

## 9: Macro-Synthesis

Macro-synthesis occurs after you have completed your synthesis of each legal authority individually and it's time to figure out how the legal authorities relate to one another. In an earlier chapter, we used an analogy of putting together a puzzle to better understand micro-synthesis. We now return to that analogy to better understand macro-synthesis.

You've pulled out all of the puzzle pieces that contain parts of the whole picture of what it would take (for example) for the State to successfully pursue an arson conviction. You now have a huge pile of puzzle pieces in front of you. Each piece represents a legal authority – one or two pieces might be statutes, several pieces might be court decisions, and still others might be secondary resources (such as a section from the Restatement of Torts). After you put all of these pieces together, you'll have the complete picture and, hopefully, some answers to your client's legal question.

When putting together a puzzle, most people start by sorting the puzzle pieces by shape or color, predicting how they might fit together. Using the picture on the puzzle box as a guide, you sort each puzzle piece into its place. Look at the shape and color of the piece: Is it an edge piece? Is it a piece of the sun or the sky? Put it in the appropriate pile.

With legal authorities, we don't have edge pieces, but we do have guidelines about how they relate to one another. In your Legal Research class, you learned the following hierarchy of legal authorities:

1. Codified primary sources of law
2. Common law primary sources of law
3. Secondary sources of law

**Codified authorities** – Constitutional provisions, Statutes, and Administrative Rules (if they apply to the client's question) – are the starting point, kind of like the corner and edge pieces. We need to have a good understanding of what they require/prohibit, to whom they apply, when they apply and where they apply (micro-synthesis) before we can determine how they relate to the other codified authorities. Some questions to ask would be:

- Which codified authority contains the general rule – the one that applies most of the time to most of the situations and people?
- Which codified authority contains definitions of words or phrases contained in the general rule?
- Which codified authority contains explanations of when, where, to whom or how the general rule applies?
- Which codified authority contains exceptions or restrictions on when, where, to whom or how the general rule applies?

**Common law authorities** – court decisions (also known as case law) – are next in the hierarchy. Often, case law interprets or defines words/phrases in codified authorities and explains how to apply them to a set of facts or circumstances. To see how the case law fits with the codified authorities, especially when you have multiple court decisions to macro-synthesize, you would ask similar questions:

- Which court decision contains definitions of words or phrases contained in the general rule?
- Which court decision contains the general rule of how to interpret and apply the codified authority?
- Which court decision contains explanations of when, where, to whom or how the codified authority applies?
- Which court decision contains exceptions or restrictions on when, where, to whom or how the codified authority applies?

Sometimes there are no codified authorities that apply to your client's question. The case law then becomes the starting point, again with nearly identical questions:

- Which court decision contains the general rule – the one that applies most of the time to most of the situations and people?
- Which court decision contains definitions of words or phrases contained in the general rule?
- Which court decision contains explanations of when, where, to whom or how the general rule applies?
- Which court decision contains exceptions or restrictions on when, where, to whom or how the general rule applies?

Finally, secondary sources (such as Restatements, A.L.R., legal encyclopedias, etc.) may also have a role to play in helping you to see the complete picture of the client's legal question. That role is to help you understand, interpret and explain the rules contained in codified or common law authorities. You will often see court decisions refer to these secondary sources; however, secondary sources do not contain "rules" of any kind.

## Performing Macro-Synthesis

Remember our client from a previous chapter, Mr. Willy Wonka? He came to our law office because he was recently charged with arson. Our factual research revealed the following:

- A fire started at the Chocolate Factory, located in Green Bay, Wisconsin, at approximately 1 a.m. on January 30 last year.
- The factory had been closed since 5 p.m. on January 29.
- No one was in the building and no equipment was operating at the time of the fire.
- The fire caused \$1,000,000 in damage to the factory.
- Mary Worth, who lives across the street from the factory, stated that at around 1:30 a.m. on January 30, she saw a man dancing in the street in front of her house. This man was wearing camouflage clothing and was repeatedly shouting, “Burn baby burn!” Mary Worth was shown a photo lineup of potential suspects and identified our client, Willy Wonka, as the man.
- The Fire Inspector found accelerants at several sites around the outside of the factory.
- The Chocolate Factory is insured by Safeco Ins. Company (policy number FA6660297-SW)
- The Chocolate Factory is jointly owned by Wonka and another man, Charlie Bucket.
- Currently, Charlie Bucket is under investigation for improper business practices. The Chocolate Factory’s financial records are being audited by Weegocha Auditing Company. The investigation and audit have revealed
  - The Chocolate Factory has been operating at a loss for 3 years
  - \$1,000,000 is currently unaccounted for (or missing) from the financial records
- Both Bucket and Wonka have Preferred Player’s cards at LaCasino, a local gambling casino. Preferred Player’s cards are issued only to \$1,000,000 players.
- When the police interviewed him, Bucket stated that he was unaware of any plan to set a fire at the Chocolate Factory, and that he would not have consented to such a plan if he were aware of it.

We located and synthesized Wisconsin’s arson statute and determined that §943.02(1)(a) is the section that is most applicable to Wonka’s facts. That statute tells us, in relevant part, that a person is guilty of arson to a building if that person “[b]y means of fire, intentionally damages any building of another without the other’s consent.” Our micro-synthesis of that statutory section looked like this:

**COMPLETE CITATION OF STATUTE:** Wis. Stat. §943.02(1)(a) (2005)

**COMPLETE CITATION OF RELATED STATUTES:** Wis. Stat. §943.02(2) (2005)

QUESTION	STATUTORY REQUIREMENTS	CLIENT’S (Willy Wonka’s) FACTS
<b>WHO:</b>	Any person	Wonka is a person
<b>WHAT:</b>	The action of using fire and damaging another person’s building. It must be a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building.	A fire was set and the Chocolate Factory was damaged (\$1 million); Bucket is another person who owns the Chocolate Factory
<b>WHEN:</b>	any time	January 30, 1 a.m.
<b>WHERE:</b>	in Wisconsin a building	Fire occurred in Wisconsin, at the Chocolate Factory, which is a building
<b>WHY:</b>	because the statute says so	n/a

QUESTION	STATUTORY REQUIREMENTS	CLIENT'S (Willy Wonka's) FACTS
<b>HOW:</b>	The action of setting the fire must be done intentionally.	Accelerants used; Wonka seen dancing at scene of fire yelling "burn baby burn;" motive exists for setting fire (\$ problems). These facts are evidence of intent
	The action of setting the fire must also be done without the other person's consent	Bucket denies knowledge of plan or consent; no evidence that Bucket set the fire or otherwise participated in the plan; joint ownership is a legal right (under subsection (2) of statute)
<b>EXCEPTIONS?</b>	There are no "unless" or "except" statements in the statute	n/a

While we know that fire was used and damage was caused, we have more questions to answer before we can advise our client whether it's best to take a plea deal or go to a jury trial:

- What is a "building" – is it a permanent structure or does a tent qualify? Does it have to be someone's home?
- What does "intentionally" mean and how is it proven? After all, no one really knows what was in Wonka's mind as far as what he intended regarding a fire at the Chocolate Factory. We have facts that we think might show intent and motive, but are they enough?
- What does "without consent" mean and how is it proven? After all, no one really knows what was in Bucket's mind as far as what he actually knew or thought about plans for a fire at the Chocolate Factory. We know what he said to the police, but maybe he lied!

For our purposes, let's assume that a "building" has been defined as any permanent structure, regardless of whether it is someone's home or dwelling place. That means the Chocolate Factory is a "building" to which the arson statute applies.

We know that the word "intentionally" is not defined in the Wisconsin criminal statutes. Let's assume that we found two court decisions that help us define "intentionally" and understand how it is proven. Below is a summary of those two cases (which, by the way, are fictitious):

*State v. Johnson*, 349 Wis. 2d 894, 455 N.W.2d 338 (1988). That case said, "Intent to commit arson must be proven with objective facts. This intent can be inferred from the following facts: use of an accelerant, the setting of the fire during a time of the day when the area is likely to be unpopulated, or any other facts tending to show hostility or intent to cause damage." The case involved Randy Johnson, who was accused of arson to a school. The school caught fire at 3 a.m. on Easter Sunday. A search of Randy's home yielded some clothes that smelled of smoke and gasoline. The fire inspector's report revealed the presence of gasoline in the area where the fire started. An empty gas can was found in the football field behind the high school. Witnesses also testified that Randy's Chemistry class was scheduled to take a big exam the following Monday. Randy's Chemistry teacher testified that Randy needed to earn an A on the exam or he would fail the class. The *Johnson* court held that this evidence was sufficient to prove that Randy intentionally set fire to the school, even though there was no evidence that he was seen in the area of the fire. As a result, Randy's conviction of arson was upheld.

*State v. Rodriguez*, 548 Wis. 2d 293, 560 N.W.2d 81 (1993). This case applied the same statute, and the definition in *Johnson*: "Intent to commit arson must be proven with objective facts. This intent can be inferred from the following facts: use of an accelerant, the setting of the fire during a time of the day when the area is likely to be unpopulated, or any other facts tending to show hostility or intent to cause damage." The Court clarified that proving "intent" beyond a reasonable doubt requires more than just evidence of the presence of accelerants at the site coupled with "vaguely suspicious" circumstances. In *Rodriguez*, the fire started on Alex Rodriguez's back porch at 5 p.m. on a Saturday, causing damage to his home. At the time of the fire, due to a renovation project at the home, the door to the back porch had been boarded up, such that Rodriguez needed to go out the front door and around the home to access the back porch. Rodriguez was at home when the fire started, and immediately called the fire department to report the fire. Several days later, Rodriguez made a claim with his insurance company, which denied the claim, calling the fire "suspicious" and noting that accelerants were present on the back porch where the fire started. Rodriguez testified

that he always kept his grill, charcoal, and charcoal lighter fluid on the back porch. Witnesses for the insurance company were unable to describe any other evidence that the fire had been set intentionally. The *Rodriguez* court held that this evidence was not sufficient to prove that he intentionally set the fire. As a result, Rodriguez’s conviction of arson was overturned – the opposite result of the *Johnson* case.

Based on what we see above, it’s safe to conclude that an arson conviction must be supported by several pieces of evidence that demonstrate intent to cause damage, with no “innocent” explanation for that evidence. One or two pieces of evidence are not enough, especially when only a “vague suspicion” is generated by the evidence – particularly when there is an “innocent” explanation for it.

With fact-intensive legal standards, it is helpful to perform a detailed side-by-side comparison of relevant court decisions. When you do this, include details about each decision with respect to court level (Supreme Court or Court of Appeals) and which decision was published first. While the questions we ask will be unique to each legal standard, the following example is a good model:

Questions	<i>State v. Johnson</i> WI Supreme Court 1988	<i>State v. Rodriguez</i> WI Supreme Court 1993
<b>Who is the primary defendant?</b>	Randy Johnson, high school student	Alex Rodriguez, adult
<b>Where did the fire occur?</b>	The high school Randy attended	The back porch of Alex’s home
<b>Did the primary defendant own the property where the fire occurred?</b>	No	Yes
<b>Was the primary defendant present when the fire occurred?</b>	No one witnessed Randy at the school	Yes, Alex was at his home and called the fire department
<b>Did the fire occur at a time when the property was likely to be unoccupied?</b>	Yes. The fire occurred at 3 a.m. on a Sunday, when the school was closed	Probably not. The fire occurred at 5 p.m. on a Saturday, when someone might typically be home preparing dinner
<b>Were accelerants present at the site of the fire? If so, what were they?</b>	Yes. Gasoline was found at the site where the fire started. An empty gas can was found on the football field behind the school.	Yes. Charcoal and lighter fluid were found on the back porch.
<b>Was there an “innocent explanation” for the presence of accelerants at the site of the fire?</b>	No	Yes. Alex testified he always kept his grill, charcoal, and lighter fluid on the back porch
<b>Was there any other “suspicious” evidence that implicated the primary defendant?</b>	Yes. A search of Randy’s home resulted in the police finding some of Randy’s clothing that smelled like gasoline and smoke.	It seems odd that Alex would keep his grilling supplies on the back porch when the door leading from the inside of the house to the porch was boarded up.
<b>Was there an “innocent explanation” for the presence of the other “suspicious” evidence?</b>	No	Yes. Alex’s home was undergoing renovations at the time; presumably, the door was only temporarily boarded up
<b>Was there evidence that the primary defendant had a motive to set the fire?</b>	Yes. Randy’s Chemistry class was scheduled to take an exam the day after the fire. If Randy didn’t earn an A on the exam, he’d fail the class	Maybe? Alex might have wanted to get insurance money to pay for his remodeling project. This is not clear from the Court’s decision
<b>Would the primary defendant benefit in some way as a result of the fire?</b>	Yes. Randy would get more time to study for a “do or die” exam.	Yes. Alex would have received insurance money to cover the damage caused by the fire if the insurance company had not denied the claim.

Questions	<i>State v. Johnson</i> WI Supreme Court 1988	<i>State v. Rodriguez</i> WI Supreme Court 1993
Was the primary defendant convicted of arson?	Yes	Yes
If the primary defendant was convicted of arson, was the conviction upheld or overturned?	Randy's conviction was upheld	Alex's conviction was overturned
Why did the Court uphold the conviction?	"Objective evidence" of intent to set a fire existed: presence of accelerants; the fire occurred during a time of the day when the school was likely to be unpopulated; the primary defendant's clothes smelled like gasoline and smoke; the primary defendant had a clear motive to set the fire.	n/a
Why did the Court overturn the conviction?	n/a	While an accelerant was present at the site of the fire, there was a logical "innocent" explanation for its presence. There was evidence inconsistent with "hostility" or "intent" – the primary defendant called the fire department right away. The only motive for setting the fire (getting insurance money) is only "vaguely suspicious."

Even though some of these details may not be crucial to the outcome of the decision, it is better to include facts that end up being trivial, than to risk excluding facts that may turn out to be legally significant. When macro-synthesizing case law, we are trying to determine what accounts for the changes (if there are any) in how the legal standard is applied to different persons or fact scenarios. This amount of detail also helps us with the next step: comparing Wonka's facts to the facts in *Johnson* and *Rodriguez*.

Questions	<i>State v. Johnson</i> WI Supreme Court 1988	<i>State v. Rodriguez</i> WI Supreme Court 1993
Wonka's facts that are similar	<ul style="list-style-type: none"> <li>Both fires occurred at a time when the buildings were likely to be unoccupied</li> <li>Accelerants were present at the site where both fires started</li> <li>There is no "innocent" reason why accelerants would have been present at a school or at the Chocolate Factory</li> <li>Randy's clothes smelled like gasoline and smoke; Wonka was seen wearing camouflage clothing</li> <li>Both primary defendants had a motive for setting the fire</li> </ul>	<ul style="list-style-type: none"> <li>Both primary defendants owned the property where the fire occurred.</li> <li>Accelerants were present at the site where both fires started</li> <li>Both primary defendants were present at the site of the fire</li> <li>Both primary defendants could have benefited financially by setting the fire (insurance money)</li> </ul>

<p><b>Wonka's facts that are different</b></p>	<ul style="list-style-type: none"> <li>• Randy was a high school student; Wonka was an adult</li> <li>• A school is a public building; the Chocolate Factory is a privately owned building</li> <li>• Wonka was co-owner of the building where the fire occurred</li> <li>• A witness saw Wonka dancing in the street in front of her house, which is across the street from the Chocolate factory. Randy was not witnessed at the site of the fire</li> <li>• Wonka was seen at the site of the fire and heard repeatedly shouting, "Burn baby burn!"</li> <li>• Wonka's potential motive for setting the fire was to obtain insurance money potentially to cover gambling losses and/or embezzlement from the Chocolate Factory. Randy did not financially benefit from the fire; Randy's motive was to delay a Chemistry exam</li> </ul>	<ul style="list-style-type: none"> <li>• Wonka's fire started at a factory. Alex's fire started at his home</li> <li>• Wonka's fire occurred at a time when the Chocolate Factory would be closed and unoccupied; Alex's fire occurred at a time when the home would typically be occupied by people living there</li> <li>• Alex called the fire department to immediately report the fire and didn't behave in a "hostile" way. Wonka danced across the street from the site of the fire shouting, "Burn baby burn!"</li> <li>• There was a witness to the Chocolate Factory fire; there does not appear to have been a witness at Alex's home, other than Alex</li> <li>• There is no "innocent" reason why accelerants would have been present at the Chocolate Factory; Alex's "innocent" reason was that he always kept the charcoal and lighter fluid on the porch, where the fire started.</li> <li>• Wonka's potential motive for setting the fire was to obtain insurance money potentially to cover gambling losses and/or embezzlement from the Chocolate Factory. Alex did not appear to have a logical motive to set the fire</li> </ul>
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Again, some of these similarities and differences may seem inconsequential. However, including those details makes it easier to determine which case is more similar to the client's facts. This in turn, enables us to make a more accurate prediction of which case will have a greater impact on the client's question. For example, assume your client's facts are very similar to a pile of authorities (puzzle pieces) you've collected. When you put that pile together, an outcome becomes apparent (a picture of a sun). You then logically predict that your client's outcome will be similar to that contained in the authorities (in other words, your client has a picture of a sun, too). Small factual differences between the authorities and your client's facts call for small variations in the outcome (an orange sun instead of a yellow one). Major factual differences between the authorities and your client's facts call for more dramatic variations in the outcome (a moon instead of a sun). You then need to decide if the difference is so dramatic that the authority does not apply, or that you must reach a conclusion opposite to that reached in the authority.

If you ask me, our client Wonka seems to be in some serious trouble! But this still isn't the complete story. Remember, the State has to prove all of the elements of a criminal statute beyond a reasonable doubt to obtain a conviction. Three out of four (fire, building, intent) is not enough. We still need to know how "without the other [building owner's] consent" means. We'd have to separately research how court decisions have defined, interpreted an applied "without the other's consent" in the arson statute. That means another round of micro-synthesis of court decisions, followed by another round of macro-synthesis. We might even need to find some secondary authorities (maybe some Wisconsin Jury Instructions?) to help us figure this out.

Once you've completed macro-synthesis of all the authorities relating to each element (or sub-question/sub-issue) that needs to be analyzed to answer the broad question relating to guilt or liability, you are ready to reach a conclusion about the client's broad question. The next step is to report your analysis.

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