

## THAT OLD FRIEND, THE TREE-BRANCHING DIAGRAM

BY ANNE ENQUIST

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*Writers' Toolbox ... is a regular feature of Perspectives. In each issue, Anne Enquist will offer suggestions on how to teach specific writing skills, either in writing conferences or in class. Her articles will share tools and techniques used by writing specialists working with diverse audiences, such as J.D. students, ESL students, and practitioners. Readers are invited to contact Professor Enquist at [ame@seattleu.edu](mailto:ame@seattleu.edu).*

Sometimes we forget about a tool that's been around a long time. It's a tried and true part of our own writer's toolbox, so we may assume that our students have it in theirs as well.

Tree-branching diagrams are exactly that kind of tool. While most legal writing faculty have used them to walk through any number of legal and nonlegal problems, many Gen X law students have not. When asked to create a chart of a complex combination of legal rules, today's law student may think more in terms of an Excel spreadsheet. After all, tree-branching diagrams are a bit old-fashioned and hard to create on a computer. Nevertheless, they can be a godsend when figuring out how the pieces of a complex law fit together.

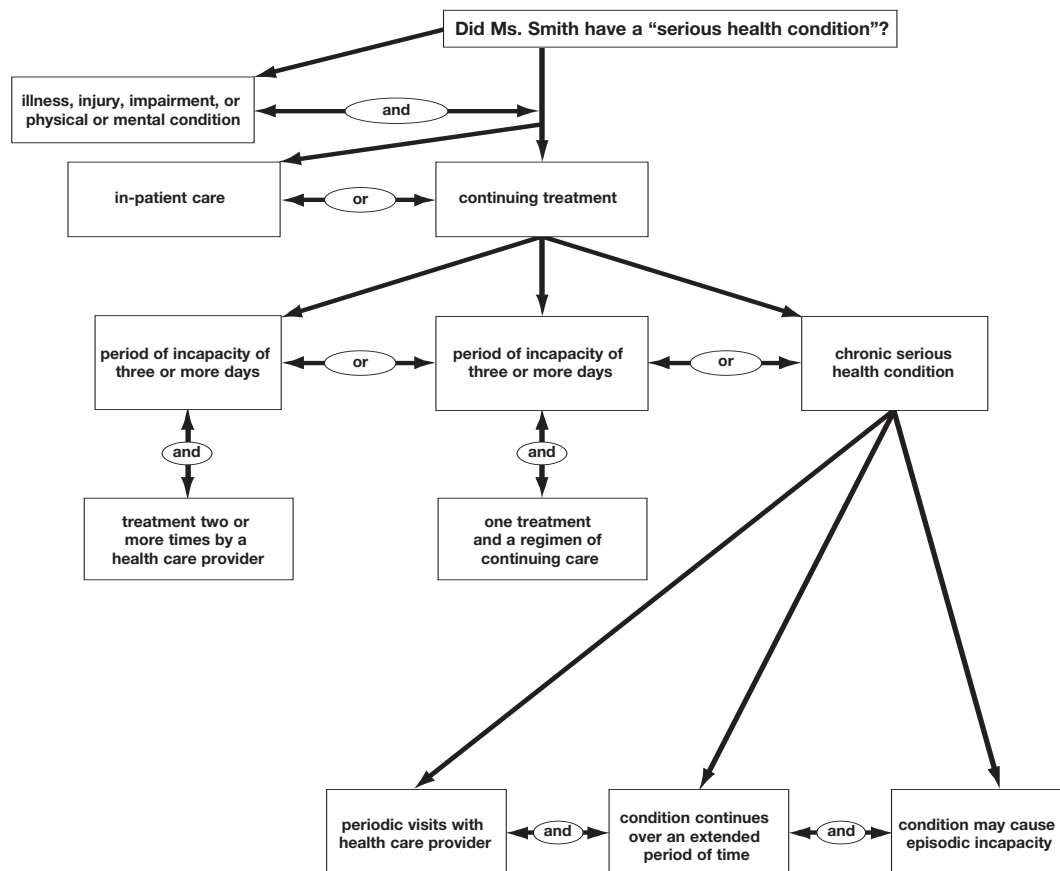
Several of us at Seattle University realized this all over again this last semester when our legal writing classes tackled an issue that fell under the Family and Medical Leave Act (FMLA):<sup>1</sup> The students struggled mightily to understand how all

the parts fit together, and unfortunately some of them started drafting their office memoranda before they had mapped the legal terrain. The result was that many of these students wrote themselves into a corner. Others kept quoting from the statutes and *Code of Federal Regulations* sections and trying to break down the elements, sub-elements, and sub sub-elements (much as they had been taught to do in previous assignments) but, with no larger conceptual framework to keep the pieces straight, their writing often dissolved into confusion.

The breakthroughs came when one of the legal writing professors had the students step back and create tree-branching diagrams of the applicable law. The chart on the next page is an example of how many students figured out the intricacies of the disputed element in their assignment: whether an employee has a serious medical condition.

Once the students had a map of how the pieces fit together, they then had to figure out how to convey the information to a reader in a memo format. The key, of course, was to insert headings, roadmaps, signposts, transitions, and mini-conclusions along the way of their analysis so that a reader could stay oriented and easily follow their explanations. By creating a coherent number and lettering system for the headings, they signaled how the pieces fit together. In addition, as a general rule, we recommended that they use a roadmap sentence to introduce each "branch" in the diagram and signposts to make it clear when several "twigs" were all under one branch. The students quickly saw that transitions such as "in addition to proving [insert element or sub-element]" for conjunctive elements or "in the alternative" to signal disjunctive elements served as important reminders to readers about how the parts worked together. They immediately understood that including mini-conclusions to wrap up a section or sub-section also kept their readers (and themselves) clear about how the pieces were adding up.

<sup>1</sup> Thanks to my colleagues Laurel Oates, Julie Heintz, Janet Chung, and Patrick Brown, all of whom designed and used this problem.



The outline below contains only the headings, roadmaps, signposts, and transitions; the ellipsis indicates where the analysis would be developed. The citations are omitted.

I. Did Ms. Smith have a serious health condition?

To establish that she had a serious health condition, Ms. Smith must prove the following: (1) that she had an illness, injury, impairment, or physical or mental condition that prevented her from working for three weeks and (2) either that she received (A) inpatient care or (B) continuing treatment.

...

1. Did Ms. Smith have an illness, injury, impairment, or physical or mental

condition that prevented her from working for three weeks?

...

2. Did Ms. Smith receive either inpatient care or continuing treatment?

In addition to proving that she had an illness, injury, impairment, or physical or mental condition that prevented her from working for three weeks, Ms. Smith must also prove that she received either (A) inpatient care or (B) continuing treatment.

A. Did Ms. Smith receive inpatient care?

...

B. Did Ms. Smith receive continuing treatment?

Even if Ms. Smith cannot prove that she received inpatient care, Ms. Smith can try to prove that she received continuing treatment. To do this, she will have to prove (1) that she was incapacitated for three or more days and received treatment two or more times by a health care provider; or (2) that she was incapacitated for three or more days and received treatment by a health care provider on at least one occasion, which resulted in a regimen of continuing treatment; or (3) that she suffered from a chronic health condition.

- (1) Was Ms. Smith incapacitated for three or more days and did she receive two or more treatments?

Although conceding that Ms. Smith was incapacitated for three or more days, we will argue that she did not meet the additional treatment requirement.

- (2) Was Ms. Smith incapacitated for three or more days and did she receive one treatment that resulted in a regimen of continuing treatment?

In the alternative, Ms. Smith can try to prove that in addition to being incapacitated for three or more days, she received treatment by a health care provider on at least one occasion that resulted in a regimen of continuing treatment

...

- (3) Did Ms. Smith have a chronic serious health condition?

Assuming Ms. Smith will be unable to prove the first option, that she received two or more treatments, or the second option, that she received one treatment resulting in a regimen of continuing treatment, she is left with a third and last option for proving she received continuing treatment: showing that she has a chronic serious health condition.

Once the students had the tree-branching diagrams worked out, their memos almost wrote themselves. They were amazed at how easy it was to keep themselves and their readers oriented and on track. With the organization under control, they could focus their energy on which cases and facts to use to create the best arguments. Like a trusty old tool, the tree-branching diagrams served their purpose so well that it was almost easy to forget the writing messes that had existed before the students used them.

Maybe that is also why it is easy for those of us who teach legal writing to forget to tell our students about things like tree-branching diagrams. They are the old friends we take for granted; it is easy to overlook them when we are dazzled by all the new technology and ideas that we are eager to introduce to our students. Our goal, of course, is to share with students any good idea—old or new—that makes their work more efficient and effective. Indispensable tools like tree-branching diagrams turned light bulbs on for us back in the day when we were students. They will continue to do the same for decades of students to come, if we just remember to tell those students about them.

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