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PLUG AND PLAY: TEACHING ANALOGICAL REASONING WITH A SPARK

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Analogical reasoning is a foundational skill in the first-year legal writing course, but it is one that students often struggle to gain proficiency in. Despite our best efforts to teach this skill, classic errors seem to appear in students' analogical arguments throughout the school year. For example, at the beginning of the year, students often highlight facts that aren't legally relevant. As the year continues, students progress to successfully identifying legally significant facts, but then forget to "show their work,"² meaning they forget to explain how and why the facts from a binding case compare to facts in their client's case.³

Resources in Isolation Prove Insufficient

Leading textbooks provide annotated samples of effective and ineffective analogical arguments.⁴ And legal writing professors have, for decades, provided sample memos that offer additional examples of and commentary about strong and weak analogical arguments. Though these resources are useful, they only go so far in helping students learn how to strengthen their own analogical arguments.⁵

In our view, these otherwise instructive resources fall short when students read sample arguments in isolation, without having grappled

¹ Katrina Robinson and Kristen Stanley are Assistant Clinical Professors of Law at Cornell Law School. This essay is drawn from their presentation by the same title at the 2023 conference of the Association of Legal Writing Directors, held at University of California—Irvine School of Law.

² Christine Coughlin et al., *A Lawyer Writes* 148 (3d ed. 2018).

³ *Id.* at 152-54.

⁴ See, e.g., *id.*

⁵ See Elizabeth Ruiz Frost, *Feedback Distortion: Shortcoming of Model Answers as Formative Feedback*, 65 J. Legal Educ. 938 (2016).

with the legal authorities on which the samples are based. Because sample analyses allow students to see only the final product, students fail to appreciate how much “invisible” work goes into drafting. Without exposure to the multistep process of analogical reasoning, students tend to underestimate the work required to effectively present and articulate analyses that are rooted in analogical reasoning.

Goals and Parameters of the Exercise

Eager to see thoughtful and thorough analogical arguments *sooner* in the school year, we set out to create an in-class group drafting exercise that would accomplish this goal while also balancing some constraints we faced.

- We wanted the exercise to allow the class as a whole to discuss a shared fictional client in the context of a closed universe of relevant legal authorities that wasn’t tied to one of their graded legal writing assignments. This approach would encourage students to share their ideas with one another freely, without fear of grade competition. In turn, not only would students get a chance to meaningfully collaborate with their peers (a common reality in practice but a rarity in many first-year legal writing classrooms),⁶ but also, through these conversations, students could lift the veil of “thinking like a lawyer” by hearing or observing other approaches to reading cases, identifying relevant legal reasoning, and applying that reasoning to a set of facts.
- The exercise would require students to spend time reading about the fictional client and the relevant legal authorities before class. But because this exercise would take place while students were working on one of their graded legal writing assignments, we needed their required preparation to be limited.
- The exercise would let us provide quick turnaround feedback to students on their analogical arguments, allowing students to implement the lessons from that feedback as they wrote their

⁶ See, e.g., Kristen K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 J. Legal Writing Inst. (2003); Marilyn R. Walter, “*Writing as Conversation*”: *Using Peer Review to Teach Legal Writing*, 16 J. Legal Writing Inst. (2010); L. Danielle Tully, *Collaborative Case Development for the First-Year Legal Writing Problem*, 31 *The Second Draft* (Fall 2018).

graded legal writing assignment. Consequently, we selected a legal issue and crafted fictional facts that lent themselves to a more modest word limit.

- Finally, by devoting a significant portion of a class session to discussing one relatively simple analogical argument, the exercise would demonstrate how nuanced and in-depth the process of creating and expressing an analogical argument can be.

Designing the Exercise

Ultimately, we designed a problem involving New York State wills that provides a discrete legal issue about which students will have no exposure, based on the traditional first-year curriculum.

The fictional client is an adult whose parent recently passed away. The parent left an executed will but made handwritten notes on it that, if given effect, would have changed some key provisions of the will. Because New York law differentiates between obliteration and alteration of an executed will,⁷ the client seeks to understand whether the parent's handwritten notes qualify as obliteration or alteration. If the former, the handwritten notes revoke the executed will.

To answer that question, students would need to analyze a statute and two cases—one holding that the decedent's notes qualified as obliteration, and one holding that the decedent's handwritten notes qualified as alteration.

Plug-and-Play Teaching Materials

We offer two options for legal writing professors to use this fictional client's facts and closed universe of relevant legal authorities. With Option 1, professors can use the exercise to teach the skill of analogical reasoning at the beginning of semester. With Option 2, professors can use the exercise to refresh and refine the students' analogical reasoning skills later in the semester.

⁷ N.Y. Est. Powers & Trust Law § 3-4.1 (McKinney 2023) (examples for “obliteration” and “alteration” of an executed will found in Editor's Notes).

The legal authority for the memo includes one statute and two cases. We have edited these authorities for this exercise; the edited versions are available through this [link](#).⁸

- The statute: N.Y. Est. Powers & Trusts Law § 3-4.1 (McKinney).
- Two cases: *In re Estate of Carcaci*, 2002 NYLJ LEXIS 1226 (Sur. Ct. 2002) and *In re Estate of Lavigne*, 428 N.Y.S.2d 762, 763 (App. Div. 3d Dept. 1980).

The appendix to this essay contains the homework assignments and most class exercises listed below. Those teaching materials, as well as an extended case chart and a sample student analysis for each option, are also available at this [link](#).

- Teaching Materials for Option 1: Introducing Analogical Reasoning,
- Teaching Materials for Option 2: Exercise Refreshing or Refining Analogical Reasoning, and
- Two sample student analyses, one for “Option 1” and one for “Option 2.”

We designed both options to take place over the course of two class sessions. A timeline for and further details about both options appear below.

Option 1: Using the exercise to introduce the skill of analogical reasoning

- Homework for Class A: Students read the statute and two cases. Students draft notes (e.g., case briefs and/or case charts) to use during an in-class exercise where they will draft a case illustration.⁹
- Exercise for Class A: Students work in small groups to draft a case illustration for one of the cases (time permitting, groups can draft a case illustration for the second case).
- After Class A, But Before Class B: Professor shares feedback on each group’s submission and posts a sample case illustration for each case.

⁸ Alternatively, you may contact one of us at Cornell Law School.

⁹ See Coughlin et al., *supra* note 2, at 113-32.

- Homework for Class B: Students review the professor's feedback on their group's case illustration. Students read facts about their new fictional client and brainstorm ways that their client's case compares or contrasts to the prior cases.
- Exercise for Class B: Professor distributes a case comparison chart to simulate the kind of notetaking or pre-writing legal writers often find useful and to aid group discussion. Students work in small groups to draft one analogical argument using one of the cases (time permitting, groups can draft an analogical argument using the second case).
- After Class B: Professor shares feedback on each group's analogical argument and posts a sample analogical argument for each case.

Option 2: Using the exercise to refresh and refine the skill of analogical reasoning

- Homework for Class C: Students read the statute, two cases, and facts about the fictional client. Students draft notes (e.g., case briefs and/or case charts) to use during an in-class exercise where they will draft an analogical argument.
- Exercise for Class C: Students take five minutes to talk with their group about the legally significant facts, reasoning, and holding of each case. Professor distributes a one-page handout containing an explanation of the relevant law that includes case illustrations of the two cases students read for class. Students spend five minutes quietly reading and reviewing the handout; professor instructs students to treat the document as a draft of the student's own writing and a jumping off point to develop an analogical argument about the facts of their case. For the remaining time in class, students work with their group to draft an analogical argument using one of the cases. Time permitting, groups can draft an analogical argument using the second case.
- After Class C, But Before Class D: Professor shares feedback on each group's submission and posts a sample analogical argument for both cases.

- Homework for Class D: Students review the professor's feedback on their group's submission and come to class ready to implement that feedback in an in-class editing exercise.
- Exercise for Class D: Students work independently to implement the feedback they received on their group's submission and create their own improved analogical argument. During this quiet working period, the professor can circulate to answer questions.

Successes and Limitations

This exercise was successful in both options. Despite the differences in timing and format, both exercises led students to deepen and refine their analogical reasoning skills. We found that students appreciated the opportunity to discuss the legal and factual issues collaboratively with their peers. They also valued drafting as a group; in particular, they felt they benefitted from workshopping style and expression on the sentence level with their peers and with input from the professors and teaching assistants during class. (Having teaching assistants in class is a benefit, but the exercise should be successful without that extra support.)

An important limitation is class size. We each teach one section of approximately thirty-five students. By having the students work in groups of three or four, we had fewer than a dozen drafts to critique between the classes.

Students referenced the in-class exercise and written feedback in subsequent individual writing conferences regarding unrelated assignments. We were delighted that students not only learned from the discrete exercise but also were able to translate that learning into future endeavors.

We encourage you to “plug” one of these options into your already excellent first-year curriculum. And if you let one of the options “play” in your classroom, we welcome any feedback you may have.

**APPENDIX – OPTION 1 TEACHING MATERIALS
(CLASSES A AND B)**

HOMEWORK FOR CLASS A

On [date of Class A], you will work in small groups to draft a case illustration. To prepare for that exercise, please complete the following homework:

1. Review the relevant statute: N.Y. Est. Powers & Trusts Law § 3-4.1 (McKinney).
2. Review two relevant cases: *In re Estate of Carcaci*, 2002 NYLJ LEXIS 1226 (Sup. Ct. 2002) and *In re Estate of Lavigne*, 428 N.Y.S.2d 762, 763 (App. Div. 3d Dept. 1980). Please read the versions of the cases I provided to you in this document as I edited them to shorten your reading and simplify the issues for our discussion.
3. Draft notes (e.g., case briefs or outlines) that you can use to help you draft a case illustration with your group during [Class A].

DIRECTIONS FOR CLASS A'S IN-CLASS EXERCISE

Work in small groups to draft a case illustration for one of the two cases you read for homework. Raise your hand if you have any questions; [the teaching assistants and] I will circulate during the in-class exercise.

[If you complete your first case illustration with time remaining before class ends, please draft a case illustration for the second case.] You will receive written feedback on your group's draft after class.

HOMEWORK FOR CLASS B

On [date of Class B], you will work in small groups to draft an analogical argument based on a new client's case. To prepare for that exercise, complete the following homework:

1. Review the written feedback you received on your group's draft case illustration from [Class A].
2. Review the attached email from a colleague containing facts about your new client's case.
3. Brainstorm ways that your client's case compares to and contrasts with *In re Estate of Carcaci* and *In re Estate of Lavigne*.

DIRECTIONS FOR CLASS B'S IN-CLASS EXERCISE

Work in small groups to draft an analogical argument using *In re Estate of Carcaci* or *In re Estate of Lavigne*. To aid your group's discussion, [consider / complete¹⁰] the following case comparison chart.

<i>In re Estate of Carcaci</i>	Connie Lin's Case
<p>Facts:</p> <ul style="list-style-type: none"> • Testator ("T") went to firm that prepared her will and presented her original will on which she had made hand-written changes • T paid the firm to have a new will executed that reflected her hand-written changes but died 	<p>Facts:</p> <ul style="list-style-type: none"> • Will only consisted of two paragraphs: bequeathing assets to a beneficiary and bequeathing house to a beneficiary • T hand wrote "VOID" over the first paragraph

¹⁰ Professors may choose to omit the information in the "Connie Lin's Case" column and ask students to identify similarities in Connie Lin's case on their own. We offered a complete version of the case-comparison chart to make this handout plug-and-play for any professors who may face time pressures in executing this class exercise. We found that offering students high-level similarities between the prior case and the client's case helped students focus on the mechanics of writing an effective analogical argument during the exercise's allotted time.

<p>before the firm executed her new will</p> <p>Holding:</p> <ul style="list-style-type: none"> • T intended to alter, not obliterate her will <p>Reasoning:</p> <ul style="list-style-type: none"> • T's changes do not affect entire testamentary scheme; they only changed the beneficiaries of some dispositions and amounts bequeathed to others 	<p>Holding:</p> <ul style="list-style-type: none"> • Intended to alter not obliterate the will? <p>Reasoning:</p> <ul style="list-style-type: none"> • Changes to the identity of her beneficiaries by writing "VOID" on specific paragraphs; did not intend to void her entire will
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<i>In re Estate of Lavigne</i>	Connie Lin's Case
<p>Facts:</p> <ul style="list-style-type: none"> • T crossed out paragraphs two through six of his will. • T signed and dated the crossed-out paragraphs, noting, "Change 7/28/79 by my sole desire Sylvester T. Lavigne." <p>Holding:</p> <ul style="list-style-type: none"> • T intended to obliterate the will <p>Reasoning:</p> <ul style="list-style-type: none"> • The changes affected vital parts of the will: the changes canceled every dispositive provision in the will • Despite using the word "change," T's intent was to revoke his will 	<p>Facts:</p> <ul style="list-style-type: none"> • Will only consisted of two paragraphs: bequeathing assets to a beneficiary and bequeathing house to a beneficiary • T hand wrote "VOID" over the first paragraph <p>Holding:</p> <ul style="list-style-type: none"> • Intended to obliterate the will? <p>Reasoning:</p> <ul style="list-style-type: none"> • By voiding half of the will, she intended to set forth a new testamentary disposition

[If you complete your first analogical argument with time remaining before class ends, please draft an analogical argument using the second case.] You will receive written feedback on your group's draft after class.

**APPENDIX – OPTION 2 TEACHING MATERIALS
(CLASSES C AND D)**

HOMEWORK FOR CLASS C

On [date of Class C], you will work in small groups to draft an analogical argument based on a new client's case. To prepare for that exercise, complete the following homework:

1. Review the attached email from a colleague containing facts about your new client's case.
2. Review the relevant statute: N.Y. Est. Powers & Trusts Law § 3-4.1 (McKinney).
3. Review two relevant cases: *In re Estate of Carcaci*, 2002 NYLJ LEXIS 1226 (Sup. Ct. 2002) and *In re Estate of Lavigne*, 428 N.Y.S.2d 762, 763 (App. Div. 3d Dept. 1980). Please read the versions of the cases I provided to you in this document as I edited them to shorten your reading and simplify the issues for our discussion.
4. Draft notes (e.g., case briefs or outlines) that you can use to help you draft an analogical argument with your group during [Class C].
5. Brainstorm ways that your client's case compares to and contrasts with *In re Estate of Carcaci* and *In re Estate of Lavigne*.

DIRECTIONS FOR CLASS C'S IN-CLASS EXERCISE

Step 1: Take five minutes to talk with [a partner or your group] about the legally significant facts, reasoning, and holding of *In re Estate of Carcaci* and *In re Estate of Lavigne*.

Step 2: Raise your hand to request [Class C]'s handout. This handout contains two paragraphs; treat those paragraphs as your own draft of the start of an analysis of the client's problem: the first paragraph introduces the governing law, and the second and third paragraphs provide case illustrations for the two relevant cases. Spend five minutes independently reading and reviewing the three paragraphs.

Step 3: Work in small groups to draft an analogical argument using *In re Estate of Carcaci* or *In re Estate of Lavigne*. To aid your group's discussion, [consider / complete¹¹] the following case comparison chart.

<i>In re Estate of Carcaci</i>	Connie Lin's Case
<p>Facts:</p> <ul style="list-style-type: none"> • Testator ("T") went to firm that prepared her will and presented her original will on which she had made hand-written changes • T paid the firm to have a new will executed that reflected her hand-written changes but died before the firm executed her new will <p>Holding:</p> <ul style="list-style-type: none"> • T intended to alter, not obliterate her will <p>Reasoning:</p>	<p>Facts:</p> <ul style="list-style-type: none"> • Will only consisted of two paragraphs: bequeathing assets to a beneficiary and bequeathing house to a beneficiary • T hand wrote "VOID" over the first paragraph <p>Holding:</p> <ul style="list-style-type: none"> • Intended to alter not obliterate the will? <p>Reasoning:</p> <ul style="list-style-type: none"> • Changes to the identity of her beneficiaries by writing "VOID" on

¹¹ Professors may choose to omit the information in the "Connie Lin's Case" column and ask students to identify similarities in Connie Lin's case on their own. We offered a complete version of the case-comparison chart to make this handout plug-and-play for any professors who may face time pressures in executing this class exercise. We found that offering students high-level similarities between the prior case and the client's case helped students focus on the mechanics of writing an effective analogical argument during the exercise's allotted time.

<ul style="list-style-type: none"> • T's changes do not affect entire testamentary scheme; they only changed the beneficiaries of some dispositions and amounts bequeathed to others 	<p>specific paragraphs; did not intend to void her entire will</p>
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<i>In re Estate of Lavigne</i>	Connie Lin's Case
<p>Facts:</p> <ul style="list-style-type: none"> • T crossed out paragraphs two through six of his will. • T signed and dated the crossed-out paragraphs, noting, "Change 7/28/79 by my sole desire Sylvester T. Lavigne." <p>Holding:</p> <ul style="list-style-type: none"> • T intended to obliterate the will <p>Reasoning:</p> <ul style="list-style-type: none"> • The changes affected vital parts of the will: the changes canceled every dispositive provision in the will • Despite using the word "change," T's intent was to revoke his will 	<p>Facts:</p> <ul style="list-style-type: none"> • Will only consisted of two paragraphs: bequeathing assets to a beneficiary and bequeathing house to a beneficiary • T hand wrote "VOID" over the first paragraph <p>Holding:</p> <ul style="list-style-type: none"> • Intended to obliterate the will? <p>Reasoning:</p> <ul style="list-style-type: none"> • By voiding half of the will, she intended to set forth a new testamentary disposition

[If you complete your first analogical argument with time remaining before class ends, please draft an analogical argument using the second case.] You will receive written feedback on your group's draft after class.

CLASS C'S HANDOUT
CASE ILLUSTRATIONS

In New York State, a testator revokes a previously executed will if the testator intended to revoke the will by obliterating it in total. *In re Estate of Carcaci*, 2002 NYLJ LEXIS 1226, *3-4 (Sup. Ct. 2002). To revoke a will, one must obliterate the entire will; one cannot partially revoke or alter a will. *Id.* For example, in *Carcaci*, the testator wanted to alter her will and noted what she wanted to change on her existing will. *Id.* at *1-2. She provided her notes to her attorney and paid the attorney to execute a new will encompassing her intended changes but died before a new will encompassing her intended changes could be executed. *Id.* at *2. The court found that because the changes regarded the identity of her beneficiaries—and not the “entire testamentary scheme” of the will in total—the testator attempted to alter, but not revoke, her will. *Id.* at *4. The court enforced her original (unmodified) will because the testator intended to modify, but not revoke, her original will. *Id.*

Where a testator crosses out every dispositive provision of their will, they demonstrate their intention to obliterate the original will, and thus revoke it. *In re Estate of Lavigne*, 428 N.Y.S.2d 762, 763 (App. Div. 3d Dept. 1980). For example, in *Lavigne*, the testator crossed out all the dispositive paragraphs in his will and noted his desired changes on his will. *Id.* at 764. He also signed and dated his markings, noting he wanted to “change” his will. *Id.* The court found that when the testator marked out “the dispositive paragraphs of his will,” he obliterated his will, even as he used the word “change” in his notations. *Id.* The testator’s changes were so sweeping that he manifested his intent “to set forth a new testamentary disposition,” and thus revoked his original will. *Id.*

HOMework FOR CLASS D

On [date of Class D], you will work independently on an in-class editing exercise using your group's first draft of an analogical argument. To prepare for that in-class editing exercise, carefully review the written feedback you received on your group's draft analogical argument from [Class C].

DIRECTIONS FOR CLASS D'S IN-CLASS EXERCISE

Work independently to incorporate the written feedback you received on your group's draft analogical argument from [Class C]. If you'd like to discuss any questions or concerns, raise your hand; [the teaching assistants and] I will be circulating and will come to your desk.

Editor's Note: The Case Comparison Chart for Class D is available at this [link](#).