

A Quick Guide to Rule Synthesis

Step One: Identify the Rule

- Case law doesn't always make it easy to identify the rule. Look for a declarative sentence that addresses the *issue* the court is trying to resolve.

- Some language that identifies the rule:
 - "As a matter of common law..."
 - "The holding is..." or "We hold that..."
 - "In this jurisdiction..."
 - "The more modern rule is..."
 - "The present case is controlled by..."

Step Two: State the Rule and Relevant Policy Considerations

- Break the rule into elements that must be satisfied in order for the rule to apply.
 - Breaking the rule into elements makes it easier for you to apply the rule in a given set of circumstances.
 - Example: Plaintiff collects *diminution in value* rather than contract price for breach IF
 - 1) The cost of performance is *excessively greater* than the benefit conferred
 - 2) AND breach wasn't a *substantive* part of contract
 - 3) AND breach was in *good faith*.

- Types of Rule: Rules can be standardized or individualized.
 - *Standardized rules* are simple declarative sentences that always hold true. For example, "Contracts always require a bargain" is a standardized rule.
 - *Individualized rules* are interpreted according to the circumstances. There are two broad classes of individualized rules:
 - Conditional rules state a proposition that applies if certain elements or conditions are present. A variation of this type of rule would set forth a list of alternative conditions where any one of them can be present in order for the proposition to apply. In this case you would apply "OR" instead of "AND" to the list.
 - Exception rules state a proposition then set up a list of exceptions where the rule does not apply. For example, "A *donative promise* is not satisfactory consideration for a bargain UNLESS there is *reliance* on the promise."

- Often a more complex rule will not fit into any of these broad categories and mix conditions with exceptions and more conditions. The important thing to remember is to use a technique that makes sense to you.
- Policy
 - State the underlying policy or doctrine behind the rule. What societal goals, if any, are furthered by this rule? For example, “The diminution in value rule furthers the societal goal of preventing economic waste.”
 - Sometimes the particular facts of a case may satisfy the elements of a rule, but the result is not consistent with the underlying doctrine. The court may then consider that particular set of circumstances an exception such that they would not apply the rule.

Step Three: Analyze the Rule

- For each element of the rule, identify examples, factors, or tests that satisfy that element. Courts use different methods to prove an element.
 - *Factual examples.* Sometimes you will only have factual examples from cases to prove an element. For example, in the first element of the diminution in value rule above, note how listing examples gives you guidelines for different circumstances. You can analogize and distinguish the facts in your case to those of the examples.
 - Derive the rule from cases where the cost of performance was *excessively greater* than the benefit conferred:
 - \$4 million to repair a ship worth \$2 million is *excessive*. Eastern Steamship
 - Turning a house 180 degrees is *excessive*. Grossman
 - Ripping out the plumbing in a house is *excessive*. Jacob & Young
 - Repairing a sunken living room for \$20K in a house worth \$40K is *excessive*. Droher
 - *Factors.* Case law also lists factors that are weighed in the evaluation of whether an element is satisfied.
 - Usually, the factors are not a laundry list of necessary elements; otherwise, the factors would be incorporated into the rule.
 - Rather, each factor is just another weight tipping the scale toward applying the rule until enough of the factors are strong enough that you’ve satisfied the condition.
 - Often no single factor is dispositive. Sometimes you can be light in one factor and heavy in another and still apply the rule. Be sure to note whether the cases allow this sort of flexibility in applying factors. Use it only when cases specifically state that alternative weights are allowed.
 - Note the factors used to show unconscionability. Unconscionability requires:

1. Absence of *meaningful choice*
 - gross inequality of bargaining power
 - unfair surprise
 - lack of education
 - hidden terms

and

2. terms *unreasonably favorable* to the other party

Note that 1 and 2 are elements that the plaintiff must prove. The items listed under 1 are factors that may be used to prove the first element. None are dispositive. You could have a highly educated person and still have an unconscionable contract if the rest of the factors are strong.

- *Tests*. Sometimes the court articulates a test that proves a particular element.
 - The test is sometimes couched in terms of probability or states an IF-THEN proposition. It may ask a series of questions or it may just be a list of factors that have to be satisfied.
 - A test typically will allow the court some room for interpretation in order to achieve a just result.
 - For example, the diminution-of-value rule has a test to prove the second element:

Plaintiff collects *diminution in value* rather than contract price for breach IF

 1. The cost of performance is *excessively greater* than the benefit conferred

and

 2. the breach wasn't a *substantive* part of contract
 - a. TEST: IF plaintiff is likely to use full damages for contract completion, THEN award benefit of bargain; however, IF plaintiff is going to take the money and run, THEN award diminution in value.

and

 3. the breach was in *good faith*.
- Note: If the professor has spent a lot of time on one element, factor, test, or example then be sure to note that in your outline. Highlight the element with some sort of special formatting that you use only for elements that the professor considers important. For instance, you may reserve underlining for such elements. It pays to spend more time studying the elements the professor thinks are important.

Step Four: Synthesize the Rule

- Rules build upon one another, and your goal in outlining is to come up with one general rule that combines the related rules from specific cases. You'll note that the format for casebooks usually has one primary case that states the rule and then several squib cases (short case summaries) that refine or modify the rule.
- Squib cases generally serve the following purposes:
 - Broaden the application of the rule to cover more circumstances
 - Narrow the application of the rule to cover fewer circumstances
 - List exceptions to the rule
 - State a policy consideration
 - Set up new factors to prove elements
 - Set up new tests to prove elements
 - Illustrate a dissenting opinion
 - Show how the same factors can be interpreted in a different way
- To synthesize a rule, just follow the format for stating the rule. Add elements, factors, tests, and examples so that you have one definitive statement even if it is riddled with exceptions and ambiguities. The rule then becomes a flowchart or checklist that you can use in an exam to see how the facts apply.
- The risk of too many elements: In synthesizing a rule, make sure you try not to add too much to one statement of the law. Otherwise, the rule becomes unwieldy. Look for natural breaks between rules. If different rules apply for plaintiffs rather than defendants break it up into two rules. You can also divide the rule by subject matter.
- These instructions are just guidelines! You will inevitably find some rule that doesn't fit neatly into the categories defined above. Be flexible and state the proposition in a way that makes sense to you.