 4 appear to be clearly established by the facts of the case. Mr. Spear’s actions of kicking Mr. Lietel were clearly intentional and harmful and did contact Mr. Lietel’s body. Admittedly, Mr. Spear was making a lawful citizen’s arrest, and he did encounter resistance. Did the continued use of force after resistance ceased constitute a battery? Was the continued use of force unprivileged?

The case law definition of battery does not provide sufficient guidance for a determination of whether the conduct was unprivileged. Marian must, therefore, refer to additional case law to determine what constitutes “unprivileged” contact. She looks for a court opinion that is on point—an opinion with facts similar to the client’s facts where the court addressed the question of the use of force in making a lawful arrest.

Assume she finds the case of Art v. Kelly. In this case, an off-duty police officer, while making a citizen’s arrest, continued to use force after the arrest had occurred and resistance had ceased. The court held that whenever a lawful arrest is made, either by a citizen or a law enforcement officer, the privilege to use force in conducting the arrest ceases when resistance ceases. Any continued use of force is a civil battery.

Applying the rule from Art v. Kelly to the facts of the case, Marian concludes that the requirements of the first element are met. Although Mr. Spear may have been privileged to use force to overcome resistance when making the citizen’s arrest, the continued use of force after resistance ceased constituted a battery under the rule announced in Art v. Kelly. Marian concludes that a cause of action exists for civil battery. Mr. Spear’s actions of kicking Mr. Lietel after Mr. Lietel had ceased resisting constituted unprivileged, intentional, harmful contact with Mr. Lietel.

c. Part 3: Counteranalysis

Before proceeding, Marian should conduct a counteranalysis, identifying and addressing any counterarguments to the analysis.

For Example Suppose Marian found a court decision involving an arrest by law enforcement officers that held that some continued use of force after resistance ceases is permissible if the situation is extremely heated. The court reasoned that law enforcement officers are not perfect, and if the situation is extremely heated, the brief continued use of force is privileged. In Marian’s analysis, she would have to include the case in her memorandum and discuss how it does or does not apply to the facts of the client’s case.

Step 4. Conclusion

The final step in the analysis of the battery issue is a conclusion. When applying the rule of law to the facts of the case in step 3, Marian reaches a conclusion that there is a cause of action for civil battery in Mr. Lietel’s case. Law firms vary in regard to what should be
included in the conclusion. Marian’s conclusion could include, among other things, any or all of the following:

- A summary of the analysis

  **For Example**  
  “The case law defines battery as the nonprivileged, intentional, harmful, or offensive contact with the person of another. In the court opinion of Art v. Kelly, the court stated that when a lawful arrest is being made, the continued use of force after resistance ceases is unprivileged. Mr. Spear’s actions of kicking Mr. Lietel after Mr. Lietel had ceased resisting constituted unprivileged, intentional, harmful contact with Mr. Lietel. Therefore, a cause of action for civil battery is available in this case.”

- A weighing or consideration, based on the analysis, of the merits of the cause of action

  **For Example**  
  “There is strong support for a battery claim in this case. The testimony of the witnesses supports Mr. Lietel’s statements that Mr. Spear kicked him after he was subdued. All the elements of the cause of action are established by the facts of the case. Under the rule of Art v. Kelly, Mr. Spear’s continued use of force was clearly unprivileged.”

- An identification of additional facts or information that may be necessary. In this case, the statements of additional witnesses or other information may be required.

- The identification of further research that may be required. Further research may be necessary because part of the research could not be performed due to time constraints (the memo was due) or the research sources were not readily available.

- The identification of other issues or causes of action that became apparent during the analysis of the case, which is not necessary in this case, since Marian’s assignment is to identify all possible causes of action and issues. Suppose Marian’s supervisory attorney believed that only a battery claim was present in this case and Marian’s assignment was to address that issue. If her analysis of the battery issue revealed other possible causes of action, she should mention those possibilities in her conclusion.

**B. Intentional Infliction of Emotional Distress Issue**

When performing step 1, Marian identified intentional infliction of emotional distress as a possible cause of action. After concluding her analysis of the battery claim, she follows the same steps in analyzing the possibility of an intentional infliction of emotional distress claim.

**Step 1. Identify the Issue**

As with the battery issue, Marian knows that this issue is the legal question raised by the facts of the client’s case; therefore, the statement of the issue must include reference to the law and the facts. She identifies the issue as follows: Under the state’s tort law, does intentional infliction of emotional distress occur when an individual, who encounters resistance while making a lawful arrest, kicks the party being arrested six times after the resistance has ceased, causing the party to have trouble sleeping and be fearful whenever he sees the individual?
Step 2. Rule of Law

Marian’s research reveals that there is no statutory cause of action for intentional infliction of emotional distress. The state case law does establish a cause of action for intentional infliction of emotional distress. There is no cause of action for negligent infliction of emotional distress. Intentional infliction of emotional distress is defined in the case law as intentionally causing severe emotional distress by an act of extreme or outrageous conduct.

Step 3. Analysis/Application

a. Part 1: Identify the Components (Elements) of the Rule of Law

Marian’s review of the case law reveals four elements:

1. Extreme or outrageous conduct
2. Intent to cause severe emotional distress
3. Severe emotional distress is suffered
4. The conduct causes the distress

b. Part 2: Apply the Elements to the Facts of the Client’s Case

Marian’s application of the facts of Mr. Lietel’s case to the elements raises several questions about whether the requirements of intentional infliction of emotional distress are met in this case:

1. Was Mr. Spear’s conduct “extreme or outrageous”?
2. Mr. Spear obviously intended to kick Mr. Lietel, but did he intend to cause severe emotional distress?
3. Was the harm suffered by Mr. Lietel “severe emotional distress”?

The answers to these questions are not apparent from a reading of the definition of intentional infliction of emotional distress. Marian turns to additional case law for guidance and locates the case of Addik v. Garay, which appears to answer her questions. In the case, Mr. Garay and Mr. Addik got into a fight at a party. Garay knocked Addik down and, while Addik was down, kicked him multiple times yelling, “I’m not gonna kill you, but you'll remember me in your dreams. You’ll never forget this.” Addik was so affected by the incident that he had a nervous breakdown and was out of work for two months.

The court, addressing Addik’s claim for intentional infliction of emotional distress, ruled that public humiliation, such as that suffered by Addik, constitutes “extreme and outrageous conduct.” Ruling that the requisite intent was present, the court held that there must be some specific conduct indicating an intent to cause emotional distress. The mere intentional act of kicking was not sufficient to evidence an intent to cause emotional distress, but Mr. Garay’s statements while kicking Mr. Addik were specific conduct indicating an intent to cause emotional distress. The court went on to rule that the emotional distress suffered must be severe: The mere loss of sleep is not sufficient. Instead, severe harm, such as loss of work or medical expenses, must result.

Applying the guidelines presented in Addik v. Garay, Marian concludes that there is probably not a cause of action for intentional infliction of emotional distress in Mr. Lietel’s case. Mr. Spear’s conduct of kicking Mr. Lietel in public is sufficiently extreme and outrageous. It is questionable, however, whether the requirements of elements 2 and 3, intent and severe emotional distress, are met by the facts of the case. There was no conduct by Mr. Spear evidencing a specific intent to cause emotional distress. The act of kicking alone was not sufficient evidence of intent according to Addik v. Garay. If Mr. Lietel’s loss of work and medical expenses resulted from the battery and were not related to the emotional distress, then there is no evidence that Mr. Lietel suffered
severe harm as required by *Addik v. Garay*. Fearfulness and loss of sleep are probably not sufficiently severe to meet the *Garay* standards.

c. **Part 3: Counteranalysis**
In this part, Marian would identify and address any authority or counterarguments to her analysis. We will assume that she did not identify any counterargument to her analysis of the emotional distress issue.

**Step 4. Conclusion**
As with the battery issue, Marian begins her conclusion with a summary of the analysis.

---

**For Example**
The case law definition of *intentional infliction of emotional distress* is the intentional causing of severe emotional distress by an act of extreme or outrageous conduct. In the case of *Addik v. Garay*, the court ruled that:

1. Public humiliation by kicking constitutes outrageous conduct.
2. The act of kicking alone is not sufficient evidence of intent—there must be additional conduct evidencing an intent to cause severe emotional distress.
3. Severe harm must result from the severe emotional distress.

In Mr. Lietel’s case, there is no evidence of the required intent, and it is questionable whether there was severe harm. Therefore, a cause of action for intentional infliction of emotional distress does not appear to be present.

Marian may include some other items in her conclusion similar to those presented in the conclusion to the battery issue.

**For Example** Marian may identify additional information that is needed. She may note that the client and witnesses need to be reinterviewed to determine whether Mr. Spear said anything while he was kicking Mr. Lietel.

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**Summary**
Most clients enter the law office with a problem that must be analyzed and solved. Legal analysis of the problem involves the identification of the legal issues in the client’s case and a determination of what law applies and how it applies. The commonly used legal analysis format involves four steps:

1. Identification of the legal issue or issues
2. Identification of the rule of law that governs the issue
3. Analysis and application of the rule of law to the facts of the case. This step is composed of three parts:
   a. A determination of the elements or requirements of the rule of law
   b. A matching of the facts of the client’s case to the elements and a determination of how the rule of law applies to the facts
   c. A counteranalysis that addresses any counterarguments to the analysis
4. A conclusion that summarizes the previous steps. The conclusion may also include a weighing of the merits of the case and an identification of other information or avenues of research that should be pursued.
The four steps of the analysis process can be easily referred to and remembered by the acronym IRAC: issue, rule, analysis/application, and conclusion.

It is important to keep three general considerations in mind when engaging in legal research and analysis:

1. Focus
2. Intellectual honesty
3. When to stop researching

Keep focused on the task. Focus on the facts of the client’s case, and analyze only the issue or issues raised by those facts. Avoid being distracted by interesting or related issues that do not need to be addressed.

Perform analysis with intellectual honesty. Always look for the correct answer, even though that answer may not be in the client’s favor or in accordance with your beliefs. Do not let preferences, prejudices, or politics interfere with your duty to objectively and honestly analyze the legal question. Base the conclusion on an objective analysis of all the facts and law and include both the supporting and opposing positions.

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Internet Resources

The following sites may provide useful support information to paralegals engaged in legal analysis.

http://www.nala.org
This is the site for the National Association for Legal Assistants (NALA). The NALA site provides a wealth of information, ranging from articles on the profession to education and certification programs for paralegals. It includes information on court decisions affecting paralegals and links to other related sites.

http://www.paralegals.org
This is the web page for the National Federation of Paralegal Associations (NFPA), another national paralegal organization. The web page provides links to a wide range of sites of interest to paralegals—research sources, publications, products, and so forth.

http://www.legalassistanttoday.com
Legal Assistant Today is a magazine geared toward the needs of paralegals. It often includes helpful articles on legal analysis and writing.
Using http://www.google.com as a search engine and “IRAC legal analysis” as a topic can identify several hundred web sites (too many to list here) related to the topic “legal analysis and the IRAC process.”
Exercises

Additional assignments are located on the Online Companion and the Student Activity CD-ROM accompanying the text.

ASSIGNMENT 1
Describe in detail the steps of the IRAC legal analysis process.

ASSIGNMENT 2
Client’s Facts: The client found a check written out to cash in the amount of $750. The check was completely made out when he found it. He took it to the bank, signed it on the back as instructed by the teller, and cashed it. He was subsequently arrested and charged with forgery.

Rule of Law: Section 30-236 of the state penal code defines forgery as “falsely making or altering any signature to, or any part of, any writing purporting to have any legal efficacy with intent to injure or defraud.” Section 45-3-109d of the state commercial code provides that when a negotiable instrument is made out to cash it is a “bearer instrument.” The section goes on to provide: “A bearer instrument refers to an instrument that is payable to anyone possessing the instrument and is negotiable by transfer alone, it is the same as cash.” Note: A check is a negotiable instrument.

Assignment
Based on the information presented in the problem, prepare a complete and detailed analysis of the question of whether there is sufficient evidence to support a charge of forgery.

ASSIGNMENT 3
Client’s Facts: The client is charged with burglary. He broke a window, entered his neighbor’s garage, and took three cases of beer. The garage is a separate building located about 6 feet from the neighbor’s house.

Rule of Law: Section 2397 of the state penal code defines burglary as the breaking and entering of the dwelling house of another with the intent to commit a crime.

Case Law: In the case of State v. Nelson the court ruled that “a dwelling includes outbuildings close to but not physically connected with a dwelling house, if such buildings are capable of being fenced in.”

Assignment
Based on the information presented in the problem, prepare a complete and detailed analysis of the question of whether there is sufficient evidence to support a charge of burglary.

ASSIGNMENT 4
Client’s Facts: The client is the president of an extremist group that believes that the followers of Islam should be deported to Islamic countries. The organization at its ceremonies burns a large replica of the Koran while singing anti-Islamic songs. The organization’s letterhead and literature are embossed with a picture of a burning Koran being stepped on by a spiked boot. The local library has books by members of the American Nazi Party, the American Communist Party, and the Ku Klux Klan. The library refuses to include the organization’s literature among its materials. The client claims this violates the organization’s constitutional rights.

The law firm handles cases involving the violation of constitutional rights.

Assignment
The researcher is assigned the task of identifying and analyzing the possible causes of action that the client may have against the city library.

a. Discuss and describe in detail the steps you should follow when conducting the legal analysis.

b. Assume there are possible causes of action based on freedom of speech under the First Amendment and equal protection under the Fourteenth Amendment. For each issue, describe in detail each step of the analytical process.

c. Discuss possible factors that may affect a researcher’s objectivity and how those factors could affect the legal analysis of the problem.

ASSIGNMENT 5
Client’s Facts: The client was cited for passing in a no passing zone. Frustrated by a slow-moving vehicle on a two-lane highway, the client admits that he passed the vehicle entirely in a no passing zone—that he began and ended the passing maneuver in an area where the center of the road was marked with two solid stripes. There was no oncoming traffic, and he made the maneuver safely.

Rule of Law: The state’s motor vehicle code, Section 293-301, provides that it is a violation of state law to pass a vehicle in a no passing zone. In the statute, a no passing zone is defined as that portion of the road marked by two solid lines painted in the center of the road. Passing zones are indicated by single, 8-foot stripes down the center of the road.
Case Law: The only relevant case on the subject is State v. Roth. In the case, Mr. Roth was cited for improper passing. He began the passing maneuver in the last 30 feet of a no passing zone and completed it in a passing zone. There were no oncoming vehicles. Evidence presented to the trial court established that the last 30 feet of the no passing zone should have been marked as part of the passing zone. Mr. Roth appealed his conviction in the trial court. On appeal, the state’s highest court held that the purpose of the state motor vehicle code is to ensure safety on the public highways. The court ruled that Mr. Roth’s passing maneuver was clearly made safely, and in light of the evidence that the no passing zone was improperly marked, a strict reading of the statute was not appropriate. Mr. Roth’s conviction was set aside.

Assignment
The researcher is assigned the task of analyzing the likelihood that the client’s ticket can be set aside.

a. Based upon the information presented in the problem, conduct an analysis of the client’s case and prepare a complete and detailed analysis of the problem.

b. Repeat assignment A, assuming the following facts: The client began the passing maneuver approximately 20 feet from the end of the no passing zone and completed it in a passing zone. There was no oncoming traffic, and the client completed the maneuver safely.

c. Repeat assignment A, assuming the following facts: The client began the passing maneuver in a passing zone, but completed it in a no passing zone.

d. What additional information, if any, may be necessary for a complete analysis of the preceding problems?

ASSIGNMENT 6
What should you do when you do not find anything when researching a specific source? After finding several legal sources that address the research topic, what considerations should you keep in mind concerning when to stop researching?